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Volume I

The impact of new forms of labour in industrial relations and the evolution of labour law in the European Union

EXECUTIVE SUMMARY

The study intends to address several objectives, all of them linked to each other, in order to present an updated analysis of what are the new forms of labour in the EU- 27 and their impact on different fields. The main objectives are:

a) To provide an overview of the most characteristic and common types of non-standard contracts in the 27 Member States of the European Union based on statistics and existing studies and research.

b) To carry out an in-depth analysis of the impact of new forms of labour on labour law and its evolution with the appearance of a second generation of self-regulation instruments for undertakings and social partners based on a voluntary nature and on soft law.

c) To review the impact of new forms of labour on social dialogue and industrial relations.

d) To examine the bases for a common body of labour law that includes a reflection on core labour rights.

It thus encompasses several and complementary dimensions including:

- recent developments regarding forms of labour taking place in the EU-27 labour laws
- impact of these changes on labour markets
- impact of the evolution of contractual arrangements on collective rights of workers
- role played by soft law and social dialogue regarding new forms of labour
- impact of the flexicurity concept on the evolution of labour laws
- difficult issue of core labour rights.

Forms of labour: recent developments in the EU-27 labour laws

Many Member States (MS) experience ongoing debates and reforms, which lead to an important diversification in terms of forms of labour and employment contracts stimulated by two main drivers:

- a wish, often controversial, among governments and social partners to cope with economic changes and social needs
- the transposition of EU labour law directives or framework agreements (part time, fixed-term, telework).

However, the distinction between “old” and “new” forms of labour is very relative. Some Member States are experiencing developments of shift work and night work, which is nothing new as such, but which can be new compared with previous trends or with the typology of jobs or economic sectors where these evolutions take place. The same remark could be applied to self-employment, which has existed for centuries but the development of which is very different in terms of jobs, conditions, sectors and MS.

Another example is undeclared work which is nothing new; however its extent, its proportion and the sectors and jobs where it takes place have changed.

In this context, several dimensions have to be jointly considered.

Approaching forms of labour: a matter of definitions

Definitions of basic concepts are rather deficient in many national labour laws. Apparently, labour legislations have been used more actively in elaborating new and increasingly complicated legal forms of labour, than clarifying the basic concepts. Until recently, there has been a low level of understanding of the difference between employment, economically dependent work and self-employment in legislations and legal practice.

Thus, these definitions are mostly missing from labour laws and this gap is usually filled by social security laws (e.g. scope of self-employment). The social law definition of self-employment ensured the payment of social contributions and insurance of dependant, self-employed persons, but did not solve the problem of their labour law protection. Consequently, the insufficient definitions of concepts, especially the difference between employment and self-employment, lead to legal debates on the legal status and incomplete protection of dependant workers.

However, some improvement has been made in recent years. Significant labour market changes, with increasing numbers of people working in settings, that are not traditionally employment relationships, have suggested that it might be necessary to re-consider the concept of an employment relationship. Particularly, the remarkable growth of false/fictitious employment, disguised by civil law contracts, enforced labour legislations and judicial practice to clarify the borderline between employment relationship and self-employment in many Member States (**Austria, Bulgaria, Czech Republic, France, Germany, Greece, Hungary, Lithuania, Poland, Slovakia and Slovenia**).

Nevertheless, these legislative measures mostly assumed the existence of merely two types of legal statuses, namely employment and self-employment. Thus, new labour provisions and court practice focused on the definition of an employment relationship with the following logic that if a legal relationship is not an employment relationship, then the person must evidently be a self-employed person. There are no definitions of self-employment and self-employed persons in national labour laws, except in **Spain** and **United Kingdom.**

The general understanding of self-employment is work under civil law contracts in various legal forms (**Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Germany, Hungary, Malta, Poland, Slovakia).** Therefore, the contractual (labour law) relationship is the same (civil law contract), but the legal (social security) status varies from member state to member state (private undertaking, individual entrepreneur, freelancer).

Moreover, the weakest definition is economically dependent work. A plausible conceptual solution has simplified the issue to employment, false/fictious employment and self-employment. Most national labour legislations exclusively focus on the differentiation and ascertainment of an employment relationship. As a consequence, not much attention has been paid to the concept of economically dependent work. However, there is certainly a third category within the working population, who are not employees or unequivocally self-employed persons.

There is a growing number of people working for another person whose employment status is unclear, and who are consequently outside the scope of the labour legislation protection, although their situation is similar to the situation of dependent employees. Economically dependent workers may be defined as persons, who have an independent legal status for a contractual work relationship with a certain client or company.

These persons can be seen as ‘hybrids’, somewhere between entrepreneurs and employees, as they are legally independent but economically dependent. In practice, they are dominantly employed by civil law contracts.

Apparently, this concept is missing from the labour laws of many Member States (**Bulgaria, Cyprus, Estonia, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovenia**), because they consider it as a problem of false employment by civil law contracts. However, at the same time, the definition of economically dependent work has been addressed by labour law in several Member States **(Austria, Czech Republic, Ireland, Portugal, Slovakia, Spain, United Kingdom)**, even though with diverse legal contents. The common feature of these definitions is that personal subordination is missing or rather loose.

Stocktaking of contractual arrangements in the EU-27

The open-ended, full time employment contract is still regarded by national labour laws as the 'basic' legal form of employment. Evidently, this 'standard' employment relationship is highly regulated in every country and is the basis of comparison and regulation of new special forms of employment.

As regards the legal character of these new forms, the following groups of legal relationships may be identified:

- 'atypical' employment relationships (fixed-term/temporary, part-time work, mini-job, midi-job, job sharing, on-call work, temporary agency work): these employment relationships are different from standard (full-time, open-ended) employment relationships in certain aspects and to various extents concerning their labour law regulation;
- 'almost standard/atypical' employment relationships (flexitime, overtime, on-call/stand-by duty, stand-by job, shift work, night work): only certain rules of working time are modified in a standard, though atypical employment relationship;
- 'miscellaneously regulated' labour relationships (home working, telework, training, apprenticeship, insertion, juvenile, work-and-learning contracts): these legal relationships aimed at employment are considered as (atypical) employment relationships in some Member States, and they are regulated as non-employment relationships in other Member States;
- special 'non-employment' labour relationships (civil law contracts, occasional employment): these are special legal relationships, with separate regulation, therefore they are not or only partially governed by labour laws on (standard/atypical) employment relationships.

A recent trend may be found in the constantly increasing number of 'special' forms of labour. Consequently, it has become very hard to classify legal forms of labour since the boundary between employment relationships and non-employment labour relationships is slowly but constantly fading away.

Occasional work, home working, training and apprenticeship contracts are useful examples of this process. This is not a totally new phenomenon, but rather the ingenuous effect of legal developments in the last decade.

These legal developments may be characterized by an increasingly complex, distinctive and polarized legislative framework in national labour laws. However, there is still a notable difference between open-ended, full time employment contracts and all other types of contracts, which are respectively legal sources of flexibility. The border between these forms becomes less clear, due to the increasingly complex and rapidly changing labour regulations. There are general trends concerning the regulation of the legal forms presented in the study. The following legal and employment developments were reported from all Member States:

- detailed regulation and widespread use of fixed-term employment;
- detailed regulation of part-term employment, however its use is hampered by several conditions in many Member States;
- very recent regulation and rapidly increasing use of temporary agency work;
- self-employment and economically dependent employment by civil law contracts, which is a remarkable source of flexibility in many MS;
- regulations on posting of workers;
- lack of definition of economically dependent work, though this concept has been developed in some MS;
- lack of labour law provisions on subcontracting.

Several trends are common accross Member States:

- wide use of flexible forms of working time in several Member States;
- regulation of various forms of training and apprenticeship contracts;
- regulation of home working in several Member States, but it is scarcely used;
- very recent regulation of telework, but it is scarcely used;
- recent regulation of occasional work in several Member States;
- regulation of mini-jobs, on-call work and job sharing in several Member States;
- multiple-job holding as a form of part-time work in some economies.

Besides these general trends**,** there are, however, fundamental differences between the situations and developments of the national labour laws and labour markets. The following models may be identified:

- Member States where full-time, open-ended contracts remain the dominant form of employment: Cyprus, Denmark, Estonia, Finland, Latvia, Lithuania, Luxembourg, Malta, Sweden.
- Member States where self-employment and undeclared work are the main sources of flexibility: Bulgaria, Greece, Romania.
- Member States where flexible forms are regulated and used, though at a moderate level: Austria, Czech Republic, Hungary, Italy, Malta, Slovakia.
- Member States where the main source of flexibility is temporary employment: Portugal, Slovenia, Spain.
- Member States where there are several sources of high-level flexibility: Belgium, France, Germany, Ireland, Poland, The Netherlands and United Kingdom.

Various impacts of new forms of labour

Impacts on labour markets

Comprehensive statistical analyses have included the construction of two composite indicators, one of them is a sub-indicator for flexible employment and the second a corresponding sub-indicator for unemployment. The results suggest that Europe is remarkably heterogeneous with respect to the incidence and temporal development of different forms of atypical work.

- The **Scandinavian Member States** and **The Netherlands** exhibit in general a relatively high incidence of flexible employment arrangements with relatively low unemployment, in particular in **Denmark** (with the exception of unskilled workers).
- In the **western continental Member States** (Austria, Belgium, France, Germany, Luxembourg) the picture is extremely heterogeneous. Similar developments in several categories are relatively rare and common patterns cannot be observed, neither for flexible employment characteristics nor for unemployment.
- For **Ireland** and the **United Kingdom**, it is worth noting that they display low rates of fixed-term workers and also a relatively low incidence of almost all other flexible work arrangements, except for temporary agency work in the United Kingdom. Furthermore, these countries are exceptional with respect to lower unemployment rates for women than those for men.
- Among the **southern European countries** several categories are relatively rare and common patterns cannot be observed, neither for flexible employment characteristics nor for unemployment.
- The prevalence of flexible characteristics is very high in **Spain**, with a lower proportion, however, of part-time workers and flexible working time arrangements than in the other old Member States.
- The new Member States in **Central and Eastern Europe** are still in the process of transition and their labour markets in general exhibit considerably different problems than those of the EU-15. While the majority of flexible work arrangements such as flexible working time, part-time work and temporary agency work are considerably below the EU-15 average, some Member States like **Slovakia** experience extremely high shares of low-skilled unemployed.

Moreover, new forms of labour in Europe show an increasing phenomenon of multiple characteristics, where several forms of atypical employment are combined. These multiple attributes seem to be one of the largest challenges since they affect the different dimensions of labour, social and economic policies. Their implications regarding the organisation of leisure time and consumption, the generation of income at home, amongst others, as well as their impact on the financing of the protection systems are obvious.

From a labour law perspective, the standard of the open-ended full-time employment contract is increasingly challenged by the growing number of fixed-term and part-time contracts as well as by agency work and self-employment. These forms of labour contribute to the fragmentation of the labour market. Labour laws and social security systems have been created on the basis of a standard form of employment, full-time and open-ended.

Therefore, workers who are not employed under such a contract are part of a potentially vulnerable group. In addition, a large number of persons exhibit several atypical work characteristics at the same time, such as employees holding a fixed-term contract and working part-time. This may make their situation more precarious.

However, segmentation can also consist in the exclusion of some workers from the most basic protective rights. Taking the opposition between "insiders" and "outsiders" as a starting point, undeclared work, which is still a very significant form of labour in several Member States, thus constitutes one of the forms of labour that presents the greatest risks for workers.

Therefore, both undeclared work and atypical work may contribute to the segmentation of the labour market. In addition, no doubt exists that involuntary atypical work contributes to increase the gap between so called "insiders" and "outsiders".

Involuntary atypical labour is an important phenomenon in the European Union, considering part-time work but also fixed-term and temporary agency work. It especially affects specific categories of workers such as women, youngsters, and low skilled workers. At the same time, no clear evidence exists that atypical forms of labour actually serve as a stepping stone towards a permanent job for individual workers.

Impact of the evolution of contractual arrangements on workers' collective rights

It is difficult to identify a common trend at EU level regarding the impact on collective rights of recent developments concerning the evolution of contractual arrangements. One of the reasons is that the evolution of new forms of labour itself is not the same in all European Member States and the responses to these different changes cannot be the same. Thus, in Member States where open-ended, full-time employment still predominates, there have been no specific changes in the system of collective bargaining or representation of workers.

For many Member States a distinction has to be made between atypical employees, employed under employment contracts, and other types of work like freelancers or economically dependent persons who are left outside the scope of collective rights. All the Member States note that in practice "while atypical employees have the same collective rights, they hardly benefit from them". The precariousness of the employment relation sometimes hampers the full exercise of collective rights because most of employment rights have been prepared according to an open-ended contract model. As a result, an increasing number of atypical forms of labour could have a negative impact on collective rights of workers and it could undermine union density and therefore their bargaining power. To cope with this negative impact of atypical employment, trade unions in some MS have sought some solutions, especially for agency workers. These particular provisions aim at allowing temporary workers to make collective rights effective.

Role of the soft law and other voluntary autonomous agreements

There is no common trend at EU level concerning this issue. Thus, the role of soft law widely differs according to the cultural features of the Member States. In some Member States such as **Austria, France, Slovakia, Slovenia or Spain,** the regulatory role of soft law is negligible while in **United Kingdom** the role of soft law is important and the United Kingdom government has increasingly moved towards the use of soft law measures in the competence of employment law generally.

The notion of soft law itself remains a major question as the notion is not understood in a similar way in all EU Member States. This concern is especially sensitive regarding the distinction between collective bargaining and soft law, especially because collective agreements themselves can include some elements of soft law.

Besides this matter of definition, developments regarding soft law are very different from one country to another. The role of Member States' authorities in steering the direction of employment law has not diminished in the face of 'soft law'. Soft law is not replacing traditional labour law and labour law still has a pivotal role to play in the shaping of working relationships and labour organization. However, in some Member States the role of soft law is more important and in some cases increasing. A growing role of Corporate Social Responsibility and Codes of Conduct is reported in some Member States but their real impact is still to be seen. For example, as regards labour law, the instrument of 'Code of Practice' is especially relevant in The Netherlands. Nevertheless, even if the latter are widely applied in fields like working conditions and occupational safety and health, they play a minor role in the field of labour contract law.

Social dialogue and changes in labour

There is no doubt about the active role played by European social partners (BUSINESSEUROPE (formerly UNICE), UEAPME, CEEP and ETUC) to face the changes brought about by the new forms of labour, at least in the last decade.

At national level, even if social dialogue offers several expressions, the structure, articulation and scope of collective bargaining are factors that determine the influence of its contents in each Member States. In some Member States, the relationship between social dialogue and collective bargaining is closer than in others since the former plays a *macro* role at national level, establishing guidelines for the treatment of different topics in collective bargaining (wage recommendations, formal aspects of contracts, etc.) at sector or undertaking level. However, we may clearly verify that, in most Member States the different ways in which social dialogue is organised at different levels have dealt with, discussed, negotiated and, given the case, agreed solutions to introduce new forms of labour and the creation or amendment of contractual forms to adapt to their existence in the national labour markets. These agreements, when they have taken place, have generally resulted in legislative reforms incorporated into labour law, either through the autonomy of the parties (bilateral agreements) or through State intervention.

Collective bargaining, particularly at sectoral level, has acted either as a *disseminator* of these agreements, or as the *protagonist* in first instance, directly regulating the adaptation and use of contractual forms and other forms of internal flexibility by means of particular arrangements, especially at the level of the undertaking.

Experience shows that Member States with strong, reliable and intertwined social dialogue and collective bargaining systems are in a better position to successfully adapt to the management of change in labour relations and, hence, to agree labour law amendments and reforms. *A contrario*, in those Member States that do not yet have fluent and efficient social dialogue systems and where collective bargaining is hardly articulated and with little scope, social dialogue may become a distortion element or may simply not affect wide layers of workers with no real coverage (and without representation).

Flexicurity and the evolution of labour law: what understanding and what approaches?

Flexicurity refers to an integrated approach, for companies and workers, aiming at better balancing flexibility and security in the labour market.

One of the four policy components of this approach as set out by the European Commission consists in *"Flexible and reliable contractual arrangements"* (from the perspective of the employer and the employee, of "insiders" and "outsiders") through modern labour laws, collective agreements and work organisation.

However, how contractual arrangements can be 'flexible and reliable' simultaneously (the expression repeated several times in the Common Principles of Flexicurity adopted by the Council in December 2007) and which contractual arrangements could be relevant to "outsiders" are not explained. In this context, no doubt exists that a description of the different national approaches regarding flexicurity concept is crucial. **As flexicurity has just recently begun to be debated in most European MS, common trends can hardly be found**.

The overall impression is that flexicurity refers to a variety of attitudes**. It is thus difficult to clearly identify different and consistent models. As a result, it would not really make sense to classify Member States in different groups.**

In Poland and in the Baltic countries, **Estonia** is the only country to have explicitly adopted Flexicurity principles through the Estonian Action Plan for Growth and Jobs 2005-2007. In **Latvia** and **Poland**, social partners have not yet defined their understanding of the concept. In Poland, social security and flexibility of the labour market are perceived as opposite phenomena (not only by the trade unions, but also by the government), thus – as there is no public debate on the topic – development of a coherent flexicurity model has been hindered until now.

In central European Member States, flexicurity does not seem to be an issue as such. In **Slovakia**, the flexicurity model has not been widely recognised or discussed until now. The discussion about flexicurity and its specific models is limited to the restricted and narrow circle of experts, who usually discuss the Danish model of flexicurity, but do not think that it is currently applicable to Slovakia and its social conditions. The **Czech** government formally accepts the principles of flexicurity but in addition to social system reforms it is also planning conceptual changes in labour legislation, aimed at the further liberalization of industrial regulations.

In the **United Kingdom,** the debate on flexicurity is not dominant, as the main discussion, at trade union level, has been with regard to the demands for protection of agency and other 'vulnerable' workers. In **Belgium**, flexicurity is not taken into consideration, mainly because the law is already flexible whereas Luxembourg still defends a rigid labour law and the open-ended contract as a model.

Southern Europe (**Italy, Spain, Portugal**), has taken on board the concept of flexicurity (introduced at the European Union level) and affected the debates about the regulation of the labour market, breaking the traditional dilemma of flexibility versus workers' protection. It is interesting to note that a change of tendency can be found in some Member States, for instance in **Spain**, where legislative changes have followed the direction of limiting the use of atypical contracts of employment, and improving their working and economic conditions. In these cases, quality of employment now seems to be a priority for governments and social partners, as labour market segmentation is a problem that is as serious as unemployment, at least. A general appraisal exists regarding the minimum contribution of these "low quality" jobs to institutional, economic and social stability due to their limited productivity and the costs entailed on the social protection system in the long term – as they are more vulnerable to restructuring or simply by non-renewal of contracts, amongst other factors.

In **The Netherlands**, flexicurity has been illustrated in particular in the *Wet Flexibiliteit en Zekerheid* (*Act on Flexibility and Security*), the so-called Flexwet (Flex Act) adopted in 1999. This act achieved flexicurity through atypical (mainly temporary employment) forms of contracts. The law allows greater flexibility in temporary labour contracts on the one hand, while on the other it gives more rights to temporary workers.

As for the Scandinavian countries, the Danish model, considered to be generally flexible, clearly differs from the Swedish and Finnish model that is based on a stronger employment protection for employees. In addition, we find more employees employed on atypical, mainly fixed-term, contracts in these MS. Both in **Finland** and **Sweden** much effort has been made to solve matching problems in redundancy situations.

Overall, it is obvious that flexicurity embraces flexible forms of employment. What remains unclear in most EU Member States at this stage is a real balanced approach of flexicurity. Liberalisations of labour markets have not really been compensated by improvements and extension of the social security systems. Employability measures linked to lifelong learning still seem to be at an embryonic stage in many Member States which experience an acute shortage of learning options.

Flexibility and precariousness of work often correlate and have a rather negative effect on employability. Therefore flexicurity is still a very challenging concept for the EU. Room may be left for the discussion on other alternative implementations of flexicurity - like flexinsurance - which assumes that the employers' contribution to social security should be proportional to the flexibility (precariousness) of the employment contract.

Core labour rights and new forms of work

The concept of "core rights" is in itself far from clear, and it can have many different meanings depending on the context and the user's priorities. The concept has been used mainly in the debates about globalisation and labour rights. It refers to a system of universal rights to be granted to workers worldwide and to be used as a reference for the definition of fair labour standards in trade agreements. In this meaning, "core rights" means a very basic floor of rights, enforceable even in non-developed countries, which have to do mostly with fundamental rights such as non-discrimination, freedom to work and prohibition of forced labour; prohibition of child labour; freedom of association for workers, and the like. This perspective is of little use as we are dealing with the European region, where these rights have been in force, and with high standards of content and protection, for decades.

According to national labour laws, active persons enjoy a number of rights of various natures, sources of regulation and persons obliged to fulfil them. These rights affect both dependant workers and other groups of working people, and can be classified in the following way:

1. Contractual rights
2. Labour marker rights
3. Social protection rights
4. Enforcement rights
5. Collective rights

However, as for these different kinds of rights, **significant differences exist between different categories of workers.** There are important limits to the extension of labour law to non-standard forms of work outside its natural scope. But this extension can be an option for some aspects of their legal status, which is currently rather weak and inadequate for the new economic and social context in most cases. Labour market, social protection and enforcement rights seem to be more feasible in order to match the status of the different categories of the working population, in employment relationships as in other legal relationships, whereas **contractual and collective rights face stronger obstacles**.

On the one hand, the requirement to identify a clear employer figure as a counterpart or failing that, a continued and stable economic business relationship makes implementation difficult for self-employed workers, economically dependent employees or triangular relationships, such as those which occur in subcontracting. On the other hand, the exercise of classic collective rights such as collective bargaining or the right to strike seems difficult for certain categories of atypical workers such as the self-employed. Even the European Court of Justice has at this moment placed the traditional trade unions' instruments of collective action and regulation under close scrutiny –in cases such as Laval, Viking or Albany-, considering them in some cases incompatible with European legislation on the four freedoms. Although collective agreements have been recognized as exempted –for social reasons- from the application of competition law, these recent case laws have questioned the lawfulness of collective action when an undertaking's economic fundamental rights were affected. In this context, the mere possibility of having professionals who do not legally qualify as workers acting together to impose working or economic conditions to their potential clients simply seems to be quite difficult.

Main issues to be tackled

Topics addressed in the report are complex, multi-dimensional and have aspects which are transversal between them. Considering Europe's global competitiveness, the diversification and complexity of systems, based upon new forms of labour influenced to a large extent by the unemployment context, may be said to be counterproductive in the context of future economic activities and foreseeable demographic trends. Conclusions of the report therefore suggest a number of elements for reflection that may serve as directing axes for future recommendations to be debated by the European Parliament. The latter are related to several dimensions, especially:

1. **What undertakings in what labour markets**? New elements have appeared making business management more complex: Social Responsibility, the management of diversity in personnel with a greater weight of immigration, environmental needs and costs, the challenge of Information and Communcation Technologies, treatment of personal information, the balance between investment in internal training and the requirement of loyalty/employees staying. Is non-standard employment a flexible adjustment form of sizing personnel or is it really a strategic need of undertakings towards production? We cannot speak of new forms of labour exhaustively if we do not consider the forms of production and work organisation in European undertakings at the same time.
2. **Modernisation of Labour law**: The possibilities of social legislation are not infinite: labour law cannot be requested to solve labour market segmentation problems on its own. European national legislations are shown to tend to guarantee an equal treatment for atypical employees regarding most legal and collective-bargained rights. However, living and working conditions are worse for workers under atypical employment contracts. Hence, the problem does not seem to be a reduced or weaker application of labour laws to these workers. Atypical forms of labour reveal new and legitimate requirements from undertakings with regard to the availability, organisation and relations with the workforce, whilst in other cases it hides the desire to decrease the cost of the labour factor. A new effort must be carried out to find connecting points between the needs of production and work organisation and the rights that workers need, including new rights derived from the evolution of society.

The lack of a meeting point between these two ambitions generates grey areas, legal loopholes, real inequality and defencelessness and, in many cases, an artificial business efficacy based on low wage costs that are unsustainable in the long term. Unfair competition between undertakings from Member States with diverging labour legislations and social dumping can not be the way for the European Union and the domestic market to progress. A common and agreed system of core labour rights may contribute to lessen this trend, respecting the social progress made some time ago by most Member States. The competitiveness and productivity of the European economy and its undertakings so require it.

3. **Self employment and triangular relationship**: With at least 22 million self-employed and millions of employees working as agency workers or in subcontracting companies, self- employment and triangular relationships have experienced the biggest increases among the new forms of labour. However, except maybe for agency workers, no EU common framework has been worked out. When it comes to self employment national answers are not only different, they are contradictory and vary from traditional laissez-faire to stricter regulations aiming at reducing disguised employment or to an approximation of social security schemes. These new patterns put the traditional model of employment relationship into question. On the one hand, it may be necessary to think about a common status aiming to address the issue of economically dependent work. On the other hand, as for triangular relationships, inspiration may be taken from the way agency work is regulated in several European Member States, in order to better protect employees affected by subcontracting.

4. **Equality**: Although equality has been promoted by the EU through a set of compulsory provisions – equal treatment, anti discrimination – persistent inequalities appear as the main feature regarding the "new forms of labour" in terms of earnings, social protection, occupational safety and health, vocational training, information and consultation, housing, access to loans. In real terms equal opportunities are not available. Our study shows that it is not only a question of equal rights but rather an issue of specific schemes enabling equal treatment and equal opportunities. The main question here is the following: what means and which actors promote equality in practice?

5. **Employability**: Employability is an issue as much for individuals as for companies and European societies that has not, until now, been fully addressed and implemented to people working in standard forms of employment. For those working in non-standard forms, the situation is much more serious and could be an impediment for further economic and social developments.

6. **Social inclusion and professional transitions**: Fighting unemployment has been one of the main drivers to introduce new forms of labour. But, whether active labour market policies might help the unemployed, and to what extent, is a controversial issue. They have partly succeeded but the side effects are not negligible. Several quite unambiguous results suggest that strategies to fight unemployment are not yet well developed in terms of effectiveness and efficiency. Fragmentations of labour markets make the transition from precarious forms of labour and living to more stable and satisfactory ones difficult for part of these groups. There is a need for integrated strategies, systems and schemes including social security, employment services, training opportunities, and making transitions fluent and painless.

7. **Workers' health**: Although there is a long-standing occupational safety and health tradition in Europe since the creation of the European Community for Coal and Steel, new forms of labour are among the drivers challenging these achievements. Globally speaking, atypical workers, such as agency workers, have to face more occupational risks than permanent employees. Health, in its widest sense, and not only safety, acquire new dimensions in workers' collectives such as the self-employed or economically dependent workers, exposed to the same or new risks in different ways and intensities. Healthy new forms of labour require adequate frameworks, attitudes and focus to be addressed successfully.

8. **Flexicurity**: Combining flexibility and security is not an easy equation when shifting from theory to practice. There are many variables entailed by this couple. Actively intervening on any of these implies preventing the effects on the general balance of the system. Flexibility and security are all-embracing concepts with many meanings which make different specific implementations possible. The general principles on which the flexicurity concept is framed are sufficiently ample as to allow for national developments which are well focused and directed, together with unwelcome adverse effects. The balance between security and flexibility, their compatibility, depends on acting globally on the set of components that influence both dimensions and, especially, the complementary nature between internal flexicurity measures within undertakings and active measures to favour efficient transitions in the labour market. Amongst these factors, the ways to introduce flexicurity – through social dialogue and collective bargaining - as well as the nature of public expenditure are of high relevance.

9. **Labour and Citizenship**: most non-standard employees and workers are not de facto, and sometimes *de jure* like the self-employed, involved in participation mechanisms, which have been designed for permanent and subordinated work force. This de facto exclusion may have a serious impact on social dialogue – with new forms of labour voiceless, how can issues be framed and answers implemented properly? Further assessment of existing national or local practices across the EU would be necessary to design possible innovations in legal terms

10. **Policy integration**: The European social model includes a vocation towards progress, the convergence between Member States, at its heart. The temptation to *downwardly* reform some national labour markets to adjust them to the misunderstood requirement of modernisation could further deepen social divergences and lack of cohesion between Member States and developing European regions. Integration, the integral nature of some European policies such as social and economic cohesion should be considered in the objectives to modernise the labour markets, which are delicate cultural, economic and social ecosystems. In this context, labour law cannot be considered as part of the problem but as a component in the search for solutions and for the balance between the real needs of undertakings and the guarantees to protect workers.

I - INTRODUCTION

The European Parliament, DG Internal Policies of the Union – Directorate A – Economic and Scientific Policies has assigned the study on "The impact of new forms of labour on industrial relations and the evolution of labour law in the European Union" to the consortium integrated by LABOUR ASOCIADOS SLL and the Association pour le Développement de l'Université Européenne du Travail.

The main objectives of the study are:

a) To provide an overview of the most characteristic and common types of non-standard contracts in the 27 Member States (MS) of the European Union based on statistics and existing studies and research.

b) To carry out an in-depth analysis of the impact of new forms of labour on labour law and its evolution with the appearance of a second generation of self-regulation instruments for undertakings and social partners based on a voluntary nature and on soft law.

c) To review the impact of new forms of labour on social dialogue and industrial relations.

d) To examine the bases for a body of labour law that includes a reflection on core labour rights.

The study was completed with further work materials prepared during the course of the study, which are enclosed to the study as complementary volume II and III.

Methodologically, the study has been carried out pursuant to the specifications made at the time and which could be summarised as:

- Collection and analysis of information on key issues which are the object of this study and comparison of this information at the level of each of the 27 Member States.
- Assessment of the results obtained in the aforementioned national analysis, completed with extensive review work of the abundant documents and studies that exist at transnational level. It is pointed out that the subjects tackled in this study are currently of enormous political and social relevance, and have given rise to the appearance of a large number of studies, official positions, decisions and several types of interesting documents during the course of this study which have been followed and analysed in detail[1].
- A specific analysis of the evolution of the European labour market with regard to new forms of employment contracts.

The diversity and casuistry of the topics which are the object of this study (new forms of employment, individual labour relations and employment contracts) and the large number of MS has required a large coordination effort of the tasks and work groups involved.

The distribution of work undertaken has been structured pursuant to the following teams and functions:

[1] The opinion of the most representative social partners has been requested and, as a result, personal interviews have been held with UEAPME and ETUC representatives, whereas it has been impossible to obtain the positions held by other organisations.

- A **Scientific Committee** including Tamás Gyulavári, Andranik Tangian, Niklas Bruun, Helmut Hägele and the heads of the study: Ricardo Rodríguez as director in charge of the study and leader of the consortium and Claude Emmanuel Triomphe as coordinator.
- A team of **regional coordinators** who have been in charge of checking the quality of national reports with regard to the study specifications as well as contributing to the preparation of the draft final report. This team has consisted of: Sylvaine Laulom, Sonia McKay, Gabriela Predosanu, Miguel Rodríguez-Piñero, Adam Turowiec, Franz Marhold and Christophe Vigneau.
- A team of national expert collaborators in charge of collecting the information necessary for the study pursuant to common requirements.
- A specific team of researchers and experts in statistical analysis from **ISG**, in charge of carrying out an analysis of the labour market.

Several coordination meetings were held[2] to work on and discuss the results obtained by the Scientific Committee and the regional coordinators. Two meetings took place to review the course of the study with the European Parliament staff in charge.

Following the technical specifications, the main study components carried out have been:

1. Labour market analysis at transnational level, carried out from a dynamic perspective.
2. Stocktaking the new forms of labour law in the EU at national level, updating the knowledge on recent national reforms developed by legislative means or via collective agreement.
3. Identifying and analysing the evolution of labour law regarding the new forms of labour through the study of the legal framework.
4. Revising the impact on social dialogue and on labour relations as a whole, including mutual interactions with regard to recent changes.
5. Analysing the understanding of and the approaches to the flexicurity concept at national level with regard the new forms of labour.
6. Prospecting the possibilities of so-called soft law as a developing instrument for changes in the labour market and industrial relations.
7. Developing a theoretical approximation to the role that core labour rights could play and which is inclusive of the new labour situations and the situation of atypical workers' collectives that exist in the EU.
8. Carrying out three **case descriptions** on different topics concerning the impact of the so-called new forms of labour in some MS: developing flexicurity in The Netherlands (by John Warmerdam); evolution of fixed-term contracts in Spain (by Miguel Rodríguez-Piñero); and self-employment in Poland (by Adam Turowiec). These cases are conceived as a way of undertaking the study in more detail, allowing an in-depth view trying to associate these phenomena at national level.

[2] 17th September and 5th December 2007 with the aim to coordinate criteria and to clarify concepts as well as to define the structure and contents to be developed by the national reports; 30th January 2008 to assess the national information collected and discuss the content and structure of the draft final report.

The study was carried out during six months and covers the 27 EU Member States. However, the analysis was also carried out at supranational level. An **interim report** containing an advance of preliminary results was submitted half way through the period agreed and an inception report containing a methodological development was submitted at the start of the study.

The structure of the present study is the following:

The report includes a detailed analysis of each of the subjects concerned: approach to the recent developments in the forms of labour by means of identifying and assessing existing forms of employment contracts in each MS with regard to so-called atypical employment; their impact on labour law and social dialogue, including the role of soft law and other forms of voluntary agreements with potential tools to channel these changes in the future; reflections on flexicurity with regard to these changes in labour, as well as an exercise to find the place for a core labour right in Europe (MS) and at European level. Together with the conclusions and future scenarios, a comprehensive table that orders the forms of labour and employment contracts in the 27 MS, pursuant to the information collected and analysed, and the summarised results of the statistical study carried out by ISG on the European labour market with regard to atypical forms of employment, are included as annexes.

As a complement to this first volume, three case studies analysed with regard to different topics and from a different perspective in The Netherlands, Poland and Spain **(volume II)** and the full statistical study regarding the labour market **(volume III)** are included.

II - FORMS OF LABOUR: RECENT DEVELOPMENTS TAKING PLACE IN THE EU-27 LABOUR LAWS

II.1 What are we talking about?

Most of the Member States experience ongoing debates and reforms, which have led to an important diversification in terms of the forms of labour and employment contracts stimulated by two main drivers:

- a wish, often controversial, among governments and social partners to cope with economic changes and social needs
- the transposition of EU labour law directives or framework agreements (part time, fixed-term, telework).

Because new forms of labour are a very sensitive and very changing concept, the study tries to contribute to clarify these sets of very complex issues and to make distinctions between categories and concepts; commonly used in the policy and social debates. Three main distinctions have been set up:

- The first regards the distinction between "old" and "new" forms of labour, which is very relative. Some MS are experiencing, for example, developments in shift work and night work, which are nothing new as such, but which can be new compared to previous trends or compared with the typology of jobs or economic sectors where these evolutions take place. The same remark could be addressed with regard to self-employment, which has existed for centuries but the developments of which are very different in terms of jobs, conditions, sectors and MS. Another example is undeclared work, which is nothing new; however its extent, its proportion and the sectors and jobs where it takes place have changed.
- The second is with regard to employment contracts and employment arrangements, the latter linked mainly with work organisation (working time especially, but also triangular relationships). Naturally, some of them are overlapping or combining each other but they cannot be assimilated. Therefore, this chapter starts by considering many definitions: the notions of employee and employer, the concept of worker and economically dependent worker, and understanding what self-employed persons – one of the outstanding trends in many Member States - represent today across the EU.
- The third is with regard to typical and atypical forms of work, bearing in mind that this distinction may be seen as being more prescriptive than descriptive, at national as well as at European level. Typical employment relationships remain dominant in the EU, with the exception of United Kingdom, meaning an open-ended and full- time contract while atypical means all others. However, a huge evolution has been mentioned in comparison to the 80's. If at the time atypical meant deviation within employment contracts – mainly part-time, fixed-term contracts and sometimes agency work - nowadays we have to define atypical as a wider concept going beyond employment contracts and covering economic dependent workers, most of the self employed, part of undeclared work and even voluntary work. Last but not least, typical employment has been also subject to many reforms, focusing mainly on termination procedures.

This chapter takes these evolutions in consideration and emphasizes what the common characteristics and differences within the EU are.

II.2 Definitions

Definitions of basic concepts are rather deficient in many national labour laws. Apparently, labour legislations have been more active in preparing new and increasingly complicated legal forms of labour, than clarifying the basic concepts. Until recently, the understanding of the difference between employment, economically dependent work and self-employment has been rather low in legislations and legal practice. Thus, these definitions are mostly missing from labour laws, this gap usually being filled by social security laws (e.g. scope of self-employment). The social law definition of self-employment ensured the payment of social contributions and insurance of dependent, self-employed persons, but did not solve the problem of their labour law protection. Consequently, the insufficient definitions of concepts, especially the difference between employment and self-employment, lead to legal debates on the legal status and incomplete protection of dependent workers.

However, some improvement has been made in recent years. Significant labour market changes, with increasing numbers of people working in settings that, traditionally, are not employment relationships, have suggested that it might be necessary to re-consider the concept of an employment relationship. Particularly, the remarkable growth of false/fictitious employment, disguised by civil law contracts, forced labour legislations and judicial practice to clarify the borderline between employment relationship and self-employment in many MS (**Austria, Bulgaria, Czech Republic, France, Germany, Greece, Hungary, Lithuania, Poland, Slovakia, Slovenia**). Nevertheless, these legislative measures mostly assumed the existence of merely two types of legal statuses, namely employment and self-employment. Thus, the new labour provisions and court practice focused on the definition of an employment relationship with the following logic: "if a legal relationship is not an employment relationship, then the person must evidently be a self-employed person". Apparently, the weakest definition is economically dependent work. At the same time, there are a few Member States (e.g. **United Kingdom, Spain**) where the basic definitions, including economically dependent work, have already been ascertained by labour law.

In this context, the understanding of the following terms will be presented:

- employee and employment relationship
- worker
- atypical worker/employee
- economically dependant worker
- self-employment.

Employment relationship, employee and employer

'Employment relationship' and 'employee' are the most advanced definitions in the Member States. The definition in statutory labour law is merely one of the regulatory instruments, since case law plays a significant role in this respect in many MS. Many national labour laws (**Bulgaria, Cyprus, Denmark, Estonia, France, Germany, Greece, Hungary, Lithuania, Romania, Slovenia, Sweden**) do not have an express statutory definition of an employment relationship, just simply refer to it as a legal relationship "established between an employer and an employee by an employment contract". Consequently, an employee is a natural person, who has entered into an employment relationship on the basis of an employment contract for remuneration. Apparently, the concept of 'employee' refers to individuals who correspond to the traditional definition of 'dependent employment'. Employment means the performance of dependent work by an employee in labour relationship for remuneration.

In **Cyprus**, the main problem is the lack of an adequate statutory framework that would clearly define the concept of subordination. In **Portugal**, the technique used by the legislation was to define the employment contract: a contract by which one person commits himself/herself, for a salary, to perform activity for another person(s) under the authority and direction of the latter.

However, there are more precise and wider definitions of an employee in several MS:

- a person with the legal obligation to fulfil a service for a designated period of time in the context of a contract-based labour relationship, which is marked by an intense personal dependence (**Austria**).
- a person who, by signing an employment contract, agrees to work under the supervision of the employer and receives wages to do so (**Belgium**).
- a person who undertakes to perform work himself on the employer's behalf and under the employer's supervision in return for remuneration (**Finland**).
- a person employed on the basis of a contract of employment, appointment, election, nomination or co-operative contract of employment (**Poland)**.
- a physical person, who provides services on another's interest, of his own free will, in return for remuneration, under the direction and control of the employer (**Spain**).
- a natural person, who performs dependent work for an employer in an employment or similar labour relationship (**Slovakia**).
- a person who works under a contract of service, or undertaken personally to execute any work for and under the immediate control of another person, including an outworker, but excluding work performed in a professional capacity or as a contractor for another person, when such work or service is not regulated by a specific contract of service (**Malta**).

In **Austria**, **Belgium** and **Luxembourg**, the legal distinction between blue-collar and white-collar workers still exists.

As a consequence of the general lack of detailed definitions, many MS' labour courts drew up sophisticated tests to identify employment relationships in order to differentiate them from self-employment. The violations are judged by the courts through a process of defining criteria in order to prove whether a relationship of paid employment exists. Since the definition of an employment relationship is a complex issue, national labour courts take into account several aspects. The most important and common elements of the case law concept of an employment relationship were identified as follows:

- the most important element by far is subordination (supervision, control of the employer);
- personal obligation to work;
- the character of work is specified in a contract (provision of services), not result-oriented work;
- work for one employer;
- work for the benefit or 'in service of' the employer;
- integration in the corporate structure, predetermined working time and place of work;
- working appliances are provided by the employer;

- intention of the parties to establish an employment relationship;
- the worker is permanently employed during a certain period of time;
- agreement to work in return for pay: agreed and regular remuneration paid by the employer;
- the lack of financial risk of the employee;
- share of income from other sources.

According to the general practice, not all of the abovementioned criteria have to be complied with, but there has to be a qualitative majority of them to qualify a person as an employee, granting the application of labour law with its safeguarding provisions (paid vacation, termination rules, maternity protection, etc). However, it is not always easy to assess, whether work is done under the authority or in service of an employer. This question should be considered from case to case on the basis of the specific facts and circumstances (e.g. **The Netherlands**).

It must be emphasized that court practices are certainly not uniform. Whereas in the **United Kingdom** the courts have used the 'control' test, in **Ireland**, the degree of control between the parties, while important, may not be the determining factor. The courts may also use the 'integration' test to decide whether or not the individuals' degree of integration within the workplace gives them the status of employee. In **The Netherlands,** the 'intentions' of the parties have been an important criterion in courts' decisions on whether or not an employment relationship could be assumed. But in essence, claims brought forward to the courts are decided upon on a case-by-case basis.

The definitions of employment relationship and employee are rather different in the Member States. The most important common element in the definition of employment relationship is the subordination bond between the employee and the employer. However, it could be rather difficult to propose some kind of "most common inclusive definition" of employee and employment relationship, as a consequence of the different emphases in statutory and case law.

Worker

The term "worker" does not posses a legal definition in the Member States, except in the **United Kingdom** and **Ireland**. In some Member States, this term exists at some level, but not in labour law. In **Slovakian** practice, a worker means employees, self-employed and other working persons altogether. In **Czech** law, this term is used in word constructions such as "social worker", "health worker" etc. In **Austria**, it is sometimes used as a synonym for blue-collar workers. Similarly in **Germany**, according to the traditional view, a worker was a wage earner, who carried out physical labour in an employment relationship. Along with the post-industrial development and society's evolution towards service economy, this distinction has become obsolete. Even with regard to the law on the establishment and participation of works, the legislature has abolished this legal differentiation.

However, in the **United Kingdom** and **Ireland**, the worker is a category between employees and the genuinely self-employed, which will be presented as a definition of economically dependent work.

Atypical worker/ atypical employee

The term ‘atypical worker’ or ‘atypical employee’ is absolutely unknown in the legal texts. They do not define even the notion of atypical employment, but regulate several and partly identical (fixed-term, part-time), partly differing (training contracts, insertion contracts etc.) forms of employment, with various titles. National labour laws refer to these forms by the title (e.g. temporary employee), instead of using a general term, such as atypical employee/employment.

Moreover, these forms of employment are no longer atypical in several MS. The example of the **United Kingdom** reveals that the so-called ‘standard’ full-time permanent contract of employment now represents the contractual situation of fewer than 50% of the labour force. Therefore, any definition of atypical employee would be useless, due to the high number, great variety and national characteristics of such legal relationships.

Economically dependent worker

As made clear by the presentation on contractual relationships, the Member Sates have been very active in drawing up various forms of labour, which are different from a standard employment relationship but enjoy certain labour law protection and regulation, even if with a diversified content. Most of national labour legislations have not been so ambitious in clarifying their special role in conceptual terms. The plausible conceptional solution has been to simplify the issue to employment, false/fictious employment and self-employment. Therefore, they exclusively focus on the differentiation and ascertainment of an employment relationship. As a consequence, the concept of economically dependent work has not received too much attention.

However, there is certainly a third category within the working population, who are not employees or unequivocally self-employed persons. There is a growing number of people working for another person whose employment status is unclear, and who are consequently outside the scope of the labour legislation protection, although their situation is similar to the situation of dependent employees. Economically dependent workers may be defined as persons, who have an independent legal status for a contractual work relationship with a certain client or company. These persons can be seen as ‘hybrids’, somewhere between entrepreneurs and employees, as they are legally independent but economically dependent. In practice, they are dominantly employed by civil law contracts. Apparently, this concept is missing from labour laws of many MS (**Bulgaria, Cyprus, Estonia, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovenia**), because they consider it as a problem of false employment by civil law contracts.

In **Luxembourg**, the government firmly opposed the introduction of a third legal category between the employee and the self-employed worker in 2007, based on the following arguments:

- this new category would reduce the protection of the worker;
- this new category is an artificial one, because there are only two situations, employees and self-employed workers, since false self-employed workers have to be qualified as employees without the slightest hesitation;
- this new category contains the seeds of a deterioration of the labour law by reducing its personal scope.

At the same time, the definition of economically-dependent work or dependent work has been addressed by labour law in several MS **(Austria, Czech Republic, Ireland, Portugal, Slovakia, Spain, United Kingdom)**, even though with diverse legal contents. The common feature of these definitions is that personal subordination is missing or rather loose.

In the **United Kingdom**, a 'worker' is the third category between employees and the genuinely self-employed (5% of the labour force). It is defined by the Employment Rights Act 1996 as an individual who works under a 'contract for services', whether express or implied, whereby the individual personally performs 'any work or services for another party to the contract, whose status is not, by virtue of the contract that of a client or customer'. They work directly for the employer but not necessarily under the control of the employer and will not acquire all of the employment rights assigned to an 'employee'. A worker will also be bound by mutual obligations, in particular the obligation to personally perform work, even if this does not extend to the obligation to work whenever requested. In the Employment Relations Act 1999, the government committed itself to the abolition of the impact of the separate status of worker and employee, by extending all statutory employment rights to workers. However, the regulations that would be required to effect this change have not been introduced. Similarly in **Ireland**, a worker is a person, who has entered into or works under a contract with an employer, whether manual or non-manual and whether the contract is express or implied and whether it is for a contract of service, or of apprenticeship or a contract personally to execute any work or labour.

In **Portugal**, the Labour Code extends some of its regimes to so-called "similar contracts", precisely on the basis of the existence of economic dependence. The law does not deliver a precise definition of this concept, but it describes one of its possible forms, where someone provides another person, for some price, with raw materials and afterwards buys the finished product to the same person by a price that includes the latter's fee.

In **Spain,** the economically dependent worker is legally included in the recent regulation of Statute of Self Employed Workers (2007). An economically dependent worker carries out regular economic activity for remuneration, directly, personally, predominantly for one client, with at least 75% of their income depending on this client. These workers are not "employees" from the perspective of the labour law, but they can affiliate to unions and their possible disputes with the clients will be decided by the labour courts. Their contracts must be written and working conditions can be regulated by professional agreements between clients and unions or self-employed organizations. They have also right to an interruption of their activity of 18 days each year and a compensation for termination without a justification.

In **Austria,** the quasi-freelance contract defines economically dependent work without subordination, a mixed legal construction half-way between a 'standard' employment agreement and actual self-employment. The main difference between the quasi-freelance contract and a typical employment contract is that there is no personal subordination. Most of the protective labour provisions, which should protect the socially weaker employees, are set aside. Social and tax burdens will be, in most cases, lower than in typical employment relationships.

In **Slovakia**, dependent work was defined by the Labour Code in 2007 and is that which is performed in an employment relationship, a 'labour relationship' similar to employment or an 'other labour relationship', but not by a civil law contract. An 'other labour relationship' is established by an agreement for work only for occasional work or for a specified result, which would not be efficient in an employment relationship (see occasional work). These (economically) dependent 'employees' are not protected as by an employment contract, especially in terms of termination of employment.

Self-employed person

There are no definitions of self-employment and self-employed persons in national labour laws, except in **Spain** and **United Kingdom**. However, this concept is often used in legal discussions. Despite the lack of statutory or judicial labour law definition, the national reports named the legal and contractual forms covered by this notion. The share of self-employed persons is very high in several MS, for example 43% of total employment in **Romania** and 26% in **Greece.**

The general understanding of self-employment is work under civil law contracts in various legal forms (**Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Germany, Hungary, Malta, Poland, Slovakia).** Therefore, the contractual (labour law) relationship is the same (civil law contract), but the legal (social security) status varies from country to country (private undertaking, individual entrepreneur, freelancer). Thus, the contractual and the legal status of self-employed persons must be differentiated. Interestingly, self-employed persons may have employees with employment relationships in many MS.

Typical solution is found for example in **Austria, Estonia** and **Hungary**, where an individual entrepreneur (self-employed) is a person offering goods or services for charge in their own name, whereas the sale of goods or provision of services is the permanent activity. Individual entrepreneurs have to be registered in a commercial register. Compared to other forms of entrepreneurship, becoming an individual entrepreneur is rather simple, since no capital is needed and costs of starting self-employment are rather low. In their case, the civil law is the legal basis for the contract of work and service. In **Greece**, free agents, freelancers and contractors usually work under civil law contracts. In **Italy,** traditional self-employment concerns the entrepreneurs, professionals, own-account workers, and family helpers. Following the labour market deregulation, there are forms of 'non-standard or 'atypical' or economic dependent work that are self-employment: employer-coordinated freelance work, project work and occasional work.

In **Germany**, the rising number of self-employed, particularly one-person enterprises in the services sector, has led to an intensive debate on the concept of self-employment. The legal distinction between self-employment and dependent activity varies according to the labour law and social insurance context. In labour law, the definition of an employee is decisive, whereas in social security legislation the employment relationship is important. According to a broad definition, the self-employed are persons running a commercial or agricultural business in a commercial and organisational way as owners or as tenants, as well as freelancers.

In **The Netherlands**, a labour relationship is either regulated by an employment contract (employee), or by a commercial contract (entrepreneur). There is in fact no employment relationship but a commercial relationship between an entrepreneur and his customer or commissioner. The difference is that an entrepreneur works for his own account and bears his own risks. However, in practice, the term self-employed worker is sometimes used to describe the situation of people who work 'under contract' or 'in commission'. They are entrepreneurs in a formal sense, but their position might come close to that of employees, since differences between them are fading away. Two types of workers illustrate this tendency. Firstly, freelancers often work 'in commission' of a client or customer and provide specific services (consultancy, journalism, marketing). Secondly, self-employed workers without personnel are often contractors, who provide specific types of work for firms that hire them for a certain project or a certain period of time (construction, health care).

As an exception, **Spanish** labour law contains a definition of self employed workers: undertake economic or professional activity in a regular, personal and direct way, without the direction or control of another person, regardless of whether or not they employ other workers. The Statute of Self Employed Workers (*Estatuto de los Trabajadores Autónomos* 2007) states a core of rights for this kind of workers like non-discrimination, safety and health and others. In the **United Kingdom,** self-employed workers are those, who provide their own equipment, may provide replacements, take some financial risk and are responsible for their own tax and insurance. Although this definition is intended to cover the genuine independent entrepreneur, in practice the status is regularly offered to those who are not genuinely self-employed.

As mentioned earlier, the social security laws generally contain definitions of self-employment, which are rather precise, in order to guarantee the payment of social contributions as well as the nationally determined social rights of self-employed persons. Basically, these definitions play a 'net function', whereby they cover all working people who would otherwise be out of the social security system. **Lithuania** is a good example of this problem, where the social law definition of self-employed persons covers the following categories: owners of personal enterprises, members of limited partnerships, lawyers, assistants of lawyers, notaries, bailiffs, persons pursuing registered individual commercial activity and working on the basis of a business certificate.

II.3 Overview of contractual arrangements in the Member States

The following 'flexible employment contracts, legal institutions and special legal forms of employment will be presented:

- several forms of fixed-term and temporary employment contracts
- part-time employment contracts, including mini-jobs, on-call work and job sharing
- home working and telework contracts
- flexible forms of working time
- occasional work contracts
- civil law contracts.

Temporary agency work, subcontracting and posting of workers will be presented in Section 3. Besides, there is a great variety of these and other legal forms (annual working hours, voluntary, entry contracts etc.), which will be briefly mentioned.

II.3.1 Fixed-term and other temporary employment contracts

Fixed-term employment contracts have gained detailed regulations in all Member States. These contracts are not new forms of employment, since their regulation has a long tradition in almost all MS (**Belgium, Finland, France, Germany, Italy, Luxembourg, Sweden and the Netherlands)**. For example in **Austria,** fixed-term work has been regulated for blue-collar workers since 1811 and white-collar workers since 1921. In **Portugal**, fixed-term employment contracts have been somehow "favoured" by a law of 1976, in order to compensate the dramatic reduction of job offers in the aftermath of the revolutionary movement of 1974/75. It has also been regulated for a long time, as an exceptional form with legal restrictions, in socialist labour law (**Bulgaria, Czech Republic, Hungary, Latvia, Poland, Romania, Slovakia**).

The implementation of Council **Directive 1999/70/EC**[3] had an uneven effect on regulation of fixed-term contracts, especially in the new Member States. In **Cyprus**, the regulation of new forms of labour through law or collective agreements is not very extensive, while the adoption of the new Law of 2003 on fixed-term employees was the clear result of harmonization requirements. It is a characteristic example of the limited effect of harmonization with regard to increasing the spread of this form.

In the **Czech Republic**, fixed-term work has long been a major source of social dumping, as the position of fixed-term employees was quite weak. Although, harmonization imposed certain stricter rules on fixed-term contracts, it failed to impose practical curbs, thus, there is still a gap between the level of protection of fixed-term and permanent workers. In **Romania**, harmonization amendments increased the flexibility of fixed-term contracts, however, still only 1.8% of employees work on a fixed-term basis.

In **Hungary**, the former limitations have slightly changed by harmonization in 2003, partly decreasing and increasing security of fixed-term workers. In **Denmark,** both Directives 1997/81/EC and 1999/70/EC have been implemented by collective agreements between the main Danish Social Partners, but the agreements have been supplemented by legislation covering those few situations that are not regulated by the collective agreements. Thereby, harmonization brought about a new regulatory model into Denmark that had only used collective bargaining in this area previously, with the exception of the law regulating white collar employees. In **Portugal**, the Directive had no effect in the comparative weight of fixed-term contracts, in spite of the fact that national law is perfectly in accordance with the former and did not need to change.

Equal treatment of fixed-term employees

As a result of Directive 1999/70/EC, all MS **prohibit discrimination** against fixed-term employees. In **Poland**, provisions on equal treatment of employees name explicitly fixed-term employment, working full time or part time as prohibited grounds for discrimination. In **Austria**, fixed-term employment contracts must not be treated differently than indefinite employment contracts, unless there is an objective justification. In **Malta** and **Bulgaria**, the anti-discrimination provisions specifically lay down that the conditions of employment in a fixed-term contract may not be less favourable than those for an indefinite term in the same place of work, unless different treatment is justified on objective grounds. The recent development of anti-discrimination laws, especially in the field of labour law, is a positive tendency in all MS.

In a slightly different perspective, **Portuguese** law requires “equal treatment” (same rights, same duties) for fixed-term employees and permanent employees “in comparable situations”, except when objective reasons justify a different treatment.

Discrimination against fixed-term employees was generally not mentioned as a major problem. However, in **Greece** the compensation of fixed-term employees tends to be lower, as they do not meet the eligibility requirements for additional payments, which are linked to the length of service. Furthermore, employers often exclude non-permanent personnel from their training schemes. In the **United Kingdom**, fixed-term employees are given the right to equal treatment with permanent employees, under the Fixed Term Employees Regulations 2002.

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[3] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

The protection applies regardless of how long a time the employee has worked, however, because some rights are service-based, temporary workers in practice do not gain access to them. For example, since the right to protection against unfair dismissal requires at least one year of service, and the right to consultation and to payment on redundancy requires two years' service, most fixed-term employees have no employment protection in these areas.

Termination of fixed-term contracts

The main difference between fixed-term and permanent employment lies in the regulation of the **termination** of employment. The popularity of fixed-term contracts lies in the fact that it offers employers less legal problems and costs of dismissal. However, the termination rules on fixed-term contracts are rather different in the various legal systems.

In **The Netherlands**, fixed-term contracts simply end when contract periods are over or projects are finished. Differences with open ended contracts are that trial periods can be shorter, that there are no periods of notice, that dismissal permits are not required and that no further dismissal prohibitions are applicable. However, in principle, intermediate termination of fixed-term contracts is not possible. In **Portugal**, things are very different: the termination of such a contract, when the term arrives, depends on a previous communication by one of the parties in the sense that it is no longer interested in it. In case of silence from both parties, the contract is automatically renewed. In **Austria**, a preterm dismissal is not provided for by law, except, where the fixed-term contract has been concluded for a period longer than five years. In this case, the employee alone has the right, after the five-year period, to terminate his employment relationship with a period of notice of six months. The stipulation of dismissal possibilities is admissible as long as legal dismissal regulations for indefinite labour contracts are followed and it is in accordance with the period length.

In **Finland,** the fixed-term contract cannot be dismissed on notice before the end of the contractual period, unless otherwise agreed by the individual parties. In **Luxembourg**, termination may not intervene before the term, except for a serious reason, which means an action or a fault by the other contracting party rendering the relationship impossible. Otherwise, employers may be sentenced to pay the wages until the end of the term. In **Slovakia** and **Czech Republic**, the fixed-term contract can only be terminated before its expiration under the reasons and conditions established by law for termination of the employment contract concluded for an indefinite period of time. In **Hungary**, the termination of an indefinite contract may have lower costs than for a fixed-term contract in particular cases. While the fixed term contract is cheaper to terminate if it is for a short term (3-6 months), it is more expensive if established for a longer period. Likewise, indefinite contracts are more expensive to terminate, if they exist for over three years.

In **Bulgaria**, **Finland, Czech Republic, Hungary** and **Slovakia,** the fixed-term contract becomes an open-ended contract, if an employee performs work for an employer with the knowledge of the employer after the expiration of the fixed-term.

Formal contractual requirements

Fixed-term contracts must be concluded in writing in all Member States, except **Estonia**, where employment contracts may be concluded orally if the term is less than two weeks. Problems are posed by these oral agreements, as the agreed conditions of employment may be easily disputable. In some MS (**Belgium**, **France, Portugal, Slovakia, Slovenia),** the employment contract shall be assumed to be for an indefinite period of time if duration of employment is not laid down in writing in the employment contract and/or if the fixed-term employment contract is not concluded in writing upon commencement of work.

In **Luxembourg** and **Portugal**, the fixed-term contract must be a document in writing with compulsory mentions providing information to the worker on the terms and conditions applicable to the employment.

If there is no written contract or it does not mention the fixed term, the contract is presumed to have an indefinite term. In **The Netherlands,** both verbal and written fixed-term contracts are possible. Written contracts are strongly recommended to prevent later disputes about arrangements.

Limitations on concluding fixed-term contracts

National laws contain various limitations on the terms of fixed-term contracts in accordance with Directive 1999/70/EC.

a) The **first aspect of limitations is the legal possibility** to conclude a fixed-term contract. This is a fundamental issue, since the presumption of (adequate) causality is one of the most essential characteristics of fixed-term contracts. Fixed term in an employment contract is a justified exception to the general rule, which must be based on causality: fixed term contract for fixed term tasks.

Generally, a fixed-term contract is an exception from the general rule of indefinite employment, effective only in case of a valid, explicit agreement on this term. In **Austria, Belgium, Bulgaria, Denmark, Czech Republic, Germany, Greece, Hungary, Ireland, Malta, Slovakia** and **The Netherlands**, fixed-term contracts are allowed without any special justifying reason. In **Austria**, an employment relationship is regarded as a fixed-term one, when a fixed term terminates it. However, a fixed-term can also consist in a future event, the occurrence of which is certain, though at an uncertain point in time.

However, certain sector-specific collective bargaining agreements (hotel and restaurant industry) provide that limitations are only allowed when they foresee a fixed calendar termination date. In **Germany**, instead of liberalising the German dismissal protection law and as a functional equivalent, labour law enables external flexibility by admitting the fixed-term without any justifying reason up to a maximum duration of two years. In **Hungary**, fixed-term employment may be determined for a fixed period, replacement or a specific task. If the duration of an employment relation is not determined by the calendar, the employer is obliged to inform the employee of the expected duration of employment. In **Greece**, the contract of employment sets a precise date as marking its end or fixes a particular length of time as its duration. In addition, a fixed-term contract is one whose duration results from the nature or purpose of the contract (e.g. replacement of a sick employee).

In **The Netherlands,** fixed-term contracts are generally used when work is temporary (seasonal work, fixed-term projects). However, employers are free to use fixed-term contracts also for work which is not temporary but which has structural character. Freedom of employers might be limited by collective labour agreements. In several sectors, social partners have made specific arrangements in these collective labour agreements regarding types, maximum share and maximum duration of temporary work. Individual employers have to comply with these arrangements. In **Slovakia**, only the first fixed-term contract is allowed without any special justifying reason. All renewals and successive fixed-term contracts come under the strict restrictions laid down by law. Renewals and successive fixed-terms are limited in their number as well as situations in which these are allowed.

The other group of MS **(France, Finland, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia, Sweden)** implemented various restrictions on the use of fixed-term contracts. In **France,** a double legal requirement is imposed by the Labour Code. Firstly, 'whatever the ground, the temporary contract of employment can have neither as an aim or for effect to fill durably a job related to the normal and permanent activity of a company'. Secondly, a fixed-term can only be concluded for a 'precise and temporary task'. The main preoccupation of the legislator is to avoid the use of fixed-term and agency work contracts to fill permanent jobs within companies. Only jobs of a temporary nature may justify the recourse to fixed-term work and agency work. In practice, these contracts are often used as a probationary period, which is not a ground according to which one can hire fixed-term workers and agency workers. The legislator decided that this general prohibition was not enough to limit the use of fixed-term and agency work contracts; thus, French law enacts a typology of situations under which fixed-term contracts are authorised. The cases of assignment are classified: replacement of workers on leave, temporary increase of activity, seasonal jobs and fixed-term contracts concluded within the framework of employment policies.

In **Latvia**, fixed-term contracts are permitted only in exceptional cases listed in the Labour Code (seasonal work, replacement, emergency work etc.). The use of fixed-term contracts was extended in 2007 to workplaces, which are open for a specific period of the year. In **Luxembourg**, a contract for a fixed-term may be concluded for a specified temporary task listed in the law, but not for a long-standing employment linked to the normal and permanent activity of the undertaking. In **Portugal**, law imposes the exclusion of the use of such a contract to try to avoid limitations to dismissals or to fulfil permanent jobs, and establishes a closed typology of situations where fixed-term contracts can be justified. Furthermore, the contract must include a specific statement on the facts that support the justification. In **Romania**, the conclusion of fixed-term individual labour contracts is only exceptionally allowed in the specific situations listed in the Labour Code. This list was recently extended in the view of hiring some categories of disadvantaged persons, e.g. persons who, within five years from the employment date, fulfil the conditions for retirement. In **Slovenia**, there is a profuse list of possibilities for fixed-term. Considering the very high share of fixed-term contracts in Slovenia, additional measures are planned to prevent abuses and limit fixed-term employment.

b) Limitations on maximum duration

The **second aspect of limitations is the maximum duration** of the fixed term.

In **Austria**, fixed-term contracts are allowed without a maximum time limitation. In **Poland**, there is no time limit to the duration of a single contract for a definite period; however, the existing practice of concluding contracts for periods of 10 or even 30 years could be questioned before the labour court as a contract contrary to its social and economic objectives. It is widely assumed that a fixed-term contract should be concluded for a relatively short time.

In the other MS, the maximum duration is limited: in certain MS it is only two years (**Belgium, Czech Republic, France, Germany, Luxembourg, Romania, Slovenia**), or three years (**Belgium**, **Bulgaria, Latvia, Slovakia, The Netherlands**), five years (**Hungary, Lithuania**), or even six years (**Portugal**). In **Portugal** the maximum duration of a fixed-term contract by automatic renewal (which can only happen twice) is three years, which can be extended until six years only by a specific agreement. In **Sweden** when a person has been employed altogether for more than two years within a five-year period the fixed-term contract will be transformed into an open-ended contract.

In **Romania**, the flexibility of fixed-term contracts has been recently increased by shifting the maximum duration from 18 to 24 months. In **Latvia**, the fixed-term may not exceed three years (including extensions of the term), except seasonal work (10 months). In **Bulgaria**, a definite period shall not be longer than three years, insofar as a law or an act of the Council of Ministers does not provide otherwise. By exception, fixed-term contracts could be concluded for a period less than one year for activities which do not have a temporary, seasonal or short-term validity, by a written demand of the employee.

In **Malta**, the employee is considered to hold an open-ended contract if continuously employed on one or more fixed-term contracts for more than four years. This rule is always applicable unless the employer has objective reasons to justify the renewal of the fixed term contract for a longer duration than four years. Such a justification may be, for example, employment for a project of a specified duration that is longer than four years. In **Hungary**, the maximum duration of fixed-term contracts is limited to five years, except when the employment is dependent on a work permit for foreigners or on an election. In **Lithuania**, a fixed-term contract may not exceed five years. In many MS, the contract shall be considered to be an open-ended contract, if the term is not clearly specified.

In France, the maximum duration of the assignment differs according to its ground. For most of the situations, the total duration must not exceed 18 months. This maximum duration is reduced to 9 months, when the assignment is made under specific objective grounds (eg. urgent work). The duration is extended to 24 months for assignments in a foreign country, exceptional export orders etc. Most of the fixed-term contracts concluded in the frame of employment policies have a specific duration. Some provisions aim at giving employers some flexibility for adapting the end of the fixed-term contract. Firstly, the expiration date of the contract may be brought forward or postponed to a limited extent. For durations of less than 10 days, the law allows a margin of two days. For longer durations, the duration may be postponed or put forward by one day per five working days. In any case, on the one hand the termination date may not be brought forward for more than ten days and, on the other, postponement must not attempt to go beyond the maximum duration set by the legislation. Secondly, employers may set an indefinite term to the fixed-term contract in three situations: replacement of an employee on leave, seasonal work, waiting for a worker recruited under permanent contract to take up the post. The contract has to be concluded for a minimal duration and must not exceed nine months in these cases.

c) Limitations on renewed and successive fixed-term contracts

The **third aspect of limitations is on renewed and successive fixed-term contracts.**

The Member States implemented various restrictions in this respect. The least rigid test is used in **Austria**, where the law does not contain any specific protection provisions for such consecutive fixed-term contracts. However, the court practice allows consecutive fixed-term contracts only in those cases that are specifically justified. The same requirement is based in law in **Denmark**. In the **Czech Republic** the number of contracts does not make any difference, but they must not exceed two years. The next possible fixed-term contract can be concluded after a 6-month expiration period after the termination of the two-year fixed-term contract. In **Hungary**, the transposition of Directive 1999/70/EC has resulted in an express prohibition of abusive fixed-term contracts, but at the same time has brought about a slight decrease in protection. In the past, the first unreasonable conclusion of the fixed term could already be invalid, if it resulted in depriving an employee from protection in any respect, but the amended text prohibits only repeated abusive conclusion or renewal.

Furthermore, invalidation was formerly possible merely on the basis of the objective lack of reasonable ground, whereas now, the phrasing of the law requires both the lack of a justified interest on behalf of the employer and their intention to deprive the worker from a legal right.

In the second group of MS (**Belgium**, **France**, **Germany**, **Luxembourg**, **Romania, The Netherlands**) the number of renewed and successive contracts is limited by law.

In **Belgium**, four employment contracts can be agreed, provided they last at least three months and do not exceed the total duration of two years. If the duration of the contracts is seven months (altogether 28 months), the last contract is considered to be of indefinite length.

If permission is given by a civil servant, six fixed-term contracts can be agreed for a minimum of six months without exceeding three years. In **France**, the law only admits one renewal of the fixed-term contract with strict conditions. The renewal must not attempt to go beyond the maximum legal duration and the grounds of the renewal must be similar to the initial contract. Renewal is forbidden in situations where an indefinite term is allowed. In **Luxembourg**, the fixed term may be a maximum of two years, with occasional exceptions on the possibility of renewed (twice) and successive fixed-term contracts, which may lead to a shift to an open-ended contract. In **Portugal**, there is no explicit minimum duration; but a contract with a term shorter than six months may only be concluded in certain situations. As for renewal, it can happen (automatically) twice, for the same period, or for a different period, by agreement. In **The Netherlands**, workers can have three temporary contracts after each other, and periods in between successive labour contracts can not be less than 3 months. Social partners can deviate from these legal standards in collective labour agreements, but only if they both agree to such a deviation. In **Poland,** the conclusion of a third successive fixed-term contract shall have the same legal consequences as an open-ended contract of employment if the parties previously concluded two consecutive fixed-term contracts, provided the time span between each contract does not exceed one month.

Despite legal constraints, successive fixed-term contracts still cause severe problems in practice. In **Greece,** a new fixed-term contract is frequently concluded between the same persons, or the contract is extended for a fixed period again, in order to avoid the severance pay. In **Slovenia**, many successive contracts are concluded, usually for a very short term. Limitation of the duration is not efficient, since it refers to the same employee and the same work. In practice, definitions of the work in successive contracts are slightly changed after the expiry of the time limit. Besides, after the expiry of the time limit, the same person may be assigned to the previous employer by a temporary agency (one year) and the same person can once again be directly employed by the previous employer under a fixed-term contract (two years) etc. Since the time-limit refers to the same employee, the employer employs another person under a fixed-term contract.

Various forms of temporary employment

In most Member States (**Bulgaria, Cyprus, Czech Republic, Denmark, Greece, Latvia, Malta, Poland[4], Romania, Slovakia, Slovenia**), fixed-term contracts are the single legal form of temporary employment relationships. Therefore, the fixed-term contract is the principal legal form of temporary employment in the EU. However, there are various forms of temporary employment in some Member States (**Belgium, Lithuania, Portugal, The Netherlands, United Kingdom**).

[4] Except for agency work, this is also performed on the basis of an employment contract in Poland.

France and **Germany** have also elaborated complicated rules for particular employees and situations. It may be conceived as a general trend that the rules on temporary employment relationships become more and more complicated and detailed with regard to restrictions and incentives.

In **Czech Republic**, beyond the fixed-term contract, there is also temporary employment through Agreements on work performed outside an employment relationship.

In **Lithuania**, temporary contracts constitute a distinct category, which may be divided into three groups: common fixed-term employment contracts, short-term employment contracts and seasonal employment contracts. A short term contract shall be concluded for a period not exceeding two months on special grounds (replacement, urgency, etc.). Seasonal contracts shall be concluded for the performance of particular seasonal works listed in the law, which are not performed all year round, and do not exceed eight months in twelve successive months.

In **Belgium**, there are three types of temporary employment: fixed-term contract, employment contract for a specific task and replacement employment contract. The employment contract for a specific task has to contain a very precise task description. The main difference is the lack of restriction on the number and maximum duration of successive/renewed contracts. The replacement contract may be used to hire an employee whose employment contract has been suspended, with certain exceptions by law (e.g. strike). These temporary contracts must meet certain requirements: reason, identity of the absent employee, written terms of recruitment. During a period of two years, it is possible to give a one-week contract one after the other. The parties can agree that the temporary fill-in contract ends automatically when the replaced person resumes work, within two years after concluding the employment contract. If the temporary worker is employed for a longer period than two years, the contract will become open-ended.

In **Austria**, certain specific provisions serve the interests of the employers and regulate temporary employment relationships, the duration of which cannot be precisely determined at the time of conclusion of the contract. Those cases mainly concern indefinite employment relationships, the particular nature of which consists in the possibility of dismissal under less strict conditions. During the first month, both contracting parties may terminate their contractual relationship either at any time or keeping a one-week notice term.

Interaction between legal environment and labour market

Despite the law approximation deriving from legal harmonization, the legal limitations on fixed-term contracts are rather diverse in the Member States. The most restrictive legal environment is found in **France, Portugal, Slovakia** and **Romania**. The legal environment is the least restrictive in **Austria**, **Hungary** and **Poland**. The rest of the MS use various restrictions on fixed-term work. In those MS struggling with an excessive share of fixed-term contracts (**Portugal, Spain**, **Slovenia**), restrictions on temporary contracts and the promotion of permanent employment is the primary issue. In MS, like **Romania**, where the share of fixed-term contracts is extremely low, the gradual flexibilization of regulations is the objective. However, in those MS with a stable and limited share (around 10%) of fixed-term employees (**Austria**, **Belgium**, **Denmark**, **Hungary, Poland**, **Sweden**), labour provisions on fixed-term contracts proved to be rather stable, even in the course of legal harmonization. Besides, harmonization had an apparently stronger effect on the **new Member States**.

The incidence of temporary work and practical problems are also rather different in certain groups of MS. On the whole, temporary work is one of the most popular atypical forms of employment. In **Denmark**, the main explanation on the relatively low rate of temporary employment contracts is the relatively high level of numerical flexibility in open-ended employment. Denmark is among the MS with the shortest job tenures on average, open ended jobs and this high level has remained fairly constant since the early 1980s. The key to the flexible labour market is the flexible employment structure and not as much the emergence of special forms of flexible employment patterns, such as temporary employment contracts.

In **Germany**, employment relationships of younger employees generally begin with a two years probationary period without any job security. However, the majority of fixed-term workers succeed in passing into open-ended employment contracts. Since 2007, no justifying cause is required for fixing terms up to five years, if the employee is over 52, was unemployed immediately before the beginning of the fixed term for at least four months and has also taken part in a welfare sponsored measure of employment.

Fixed-term employment should result in the reintegration of older unemployed by the "glue-effect". If this fails, especially low-qualified women are threatened by chains of unstable employment, which lead to insecurity in their subjective employment and a shrinking birth rate.

In **The Netherlands,** prolonged chains of fixed-term contracts were popular among employers in the affluent labour markets of the early 1980s and 1990s. They were pushed back to a certain degree with the introduction of new legislation at the end of the 1990s that fixed the maximum duration of temporary work at a period of 3 years.

In **Malta**, fixed-term contracts are widespread in the construction and tourism industry. However, there are penalties in cases of premature termination by employers. In **Slovakia**, harmonization of the Directive resulted in permanent legal changes, which is one of the reasons of the low share of fixed-term work. In the **Czech Republic**, the share of fixed-term contracts slightly grew until 2003, because of the need of employers for flexibility and lower labour costs. After 2003, their share slightly decreased by the introduction of stricter harmonization measures to protect fixed-term employees and, conversely, to relax the protection of indeterminate employment contracts.

Slovenia is one of the EU Member States with the highest rate of fixed-term employment, and it grows rapidly. Over 70% of all new jobs are jobs for a fixed-term and 40% of all unemployed lost their jobs due to the expiry of a fixed-term contract. Additional measures are planned to prevent abuses and guarantee equivalent situation for fixed-term workers, in order to reduce the extreme segmentation of the labour market.

In **Portugal**, despite the restrictive regulation, this kind of contract is used as a rule (in more than 80% of the cases) in the first months or years of (potentially) permanent employment relationships, even though the law establishes trial periods where dismissal is free. Non-compliance with the legal regulation is, to a certain extent, socially accepted, and the cases brought to court are very rare. Besides, the law accepts the use of fixed-term contracts, without any additional requirement of justification, to hire youngsters in search of the first employment and those unemployed for a long time. These factors explain the fact that fixed-term contracts are used in a little more than 20% of the total employment relationships.

The most problematic situation is obviously found in **Spain**. The use of fixed-term contracts were allowed to cover permanent positions from 1980 to 1994, which broke the former rule of temporality. As a result, all flexibility was concentrated in temporary employment, while the cost of dismissals, working time etc. remained unchanged in open-ended employment.

Nowadays, the main problem is not unemployment, but the high rate of temporary employees (34.6%). It has a negative impact on the safety and health, quality of jobs, and productivity. Several legal reforms have tried to reduce this rate since 1994; however, they have had a limited result. The last reform was based on an agreement between the main trade unions and employers' associations, which was passed by the Government in 2006. These measures promoted creation of permanent contracts and the conversion of temporary into permanent jobs, by subsidising new permanent contracts and reducing employer contributions, restricted the repeated use of temporary contracts and enhanced transparency in subcontracting. This reform has had a significant impact on Labour Law, but the share of fixed-term contracts still remains too high.

II.3.2 Part-time employment, mini-jobs, on-call work and job sharing

Part-time employment contracts, just like fixed-term contracts, are not new forms of employment, since they have existed for quite a while in all MS. Part-time employment is the most fully-regulated non-traditional form of employment relationship, beside fixed-term contracts. For example, in **Denmark**, **Sweden** and **The Netherlands**, part-time work can not longer be considered as a non-standard form of employment, although it has been decreasing in both **Denmark** and **Sweden** during the last decade. In **Spain**, part-time contracts were firstly regulated in 1980, and the latest amendment was passed in 2001. In **Portugal**, the first legal rules on such contracts were created in the 70's but it was only in 1999, under the influence of Directive 97/80/CE, that the first complete regime was published; nowadays, it is inserted in the Labour Code. Nevertheless, it is still very rare in practice: only about 5% of the employees have a contract of this kind. In **Greece**, it is a relatively new type of contract, which had existed in practice; however, it was regulated in 1990 for the private sector and was recently extended to the public sector. In **Luxembourg**, part-time work was regulated in 1993, after eleven years of debate.

In the former socialist legal systems (e.g. **Bulgaria**, **Czech Republic, Hungary, Slovakia, Poland**) part-time employment was allowed, though not particularly regulated, as an exceptional form of employment and a supplementary activity. In these MS more detailed provisions were the result of legal harmonization. In **Romania**, part-time work has always been accepted in practice, although it was expressly regulated as late as 2003, as a clear result of EU accession. In **Cyprus**, the adoption of the recent law on part-time employment was the result of harmonization. At the same time, in **Hungary**, legal harmonization did not have a tangible effect on regulation of part-time work.

National legislative measures tried to achieve two objectives at the same time: remove barriers in order to encourage employers to offer part-time jobs and give security to part-time employees. In doing so, the following forms of part-time employment have been elaborated:

- part-time employment contract: it has been regulated and exists in all MS, though on a rather different scale, and with various limitations;
- mini-jobs: there are various special employment relationships for marginal part-time employment in some MS (**Austria, Czech Republic, Germany, Slovakia, Slovenia, United Kingdom**), with varying titles and conditions;
- on-call work: the worker only works and is paid, when work is actually available. This form of employment exists in a few MS[5] (**Germany, The Netherlands**);

[5] In Italy, on-call jobs have been abolished in December 2007.

- job sharing: it was not reported as a widely used form of employment, however, it exists and/or regulated in a few MS (**Denmark, Italy, Portugal, Slovenia**).

Equal treatment of part-time employees

The remarkable improvement of non-discrimination laws was a positive effect of **Directive 97/81/EC**. The labour and non-discrimination laws of all MS contain similar clauses and mechanisms to guarantee equal treatment of part-time and full-time employees and the principle of proportionality.

Although, discrimination against part-time employees is not an extensive problem, there are difficulties regarding implementation. The most problematic situation is found in **Slovenia**, where most of the part-time work is involuntary, who are mostly women, at a higher risk to become poor, although they have an employment (the working poor). Moreover, the length of employment is calculated on the pro-rata basis within pension insurance. Thus, one year of part-time employment counts not as one year of insurance, but proportionally less. Consequently, part-time employees face difficulties regarding the fulfilment of retirement conditions. The social rights are an issue in **Germany** as well, where even long lasting part-time jobs result in deficient pension claims.

In the **Czech Republic, Hungary, Poland** and **Slovakia**, part-time employees formally enjoy the same status as full-time workers; however, it is a source of social disadvantage in practical terms. Their wages are reduced proportionately to their working hours; however, there seldom is a proportional reduction of the employer's requirement for the workload. Consequently, a significant proportion of part-time employees work full-time in reality, which may be called "undeclared full-time work". In Malta, part-time employees with more than 8 hours of work per week are entitled to benefits like full-timers.

In **Finland,** case law exists concerning job sharing and the right to time-off in accordance with the collective agreement. The agreement stipulated that only full-timers were entitled to time off and did not give anyone of two persons sharing a full time job any time off. The Finnish Labour Court issued a judgment and decided that both were entitled to 50 % time off pro rata temporis.

In the **United Kingdom**, part-time workers have the pro-rata right to the same rate of pay as full-time workers; however, in practice, they earn proportionately less than full-time workers, as the jobs available as part-time work are more likely to be lower graded jobs and thus the gender pay gap is greater in part-time work. This is partly due to the need to establish an appropriate comparative, and as a consequence, the regulations would benefit only 7% of part-time workers, all but 17% being excluded for lack of a comparative. In **Ireland**, around 30% of employees work in organisations that offer job sharing, but only six per cent of employees, mainly women, are personally involved in such arrangements. The Equality Officer concluded[6] that a company policy of not allowing job shares offended sex discrimination legislation. There is, however, no automatic entitlement to job share.

Definition of part-time employment

All national laws include a definition of the part-time employment relationship. In many MS **(Austria, Bulgaria, Czech Republic, Germany, Hungary, Latvia, Malta, Romania, Poland, Slovakia, Slovenia, Spain, The Netherlands, United Kingdom)**, there is no time limit, minimum daily or weekly hours concerning part-time work.

[6] Nuala Weir v St Patrick's Hospital [2001] E.L.R. 228.

According to the general definition, part-time employment must be established for a shorter working time than full-time employment, based on a written employment contract. The number of working hours or days for full-time employment may be regulated by legislation or collective agreements **(Austria, Malta, Spain).** Part-time contracts may be also concluded for indefinite or fixed terms, under the condition of complying with the legal provisions applicable with regard to the contract's duration. In **Estonia,** the use of part-time work is mostly agreed between the employer and employee. However, part-time work may be implemented in the undertaking for a maximum of three months during one year, with the consent of the employee and the labour inspector, in case of the reduction in work load or bookings.

Even in this dominant model (no time limit), there are certain restrictions. The part-time contract shall be deemed a full-time contract in all MS, if it is not written or does not contain the number of fixed (daily, weekly) working hours. In some MS **(Belgium**, **Bulgaria, Italy, Romania, Luxembourg),** the work schedule, distribution of working time, is also a compulsory term of a part-time contract**.**

In some MS, overtime is prohibited or limited (**Austria, France, Luxembourg, Romania, Spain**). In **Slovakia**, overtime is allowed only with the consent of a part-time worker, but the employer cannot order a part-time worker to work overtime. In **Austria**, a part-time employee is only bound to accomplish extra work if it is stipulated by law, collective agreement or employment contract, in case of increased workload, or if there are no contrary motives from the employee (e.g. childcare). In **France**, the contract may foresee the possibility of overtime; however, it must no exceed 10% of the weekly or monthly working time, which may be increased up to 1/3 by a collective agreement.

The typical definitions of a part-time worker are as follows:

- Any worker, whose hours are less than those of a full-time worker (**Malta, Poland, United Kingdom**);
- The employee who provides services for a working day which is shorter, or for a number of days per week or per month which are fewer than normal (**Spain**);
- An employee who works less hours than what is the usual for fulltime workers in the sector or company where he or she works (**The Netherlands**);
- Work less than the 35 hours foreseen by the law or collective agreement (**France**);
- Work less than hours per week regulated by law or collective bargaining (**Austria**);
- Work less than 40 hours per week and it must not to be performed each working day (**Hungary, Slovakia**).

Italy introduced a unique solution, as there are three types of part-time contracts, which may be both fixed-term or open-ended:

- horizontal part-time: reduction of working time on a daily basis;
- vertical part-time: work is full-time, but for a limited number of days in the week, month or year;
- mixed part-time: combination of horizontal and vertical types.

In a smaller number of MS (**Belgium, Cyprus, Lithuania**), there are various time limits (minimum daily or weekly hours). In **Belgium**, the working hours of a part-time employee should not be less than one third of a full time schedule. If the employment contract is made up for less hours, the wage should still be 33% of a full time pay.

The King may allow a deviation from the one third principles in specific industrial sectors. In addition, the duration of a part-time working period cannot be less than three hours unless explicitly otherwise decided by the King. In **Cyprus**, there is a minimum working week of 20 hours, which must be equally distributed, in order to make part-time employment more attractive, despite low wages. Many collective agreements contain further restrictions on part-time employment. In **Portugal,** the law on part-time establishes a maximum of 75% of working time in comparable full-time jobs.

Switch between full and part time employment

As a result of harmonization, all MS have introduced some measures to promote the switch between full and part time employments. However, these national measures are rather diverse in terms of strength and practical effect.

The weakest solution is the obligation of the employer to inform employees on the possibility to switch between full and part time and give consideration, "as far as possible", to such requests (**Hungary, Poland, Portugal, Romania**). The weakness of this solution lies in the rule, that employers may refuse the employee's request without any real consequences, so they generally do so. Thus, this right exists only in the word of the law, but not in practice.

Slightly stronger right is guaranteed in **Luxembourg**, where the employers have to consult the staff delegation or the joint works council before creating part-time jobs. They must also inform the workers of the unit, who have expressed their wish to get or take back a part-time or a full-time job.

Preferential treatment of all part-time employees, if full-time jobs are available, is a more effective solution (**Finland, France**, **Germany and Sweden**). In **Finland,** necessary vocational training must also be given to the part-time worker. In **Hungary**, preferential treatment may be provided by a collective agreement, based on the new law on equal treatment. In **Poland,** one disadvantaged group of employees is entitled to such a preferential treatment. The employee, who is entitled to an unpaid upbringing leave, may request the employer to reduce their working hours to not more than half and the employer is obliged to agree to the request. In **Austria,** a special claim has been established by legislation in 2004, in order to reconcile work and family life. The following requirements have to be fulfilled:

- dependent engagement in a company, occupying more than 20 dependent employees,
- a minimum duration of the relevant employment of three years, and
- a child, younger than seven years.

If the company engages fewer than 21 dependent employees, there is a possibility to stipulate part-time because of childcare on a voluntary basis or in the context of an internal company agreement.

In **Slovakia**, an employer is obliged to agree with an employee special working time upon the request of an employee based on health- or other serious- grounds provided that the operation of the employer's business allows so. However, it must be mentioned that this legal option is used only rarely in practice, mainly due to the missing definition of the "serious grounds" and "operation allows so".

The strongest rights are provided in **Germany**, where employees have the right to unilaterally reduce or extend the agreed working time, provided that no operational reasons are conflicting. Apparently, the German legislation is moving towards internal flexibility by providing employees the right to reduce the agreed working time.

A similar solution is the frequently used right to partial retirement*;* however, it will be subsidized only until 2010, because it is counterproductive regarding old age employment. In **The Netherlands,** employees have no unilateral right, but if they request reduction of working hours employers have to take this seriously into account. The only reason to refuse a workers' request can be a ponderous interest of the company. In case of refusal, workers can consult the trade union or the works council for mediation.

Mini-jobs

Mini jobs do not exist as separately regulated legal forms in some MS **(Greece, Hungary, Italy, Poland, Portugal, Slovakia, The Netherlands).** However, in other MS **(Austria, Czech Republic, Germany, Slovakia, Slovenia, United Kingdom),** there are various special employment relationships for marginal part-time employment, with varying titles and conditions. The common contents of these legal forms is that they cover:

- low and very limited number of working hours and/or income;
- employment relationships with more or less limited labour law protection;
- insured status with limited social protection.

In **Slovenia**, the parties may conclude a contract of mini employment, which is a special form of part-time employment relationship, accompanied by limited social protection. The maximum working time is 20 hours per week and 40 hours per month. The pay may not exceed 50% of minimum salary, and the employee must not work full-time, pursue an independent activity or entitled to any pension.

In **Austria**, marginal part time employees are called "marginal income workers", in which case the annual income must not exceed a regularly defined monthly amount (EUR 341.01). Minimum income work is a sideline to regular dependent employment, childcare responsibilities and household work, but rarely common next to self-employment. They are not the ideal startup for a career, because part-timers seldom succeed in getting a regular job in the same undertaking. The same labour regulations are applied as for all other employees, except the regulation on giving notice. The main difference from other employees is the limited coverage in social security.

In the **Czech Republic**, very short workloads (e.g. only two hours a week) can be contracted, which is typical for university teachers. Moreover, partial unemployment has existed as an option since 2004, in order to encourage the unemployed to seek jobs by enabling them to:

- Perform an economic activity on the basis of a job provided that such activity covers less than half of the set weekly working time and the monthly wages are below one half of the minimum wages, or to
- Perform an economic activity under an agreement provided that the monthly remuneration or the average monthly remuneration for an agreed period is lower than one half of the minimum wages.

In **Germany**, there are mini- and midi-jobs. Mini-jobs may pay up to 400 euros per month, or for which the employee works no more than two months or 50 working days per year in the company. Midi-jobs may pay between 400.01 and 800 euros per month. Persons employed in these marginal jobs are part-time employees, who are entitled to all the rights of "normal" employees. Any inappropriate distinction between employees in non-mini-jobs and those in mini-jobs infringes the equality principle. In many cases, however, their part-time work is also fixed-term employment with all consequences with regard to job security.

Since the Hartz II Reform (2002), mini-jobs are insurance free in contrast to "standard" part-time employment. Claims for statutory pension are constituted by the employer's contributions, but they are insufficient for obtaining independent financial security in retirement. It is profitable to have a mini-job in addition to a non-minijob, because it can be carried out tax-exempt in addition to the basic employment. In consequence, only those persons are satisfied by mini-jobs, who are predominantly supported by others, but the risks of precariousness for sole wage earners are obvious.

In **Slovakia**, the part-time job for less than 15 hours per week can be (notwithstading with the part-time jobs for more hours) terminated without any reason and in the shorter termination notice period (only 30 days). In all other aspects, save for termination, this job is considered as an employment contract. An employer and an employee can enter also into the special contract for working activity regulated under the Labour Code, under which an employee can work a maximum of 10 hours per week. This contract can be easily terminated and the exemption from payment of social contributions applies to it.

On-call work

In most MS, there are no provisions regarding on-call or intermittent work. In other MS, the term "on call-work" has two, distinctive meanings in national laws.

In most of the new Member States (**Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Poland, Portugal, Slovakia**), on-call work is not a special kind of contract, but rather a special kind of working time (on-call/stand-by duty) in an employment relationship.

The other meaning of on call-work is an employment contract, with the specification that the worker only works and is paid, when work is actually available. This form of employment was reported in a few MS (**Germany, The Netherlands**). In **Italy**, on-call jobs were abolished in December 2007. In **The Netherlands**, there are on-call and min-max contracts. In case of 'on-call contracts' the periods and times of work are usually not specified exactly in the employment contract. In principle, there is only the agreement that the employer 'calls' the workers, when work is available for them and only these hours are paid. In practice, employers usually define a minimum number of hours, and the legal minimum is 3 hours paid work per call. They often use work schedules to plan on-call staff capacity. The 'min-max contract' is a special form of on-call, with a minimum and maximum number of working hours/day within a certain period of time.

In **Germany,** on-call work also exists as a special form of part-time work, which permits transition to flexible working hours. Due to its one-sided arrangement, taking predominantly the employers' necessities into account, legislation has tied contractual agreements to legal minimum requirements, in particular: a minimum duration (10 hours per week), a minimum working time (3 hours in one go) and a minimum notice period (4 days before each activity). In favour of the employers' interest in flexibility, the Federal Law Court validated the so-called bandwidth arrangements, whereby further on-call work of up to 25% in addition to the contracted minimum working hours (e.g. 30 hours plus 7,5 hours) is allowed.

Job sharing

Job sharing was not reported as a widely used and/or regulated form of employment, since it does not offer significant advantages to the employers and burdens them with additional administrative costs (**e.g. Czech Republic, Slovakia, Hungary, Portugal**). In **Slovenia** and **Poland**, there is no special provision concerning job-sharing**,** nevertheless, it is possible in practice, although not very frequent.

In **Denmark**, the anxiety of a surplus demand on labour has also resulted in Governmental intervention in collective agreements to remove all obstacles to part-time employment. Many collective agreements stipulate some conditions for setting up a part-time job. The typical condition was that a full-time job could not be split into some part-time jobs without the consent from the shop steward or the trade union. In 2002, the Government simply banned such conditions and gave the employers the right to decide if a part-time job should be created.

In **Italy,** job sharing is a subordinate employment relationship agreed between an employer and two workers, who undertake to perform one job. This 'solidarity' concerns the time schedule for presence on the job, in the sense that the workers can autonomously manage the division of work between them and substitute each other. Both are directly and personally responsible for fulfilment of the contract. A job-sharing contract may be stipulated by all workers and employers; moreover, it may be fixed-term or open-ended.

In **Finland,** the Act on job alteration leave has introduced a special kind of job sharing. The purpose of the job alternation leave is to promote employees' wellbeing at work while also providing an unemployed jobseeker with the opportunity of gaining work experience through fixed-term employment. The employer benefits from the new competence that the new employee contributes to the working community. Agreement on the job alternation leave is made between the employer and the employee, and employees may use the leave in whichever way they want to. The precondition for the job alternation leave is that the employer makes a commitment to employ an unemployed jobseeker registered with an employment office as a substitute for the duration of the leave. The minimum duration is 90 and maximum duration 359 calendar days. The employee's employment relationship is dormant during the leave. The substitute should primarily be a young or recently graduated unemployed jobseeker or a long-term unemployed person. The substitute need not be employed for the same duties as the person taking job alternation leave.

The role of part-time employment

In all MS, part-time employment has always been and still is the most popular legal form of employment to integrate women into the labour market. It is more popular in the most advanced economies (**Austria, France, Germany, Italy, Ireland, United Kingdom, The Netherlands**). Likewise, in **Malta**, although women comprise only 35.3% of the total workforce, they represent 59.6% of those employees whose sole occupation is part-time.

In **Germany**, as a main feature of "flexicurity", an increasing number of German companies (72%) benefit from part-time work, and only one in four companies works exclusively with full-time employees. In **Austria**, part-time work is a wider spread phenomenon in female occupation, than in most other Member States. In 2006, 40.2% (28% in 1997) of women worked part-time, compared to 7.2% of male part-timers, with an increasing trend. At the same time, 31.2 percent of all unemployed women were searching for a part-time job. Part-time work has increasingly been used by employers as a core strategy to increase flexibility and reduce costs. In **Italy**, part-time employment is particularly in demand by women and it responds more to a personal need to balance work and family responsibilities than to the flexibility needs of undertakings. In **Ireland**, the high proportion of part-time employment is negative in terms of aggregate skill acquisition, employment security and the sustainability of employment conditions. In the **United Kingdom**, part-time employment accounts for one in four jobs. The rise in the number of women entering the labour force in the 1970s, coinciding with the introduction of new employment rights on non-discrimination, equal pay and maternity rights, provided the basis for a debate around access to more flexible working arrangements, in particular, part-time work.

Thus the proportion of part-time workers grew significantly. Part-time work was and still is directly associated with a gender choice, with fewer than one in ten male workers opting to work part-time, compared to nearly half (42%) of female workers. In **The Netherlands,** the number of part-time jobs has risen strongly during the past decades. They are mainly occupied by women. Due to the growth of part-time jobs the total labour market participation rate is now at a substantial higher level than in the 1980s and early 1990s.

As an exception, in **Denmark** the general decline in part-time employment is caused by a halving of women's part-time employment, while men's part-time employment has more than doubled during the past 30 years. This significant shift in women's employment pattern has taken place simultaneously with a steadily increasing labour market participation rate, while the participation rate among men has been recessive since the late 1980s. The influx of women during these two decades took place as part-time employment, while women during the 1980s and later became part of the ordinary labour force with almost the same employment pattern as men. The most influential legislation affecting part-time employment is the unemployment insurance system. The situation in **Sweden** is to a large extent similar.

In many MS (**Bulgaria, Czech Republic, Cyprus, Estonia, Greece, Hungary, Portugal, Romania, Slovakia, Slovenia**), mostly in the less developed economies, part-time work has exhibited a very low impact (below 10% or even 3%). For example in **Greece**, the level of part-time employment is almost four times lower than the EU average, while the share of fixed-term employment stands at around the average. In many MS (**e.g. Bulgaria, Cyprus, Romania, Slovakia**), almost all part-time workers choose this form due to the lack of work and/or full-time jobs. Multiple-job holding is another form of flexible work arrangement, where workers hold a second, usually part-time, activity besides their main job.

The following reasons were identified for the low share of part-time employment:

- For those seeking employment, part-time work is an unattractive alternative due to its low wages (**Bulgaria, Czech Republic, Greece, Hungary, Portugal, Slovakia**) and in **Slovakia** high costs connected with working (travel, child-care services etc.).
- Despite the development of the tax and social benefit systems, there is still little incentive for low-wage earners to enter formal employment (**Estonia**).
- Employers are not interested because the sharing of one workplace between two or more employees leads to higher costs (**Bulgaria, Czech Republic, Hungary, Greece, Portugal, Slovakia, Slovenia**).
- Employers seek working-time flexibility from overtime work by full-time employees instead of part-time employment (**Czech Republic, Greece, Hungary, Slovakia**).
- Works suitable for part-time can be performed under a recently introduced special contractual (non-employment) relationship, which is cheaper and less administratively burdening for an employer (**Hungary, Slovakia**).
- Part-time work is usually combined with fixed-term contracts in low-wage sectors, which makes part-time positions unattractive (**Greece**).
- Relaxation of rigid legislation concerning part-time employment lead to a very complicated legal environment, which deters employers (**Belgium**).
- The level of full-time female employment is already very high, thus, there are not many women entering the labour market (**Slovenia**).

II.3.3 Home working and telework

Working at home is a source of functional flexibility and it has two basic forms: home working and telework. Home working is not a new phenomenon, since the use and regulation of this form of employment has had a long tradition in many MS (**Czech Republic, Germany, Greece, Hungary, Latvia, Malta, Poland, Portugal, Slovakia, The Netherlands, United Kingdom**). However, technological development brought about telework as a special form of home working. Nowadays, these are more and more popular measures to increase flexibility through flexibility regarding work place in several MS (**Czech Republic, Ireland, Poland, The Netherlands, United Kingdom**).

Regulation of telework is a new phenomenon that has been largely generated by the Framework Agreement on Telework since 2002. Telework denotes a form of employment using information technology, which allows employees to conduct some or all of their work at an alternative worksite away from the employer's typically-used office. Special legal provisions in labour law (**Greece, Hungary, Poland, Portugal, Romania, Slovakia)** and/or collective agreements at national level (**Belgium, Denmark, Finland, France, Latvia, Luxembourg and Sweden**) were implemented in the last few years in several MS. In **Slovakia** and **Poland** special labour law provisions on telework were introduced in 2007. There are generally two reasons behind passing new rules on telework:

- implementation of the Framework Agreement,
- regulating already existing practices in order to solve legal problems and create a supportive environment.

Besides, telework is not reported as a particularly used and regulated form of work in many MS **(Austria, Cyprus, Denmark, Estonia, Finland, Italy, Lithuania, Malta, Portugal**). In **Malta**, however, the number of call centres is on the increase. In **Spain**, some mentions can be found in collective agreements due to the European Framework Agreement being included as an Annex in the bipartite non-binding Interprofessional Agreement on Collective Bargaining (2003).

Home working

As mentioned above, home working has existed for a long time in many MS, before the emergence of telework. The main difference between a home worker and a teleworker is that the final product of the first is usually of a material nature and may not be transferred by means of electronic communication. Telework necessarily involves the use of information technologies, but home working does not.

In some MS (**Czech Republic, Hungary, Malta, Poland**) home working has long been associated with a very specific group, largely women of pre-retirement age and on maternity leave. They would usually make bead strings, jewellery, handicraft products, or provide letter-writing and word processing services, etc. In **Ireland**, home working is available to white-collar workers, who may work from home for at least part of their time. In **Portugal**, home working is still used in parts of productive processes, in traditional industries like shoemaking. In some villages in the North of the country, entire families organize themselves to perform this type of work and are paid according to the amount of pieces produced. Furthermore, home working exists also in urban environments as a supplementary source of income. Labour law does not cover these situations, but, for some limited purposes, it considers them to be similar to employment relationships.

Home working has been regulated in **Poland, Hungary** and **Czech Republic** for decades. In these MS, the legal status of home workers was and still is vague, since they are not employees; however, certain provisions of the Labour Code shall be applied.

A contract to perform home working is a form of *contractus innominatus* of a nature close to a contract of work (locatio-conductio operum). A home worker is obliged to perform a specified kind of work for the benefit of a commissioner, but there is no obligation to perform work personally, as he/she may use help of family members. A home worker has rights to paid parental leave, safety and health benefits and protection of pregnant women.

The legal status of home workers is somewhat different in **Germany,** where they are the most important group of economically dependent workers. They work at a working place chosen by themselves alone or only with members of their family for independent tradesmen on a commercial basis. The exploitation of the work results is left to the direct or indirect commissioning tradesmen. Homework can also be carried out on a mini-job basis or in another form of employment subject to social insurance contributions. In **The Netherlands,** home work is basically characterized by the fact that it is conducted in the workers' private environment. Home work can be regulated by a labour contract or a civil contract; also in case of a civil contract. However, certain regulations of labour law are applicable, e.g. regarding minimum wages, work safety and health and certain dismissal prohibitions. In the **United Kingdom**, home working has been associated with low-paid employment; thus, there are special provisions under the National Minimum Wages Act (1998) to cover homeworkers, guaranteeing them the right to a minimum level of pay. In **Greece**, home workers and piece workers, just like teleworkers, work on the basis of civil law contracts. As a contrast, in **Slovenia** and **Slovakia**, home working is regulated by the labour legislation and considered as an employment relationship. In **Lithuania**, as introduced by the Labour Code in 2003, an employment contract may establish that an employee will perform the job functions agreed therein at home. Employer and employee can agree about almost any kind of job that would be done at the employee's home.

Regulation of telework

The regulation of telework is rather different in certain groups of MS.

In several Member States (**Greece, Hungary, Poland, Portugal, Romania, Slovakia, Slovenia**) telework has recently been regulated in labour law, mostly by an amendment of the Labour Code. Beyond statutory provisions, collective agreements may provide for further terms and conditions. In **Poland, Romania, Slovakia** and **Slovenia**, the amendments of the Labour Codes in 2007 explicitly determine the rules on telework. In **Hungary**, the new chapter on telework was inserted to the Labour Code in 2004, and the same happened in **Portugal** in 2003. Nevertheless, in **Greece**, regulation of working at home, telework and piece work was passed in 1998, though as contracts for services, involving concealed dependent employment not covered by labour legislation.

In several MS (**Estonia, Lithuania, Malta, Spain**), there are no specific regulations on telework, even though the practice exists on the basis of standard employment contracts. In **Lithuania**, the abovementioned rules on home working include telework.

However, collective agreements at national and lower levels play a significant role in several MS. In **Finland**, a social partner agreement was adopted together with guidelines for negotiators at local level in Finland by the representative organisations of both the public and private sectors. In **Estonia**, there are no special rules on telework; thus, the general provisions on employment relationship shall be applied. Specifications of the employment relationship with teleworkers are under enterprise level collective agreements or individual employment contracts. In **Latvia**, the Employers' Confederation and the Free Trade Union Confederation signed an agreement in 2006. In **Belgium**, telework was settled by the collective agreement of the National Labour Council in 2005.

In **France**, a national agreement was signed in 2005 to implement the European Framework agreement. In **Luxembourg**, the social partners transposed the European framework agreement by a new type of collective agreement in 2006, called "agreement as far as cross-sectoral social dialogue is concerned". This kind of agreement is declared as a general obligation, which applies to all employers. Telework is subject to the common legislation of the Labour Code, but if it conflicts with the agreement, the latter will take precedence. Implementation of this new legislation raised some important problems, especially as regards cross-border workers. In **Germany**, teleworkers are "normal" employees and the particular working conditions are generally determined by collective agreements (e.g. T-Mobile, IBM), such as flexible working time arrangements, time recording etc. This is also the case in **The Netherlands. Swedish** social partners had already agreed on common guidelines regarding telework in 2003. Both in **Denmark** and **Sweden** sectoral collective agreements contain provisions on telework.

Legal status of teleworkers

The legal status of teleworkers is rather different in the various legal systems. In **Greece**, the government passed legislation in 1998 to restrain three expanding forms of atypical work: working at home, teleworking and piece work, which are based on civil law contracts, involving concealed dependent employment not covered by labour legislation. They shall be considered dependent employees if the Labour Inspectorate is not notified of the contract within 15 days and the worker provides his services mainly or exclusively to a single employer.

In several MS (**Germany, Ireland, Latvia, The Netherlands, United Kingdom**), telework may be performed on the basis of a standard employment contract or a civil law contract. In the **United Kingdom**, freelancing may involve working part- or full-time from home, predominantly in the media industries. In **Ireland**, "outworkers" are generally employees although some may be self-employed. In **Germany**, contractual basis can be a contract of service, a contract for work and labour (economically dependent homeworkers) or a contract of employment. If telework is not part of the initial job description, the change to telework requires an adaptation of the contract modifying the job location. The employee can accept or refuse this job transfer. In **The Netherlands**, teleworkers can be employees (standard employment contract) or contractors (civil law contract). In the case of contractors, however, certain rules of labour law are applicable, especially those regarding minimum wages, work safety and health (working with display screens), information and instruction.

In other MS (**Bulgaria, Hungary, Poland, Slovakia, Slovenia**), teleworkers must hold an employment relationship in theory. Their employment relationship is either governed by the provisions on standard employment contracts (**e.g. Bulgaria, Slovakia, Slovenia**), or the special rules on telework employment relationship (**Hungary, Poland, Portugal**). However, in practice, many teleworkers work unlawfully under services contracts, in order to reduce their costs.

Equal treatment of teleworkers is generally not expressly mentioned by labour laws. In **Poland** and **Slovakia**, only the latest provisions guarantee explicitly equal treatment of teleworkers, with regard to their privacy, possibility to contact other workers and use employer's premises. Refusal to perform telework cannot constitute a justifiable reason for dismissal. In **Portugal,** equal treatment is explicitly imposed by law, as far as training and working conditions are concerned.

Share of telework and home working

Telework and home working do not constitute a remarkable share of the labour force. In many MS (**Austria, Cyprus, Denmark, Estonia, Hungary, Italy, Lithuania, Malta, Portugal, Spain)**, their incidence is very low. In **Bulgaria**, a telework employment relationship is considered as risk employment and the managers prefer direct to virtual control of their staff. In **Malta**, about 3.8% of employers made use of some form of telework. In **Estonia**, one quarter of workers is working at home at least partly, but only 3% do so all the time. Half of the persons working at home have a respective agreement to use the telework arrangement. Men and highly educated persons are predominant among teleworkers. In **Slovakia**, 4.2% of employees are teleworkers (IT programmers, accountants) and another 4% work at home irregularly. In **Hungary**, a fund was launched to promote telework in addition to the legal changes; however, still only 0.5% of employees are teleworkers. In **Slovenia,** this type of employment is also used very rarely; however, most telework is not formalised and performed outside the scope of the employment relationship.

At the same time, there are a few MS, where the emergence of telework and home working is an important trend. In **Poland,** the popularity of telework has increased considerably over the last few years and exceeded 17% in 2007, which was partly generated by recent legislation. In **The Netherlands,** home working is rather scarce, e.g. less than 1%, but telework is more common. The number of teleworkers with a minimum of 8 hours telework a week increased from 6% in 2002 to 14% in 2007. In the **United Kingdom**, working from home is a growing form of working arrangement with two million working from home all or some of the time. Home working and teleworking can present problems with regard to the nature of the contractual employment relationship in situations where the employer does not exercise control over the worker, in the day to day organisation of work. In addition, the employer's inability to exercise day-to-day control also raises issues of safety and health and its management. Home working is now also a feature of some non-manual forms of employment, where individuals routinely work without the employer's day-to-day supervision. Home working is generally found in small-scale production and information technology. In **Ireland**, home working and telework have become more common, since 14% of employees work in organisations that allow working from home, but only 8% of employees are personally involved in such arrangements. However, teleworkers earn less than their office-based colleagues. In the **Czech Republic**, the advent of the computer changed and extended the scope of work from home; thus, around 11% of employees worked from home in 2002, men and women alike.

II.3.4 Flexible forms of working time

Greater flexibility is not only ensured by adaptations in labour contracts. Flexibility might also be ensured by adaptations in other rules governing the employment relationship, such as working time. In many MS (**Czech Republic, Denmark, Ireland, Germany, Greece, Hungary, Poland, Romania, Slovakia, The Netherlands, United Kingdom**), working time is an outstandingly important source of internal flexibility. Working time flexibility is equally present in indefinite and fixed-term employment relationships.

Apparently, this is not an absolutely new trend, since flexible forms of working time have already spread in various Member States since the 1990s or even earlier. However, there is a tendency on both sides of industry to move towards flexible working time arrangements. As a main feature of flexicurity, an increasing number of **German** companies introduce flexible systems of working hours. In **Greece** and **Portugal**, overtime and work at 'unsocial' hours, are the main means to adjust to market pressures.

In **Ireland,** the predominance of the contract of employment as the primary indicator of employment rights has encouraged the development of flexible working patterns. In the **United Kingdom**, the development of employment law and in particular its basis in the Common Law has provided an environment conducive to the growth of flexible working arrangements. In **Denmark**, unemployment decreased from 1994 onwards; thus, employers wanted better possibilities for overtime work, and collective bargaining has resulted in increased working time flexibility. In **The Netherlands**, the Working Times Act has been changed into a framework law as part of a policy of 'regulated decentralization'. This law distinguishes two types of regulation: the 'standard regulation' with legal standards for maximum working hours and minimum rest periods, and a 'regulation based on mutual consultancy' allowing social partners to deviate from the legal standards in collective agreements. Both types of regulation are included in the Working Times Act itself.

In **Bulgaria, Czech Republic, Hungary**, **Poland, Slovakia** and **Slovenia**, the Labour Codes regulate several forms of flexible working time arrangements (overtime, shifts, on-call, stand-by etc.) within the contract of employment, which are supplemented by workplace level collective agreements. In these MS, the flexible forms of working time, within standard employment, are widely used and even the main source of flexibility. This is especially true for **Slovakia** and **Czech Republic**, where employees seek rather for security (i.e. open-ended, full time employment), than flexibility. At the same time, they welcome work overtime, shifts, uneven distribution of working time etc. They are motivated by high unemployment, fear from losing their job and low basic wage, which can be enhanced by work overtime, during holidays and/or night.

However, in several MS (**Belgium, Bulgaria, Cyprus, Malta**) working time is not an important source of flexibility. In **Spain**, some flexible working time arrangements have been developed by collective agreements.

In **Portugal**, the Labour Code includes several rules admitting forms of flexible working time arrangements either by collective agreement or by consensus at shop floor level, but they are very seldom used due to the conservative culture that prevails in the undertakings.

Flexible working time arrangements

The following flexible forms of working time have been identified in employment relationships:

- overtime **(Bulgaria, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Ireland, Italy, Poland, Portugal, Slovakia, Slovenia, Sweden, The Netherlands)**
- on-call work **(Czech Republic, Hungary, Poland, Slovakia)**
- stand-by duty and stand-by job **(Czech Republic, Hungary, Slovakia)**
- shift work, including night work **(Bulgaria, Czech Republic, Estonia, Hungary, Ireland, Poland, Portugal, Slovakia, Slovenia, The Netherlands, United Kingdom)**
- flexible working hours **(Czech Republic, Estonia, Germany, Ireland, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom, The Netherlands).**

Flexible working hours (flexitime)

Flexible or uneven working hours (flexitime) are undoubtedly the most spread forms of flexibilising working arrangements. In **Germany**, an increasing number of companies introduce flexible systems of working hours which are stipulated in collective branch or works agreements. The Working Hours Act allows an abundance of flexible working time models. As long as the number of working hours does not vary, the social partners can freely decide about the allocation of working hours within the scope of legal and collectively agreed guidelines. Flexible work time accounts and working time accounts enjoy a great popularity. These accounts offer the employers a cost-effective solution to cover seasonal fluctuation ('breathing factory'), while they improve time autonomy of employees and facilitate reconciliation of work and family life. Thus, working time accounts can lead to a win-win-situation, to the benefit of both sides.

Works councils, as collective bargaining partners, play an important role in shaping employee-friendly working time accounts. Therefore, working time account arrangements usually only exist in medium-sized or large companies.

In **The Netherlands,** working time account arrangements are also often negotiated at undertaking level, between individual employers and works councils. However, in several sectors, trade unions and employers associations arranged new flexible working time schedules at sectoral level, within the framework of collective negotiations. The Working Times Act gives social partners the opportunity to conclude specific, tailor-made arrangements within the general legal standards.

In the **Czech Republic**, the institute of flexible working hours enjoys a long tradition, which has three basic forms: flexible working day, working week and four-day working cycle. Flexible hours are most often used by administrative professions. The most frequent form of flexitime (10% of employees) involves the possibility to choose the start of working hours within a certain time limit each day. Staggered working hours are usually determined for the periods of one month, a quarter of or whole year. In **Slovakia**, uneven distribution of working time usually also means work during the weekends: 27% of employees work regularly on Saturdays and 20% on Sundays.

In **Estonia**, measures to increase working time flexibility are sliding time, individual agreements and freedom of decision over working time arrangements. In the latter case, some provisions on working and rest time are not applied (overtime, rest time). Accordingly, the employees who have total freedom to decide their working time arrangements do not have the right to additional remuneration for overtime work.

In **Ireland**, there are various forms of flexible working arrangements. At their most basic, workers may have different start or finish times or may have more formalised arrangements, through flexitime contracts. Employers began to use flexible working hours as a means of achieving greater control over employee working hours, such as annualised hours contracts and flexible part-time arrangements. Sometimes these have been at the direct request of employees, but the growth of flexibility has modified traditional industrial relations practices. Flexible working arrangements are also seen as helpful to female workers, but they are pushed into employment with less employment protection.

Overtime

The most problematic form of flexible working time arrangements is overtime. In the **Czech Republic** and **Slovakia**, the Labour Code is most often violated in connection with overtime, as the employer considers and actually also plans overtime work in defiance of labour provisions. Although employers are required to pay extras for overtime work, the amounts paid usually do not reflect the extra work done. The sheer amount of assigned work often makes the employee stay longer in the workplace without reporting for overtime work. Work over the schedule is often assigned due to organizational changes in order to reduce the number of employees. The workload is not reduced and work is redistributed to the remaining staff.

In **Greece**, the prevalence of overtime is evidenced by the increasing number of permits for overtime exceeding maximum working hours contrary to the regulatory framework. Wage-earners prefer overtime as well, since one-third of dependent employees seek overtime work as the only way to supplement their relatively low wage. The recent controversial legislative change made overtime cheaper and more accessible, contrary to previous legislation aimed at scarce and expensive overtime. The amendment of 2005 provides for five hours of overtime with reduced premium charged on hourly wage and regulates working-time arrangements on an annual basis. The new arrangement of annual working time provides companies facing seasonal shifts in demand, i.e., hospitality services, with flexible, extra work for a specific period of time free of overtime charge. In the opinion of the trade unions, it has a negative impact on employees' work-life balance and benefits. The employers escalated their pressure on the government, since "companies will leave Greece, if an employment regime similar to the one in effect in most European MS is not put into effect".

In large **German** companies, the works councils, provided with compelling rights of participation, usually only approve overtime hours in exceptional cases, whereas in the past overtime hours were common practice. Overtime is rarely paid and employees usually get compensation time instead. The transition between classic overtime and the model of working time accounts (see above) leaving the average working hour quota of the single employees untouched is evident.

In **Denmark**, working time patterns have remained relatively stable apart from a significant trend during the past 20 years. The rate of persons working according to or below the norm (40-37 hours a week) has diminished and above the norm has increased. In **Finland** and **Sweden,** local working time agreements based on the sectoral agreements are common. The high level of overtime working in **Ireland**, combined with the high incidence of weekend working, suggests that changing working patterns are also the product of longer working hours and more irregular work patterns.

In **Portugal**, overtime is still the predominant form of working time flexibility. It is widely used, overcoming legal and conventional limits systematically. Companies prefer this simple form of adapting the volume of work to the specific needs of each moment, rather than the complex processes of negotiation and time organisation that other forms imply. Employees prefer it also, because it offers an easy way of increasing their revenues. As the compensation of overtime with rest is only mandatory in case of work on days of weekly rest, the other situations just have financial consequences.

On-call and stand-by work

As already mentioned with regard to temporary work, on-call work has a special meaning in several MS (**Czech Republic, Estonia, Hungary, Lithuania, Poland, Slovakia**). It is not a special kind of contract, but rather a special kind of overtime (on-call/stand-by duty) in an employment relationship. The following forms exist:

- on-call work: employers may order the employees to work a maximum number of hours of stand-by duty per year, which must be performed at the workplace. Before 2007, it was not considered as working time if an employee did not perform actual work, but harmonization of the Working Time Directive and European Court decisions have enforced such a change. Although the legal situations still vary concerning the calculation of working time and on-call duty.
- stand-by work: the employee may be required to perform stand-by duty at a location specified by the employee that can be reached from the place of work, with the same working time implications as on-call.
- stand-by job: the employee does not work effectively in a significant part of the working time, since the actual work to be done is random. The working time rules of stand-by jobs in **Hungary** are extremely flexible, which raises doubts concerning the harmonization of the Working Time Directive.

II.3.5 Training and apprenticeship contracts

In several MS **(Austria, Bulgaria, Czech Republic, Belgium, Estonia, France, Germany, Hungary, Italy, Lithuania, Portugal, Romania, Slovakia, Slovenia, The Netherlands, United Kingdom),** training and apprenticeship contracts are common and often used as an option to enter the labour market as a sideline, or subsequent to secondary or higher level education. These are not absolutely new forms, since they have some tradition in most of the abovementioned Member Sates. However, the range of these contractual relationships is constantly changing and new forms appeared in the last few years. In **France,** there are increasingly more types of fixed-term contracts to promote training and employment (contracts of qualification, professionalisation, youth contracts etc), within the categories mostly affected by unemployment. The specific nature of these contracts is to entitle the employer to subsidies from the state. In **Hungary,** the law on employment of scholarship holders was passed in 2004.

At the same time, training and apprenticeship contracts were not reported as really relevant or regulated forms of employment in several MS **(Bulgaria, Denmark, Greece, Latvia, Malta).**

Common features

The general objectives of these contractual relationships are to promote training, work experience of young workers and students, as well as entry or re-entry of persons with disadvantages in the labour-market. Training and all kinds of apprenticeship contracts are flexible employment forms, which are also used to activate labour market policies. Besides, it is hard to find common features of these national measures, as national legislations and different forms within some legal systems are rather heterogeneous concerning the following terms:

- the names of these contracts show a great variation: training, apprenticeship, scholarship holder, teaching practice, insertion, juvenile workers, work-and-learning contracts;

- legal relationship and labour law protection: employment relationship (**Austria, Bulgaria, France, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, The Netherlands, United Kingdom**), or a non-employment special legal relationship (**Austria, Belgium, Czech Republic, Hungary, Ireland, Luxembourg, Portugal, Slovakia**), therefore labour law protection is limited in many cases;
- eligible workers: mostly students and career-starters (**Austria, Czech Republic, Estonia, Germany, Hungary, Italy, Luxembourg, Poland, Romania, Slovakia, Slovenia, The Netherlands, United Kingdom**), or a wider category of young and senior workers (**Belgium, France, Germany, Italy**);
- length of employment: limited maximum (**Austria, Hungary, Romania, Slovakia**) or unlimited (**Austria, Belgium, Czech Republic, Germany, France, Slovenia, The Netherlands, United Kingdom**) period of fixed-term or indefinite (**Poland, Slovenia**) employment;
- remuneration: unpaid (**Austria, Germany**) or mostly paid with a low remuneration (**Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Hungary, Italy, Lithuania, Romania, Slovakia, Slovenia, The Netherlands, United Kingdom**).

Some national experiences

In the **United Kingdom**, preparation for skilled manual labour through established apprenticeship schemes has more or less ended. From the 1980s onwards there have been a series of government schemes as alternatives to formal apprenticeships. This shift matched the aspirations of employers who wished to move to alternatives to formal apprenticeships, particularly in a period where significant job losses placed traditional schemes under challenge. Formal apprenticeships carried with them a specific contractual status. An apprentice had very important rights to job protection, while being trained. This meant that it was difficult for any employer to terminate an apprenticeship, prior to its completion. Changes in government targets for a significant increase in the numbers of young people going into further education, may also have contributed to a fall in the number of young people seeking formal apprenticeships. The current government scheme is called the Modern Apprenticeship. This is a combination of on-work and in-college training, where an external trainer provides training, while work experience is supplied through the employer. In 2002, there were just over 100,000 individuals on Modern Apprenticeships, mostly in hospitality and business administration. Those employed on Modern Apprenticeships have recently been held to have the same contractual status to those on formal apprenticeships. However, where the training contract does not involve a duty to perform work, but consists mainly of the individual observing work, there may not be an employment contract at all leading to no employment-based rights to enforce.

In **Italy**, an apprenticeship contract has a training content: the employer undertakes to pay the worker a wage while providing suitable vocational training. The purpose of this type of contract is to deliver alternating school/work training. Legislation defined different types of this contract in 2003, each serving different purposes. The training contract (*contratto di formazione-lavoro,* CFL) is a fixed-term contract for subordinate employment on which young workers aged between 16 and 32 years old can be hired. Since the end of 2004, the CFL can only be stipulated by the public administration. On the other hand, the work-entry contract is a training and work arrangement specific to the private sector, which lasts between nine and eighteen months, and is not renewable. To some extent, the work-entry contract has replaced the CFL.

Its purpose is to enable the labour-market entry or re-entry of certain categories of persons through an individual plan for adaptation of their occupational skills to a particular work context.

In **Austria**, there are both typical and atypical apprenticeships:

- Typical apprenticeships usually start after school attendance at the age of 14 or 15. They are characterised by the duality of practice in the undertaking where the apprentice is trained and theory in a vocational training school, targeting a final apprenticeship examination. These apprenticeships are fix-termed, government-regulated, paid and subjected to a special labour law act. At the beginning of the apprenticeship there is a three-month probation period by law; after this period, the preterm termination is only currently possible due to severe reasons or amicable. As of June 2008, an amendment of the Apprenticeship Act allows dismissal once a year after an obligatory mediation process between the apprentice and their instructor. These apprentices are fully covered by statutory social insurance.

- Besides, other atypical training contracts like school practice agreements or voluntary service agreements with little ("pocket money") or even no pay are common. Contracts without payment are admissible, as long as the unpaid service is stipulated explicitly.

  Without any personal subordination, not even compulsory attendance, these persons have no obligation to work and therefore no claim on payment. In reality these voluntaries are often used as unpaid and non-insured employees. Labour law contains no specific regulations on internships, but the inherent aim of apprenticeship justifies a fixed-term employment and therefore prevents a forbidden consecutive fixed-term contracts from arising. Since the insurance system refers to elaborated salary, unpaid trainees have only coverage in the statutory accident insurance. Definitions and stricter regulations respectively and stricter control of the real intent of the engagement are urgently needed, to avoid a further circumvention of labour law benefits within this imprecise legal situation.

In **Belgium**, it is possible to combine school with training in an undertaking through the following ways:

- industrial training: a youngster can receive training in specific companies by a special contract similar to an employment contract. There is a probation period, the student can be dismissed, the contract may be breached and the student receives compensation.

- apprenticeship: training and counselling of self-employed workers under regional regulations.

- teaching practice contracts: the trainee acquires experience by working and is paid for the work.

In **The Netherlands,** two types of training contracts can be used. The first are work-experience contracts, which are usually not real employment contracts; duration is short, work is unpaid, the focus is on training, tasks are often not clearly specified, school takes part in supervision. The second are apprenticeships, which usually are dual work-and-learning contracts, signed by employers and schools (plus the students/employees). These are paid, according to normal wage levels, exact tasks are specified, supervision is provided by the company, labour law is nearly fully applicable. Contracts are usually fixed-term contracts, concluded for the duration of the education.

In the **Czech Republic** and **Slovakia**, training contracts cover internships under specific agreements between educational institutions and enterprises for undergraduates, which is part of certain study programs. The form of these internships differs according to the type of institution. Some enterprises offer long-term employment contracts to internship alumni and those who have previously had part-time contracts. Paid internships are considered employment contracts. Remuneration is specified by specific agreements between educational institutions and undertakings, including working conditions and working time. Remuneration in undertakings is governed by wage agreements.

In **Germany**, an initial training contract has to be concluded for apprenticeship and the legal provisions governing contracts of employment are to be applied to it, insofar as this is not incompatible with the nature and purpose of the contract. Unpaid insertion contracts are only allowed if the employee does not owe any specific performance and the contractual relationship exists for a short period of time. The crucial question to ascertain the difference between employment on probation and insertion contracts is whether or not the relevant person is under the direction authority of the employer. Training contracts are partly considered to be contractual relations of their own kind. From another point of view, they are seen as normal employment contracts with special rights and obligations on the side of the employee. Usually, remuneration is agreed upon; however, it takes a form closer to an allowance or to maintenance assistance. Unlike actual initial training contracts, training contracts can not result in subsequent employment.

In **Lithuania**, training contracts would fall within the scope of labour law with an essential condition of remuneration. If an individual is receiving payment for their activity, it is presumed to be a contract of labour law, thus must be laid down in accordance to the requirements of legal acts of labour law. If such contracts do not include a clause of remuneration they are not in the sphere of labour law.

In **Romania**, the apprenticeship contract is a fixed-term employment contract (from 6 months to 3 years), where the apprentice is obliged to follow professional training and work for a salary. The rules of standard employment contracts are applicable. The employer is obliged to register at the labour inspectorate. The apprentice may be any natural person between 16 and 25 years of age who did not obtain qualification for the activity to be performed.

In **Slovenia**, a law or branch collective agreement may provide that a person who starts to carry out work appropriate to the type and level of professional qualification for the first time concludes a contract of employment as a trainee in order to gain ability to carry out their job independently. The length of a traineeship is up to one year, depending on the level of qualification/education of the employee. Training contracts are ordinary contracts of employment, indefinite or fixed-term. Exceptionally, traineeship may be served without a contract of employment (voluntary traineeship), if the trainee is not entitled to salary and other employee's rights. The contract of the voluntary traineeship has to be concluded in written form.

In **Bulgaria,** the apprenticeship contract binds the employer to train the novice while working in a specified profession or speciality; and the novice to master it. The contract sets down the forms, the place and the duration of training, which cannot be longer than 6 months, the compensation due by the parties in case of non-performance as well as other issues related to the training. The parties set down in the contract the period of mandatory work by the trainee with the employer after successful completion of the training course, and the employer is obliged to provide work in accordance to the qualification acquired. This period is no longer than 3 years. During training, the trainee receives labour remuneration in proportion to the work done but not less than 90 per cent of the minimum work salary decreed for the country.

The parties to an employment relationship may enter into a contract for higher qualification training of the employee or for training in another profession or speciality (re-training). This contract stipulates the profession and speciality in which the employee is to be trained. The contract may also provide an obligation of the employee to work with the employer for a fixed period, but not longer than 5 years.

II.3.6 Occasional work contracts

Occasional or casual work is the most flexible new form of employment, which has been regulated in some MS (**Cyprus, Hungary, Italy, Slovakia, Slovenia**). The purposes of occasional work are to protect and promote labour market entrance of undeclared and disadvantaged workers by increasing work opportunities. This special legal form is an increasingly popular alternative to fixed-term, part-time, on-call or even standard employment relationships in these MS, since it is cheaper and free of strict labour standards. Occasional workers are far less protected (e.g. termination, insurance), than employees. It is mostly used by self-employed persons (students in **Slovenia**) as it opened up the possibility of a quasi-employment relationship for former undeclared workers, but also made it possible to easily avoid the burdens of an employment relationship.

In **Cyprus**, "part-time casual work" was regulated in 2007, as employment by one employer for more than eight weeks per year, with a maximum continuous employment of three weeks, or continuously for five hours per week.

In **Italy**, occasional work is not a new legal relationship, and may not exceed thirty days in a year for the same commissioner. The overall annual remuneration received by the worker from the purchaser must not exceed 5,000 Euros. Moreover, a specific type of occasional work exists which concerns the performance of occasional work by subjects at risk of social exclusion, or persons who have not yet entered the labour market or are about to exit from it. They are two different forms of occasional work.

In **Slovakia,** one new form of casual work was re-introduced/"added" to two existing so-called agreements for work out of the employment relationship, in 2007. These agreements are recognised under the Labour Code. They can be entered into only exceptionally and only for works which may be determined by a specified result or characterised by their occasionality and performance of which would not be economic or efficient in an employment relationship. The exemption from payment of social contributions, easy termination and short duration (a maximum of 350 hours per year or 10 hours per week) make them attractive for employers as well as employees (second income, students, parents on leave, pensioners). One of these three "agreements for work out of the employment relationship" is determined especially for students (a maximum of 20 hours per week) and helps to combine school with working life.

In **Hungary**, the occasional employee's book is a special type of temporary employment relationship. The obligations of the casual worker are registration with a book and payment of the lump sum contribution with the purchase of a stamp. The milestone of "flexibilisation" of casual work was the amendment in 2005, when the maximum number of days increased to 200 per year in case of three or more employers. The objective is to create a cheap legal relationship for irregular workers. It resulted in a sky-rocketing of casual work, since the number of registered workers was thirteen times more in 2006 than in 2002.

Evidently, occasional work is so flexible that it competes even with civil law contracts in the game of replacing the far more expensive typical and atypical forms of employment relationships.

II.3.7 Civil law contracts

Self-employed persons usually conclude civil law contracts for work. These contracts can be of very different natures, reflecting the contractual freedom applicable to these contracts provided by the Civil Code as a general solution. Services and mandate contracts are the typical types; however, there are also several special types of these contracts in some MS. In the **Czech Republic**, hidden forms of employment include mandate contracts, contracts on procurement of assets, and order contracts. In **Germany**, contracts with economically dependent workers can be a contract of service or a contract for work and service, a franchise agreement or other service agreements.

Workers with civil law contracts are generally considered as self-employed persons, who are not protected by labour law. The worker in this kind of employment is formally self-employed, but in many cases they depend on a single employer on their income. Certainly, there are many genuinely self-employed persons as well, who use civil contracts to work for several clients. The constant and remarkable increase in employment by civil law contracts has been an important trend in many MS during the last decade (**Austria, Bulgaria, Czech Republic, Estonia, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, The Netherlands, United Kingdom)**, together with the recent changes in the economic structure of the new Member States and the highly fragmentised structure in micro and small enterprises.

This increase was slowed down or even put to a stand by intensified restrictions on false employment and creation of even more flexible forms of employment (e.g. occasional employment). Despite these legal developments, the misuse of civil law contracts is still one of the most problematic issues with regard to new forms of labour in many MS (**e.g. Bulgaria Hungary, Greece, Poland, Romania, Slovakia**). Many employers still force their employees to become self-employed, to avoid labour law provisions (e.g. termination rules) and payment of social contributions. Evidently, this procedure has led to the creation of a mass of dependent self-employment. The inappropriate legal and enforcement framework lead this trend, since employers were not strictly obliged and/or compelled to employ workers exclusively in an employment or similar labour relationship.

In **Portugal**, one of the most frequent ways of defrauding labour laws is the use of the so-called *recibos verdes* (green receipts) which is a document legally defined to prove the payment of fees to self-employed (or "autonomous") persons, when, in fact, there is an employment relationship. Thus, the appearance of a service contract is created to cover the reality of an employment contract, and the rules of civil law are applied instead of those of labour law. On the other hand, there are, of course, many situations where an activity is displayed in independent terms, even those that in ancient times were exclusively performed by employed people, and in these cases civil law on service contracts and mandate contracts is correctly applied.

These problems were partly solved by recent legal changes, enhanced inspection and fines. However, in **Poland**, the increase and high level of flexibility has been partly due to the growth of civil contracts as self-employment. In **Slovakia**, the amendments of 2003 are still not used in the construction industry, restaurant and cleaning services; for example, approximately 40% of cashiers are de jure self-employed. In 2004, the drop of employees was "compensated" by an increase in the number of self-employed workers without employees. The amendment of the Labour Code in 2007 aimed at eliminating these efforts. In **Bulgaria**, false employment represents approximately 30% of the total number of contracts in construction and tourism in the capital.

In the **Czech Republic**, according to estimations, one in three self-employed works under a civil law contract covering an actual employment relationship. It is applied not only to less well paid jobs, such as shop assistants, cleaners or bricklayers, but also to managers, ice-hockey players, camera crews etc. In **Latvia**, the use of such contracts has been facilitated by the fact that the labour law provides for only two kinds of employment contracts (indefinite and fixed-term), but not for the period of completion of a particular work. Thus, employers are more likely to conclude a service contract, when they require a specific project to be done.

At the same time, it seems to be a characteristic of some regions' labour markets; thus, it was not reported as a widespread phenomenon in several MS, especially in the Scandinavian MS (**Cyprus, Denmark, Finland, France, Luxembourg, Sweden**).

Advantages and disadvantages of civil law contracts

Certainly, the choice of a civil law contract by the parties depends on the individuals' desires, expectations and other conditioning labour factors. However, the following advantages and disadvantages were identified by the national reports as conditioning factors.

Advantages of civil law contracts for the employer are as follows:
- all the protective labour provisions are put aside, such as working time, termination of employment
- greater flexibility, more freedom, especially in seasonal work and construction
- means of avoiding wage taxes and social security contributions; thus, this is the cheapest form of employment

Advantages for employees:
- an opportunity for more flexible work, especially when combined with a primary job
- a way to escape from unemployment and a "bridge" to permanent employment
- lower taxes and contributions compared to an employment relationship (e.g. in **Lithuania** 15% income tax instead of 27%).

Disadvantages for employees employed by civil law contracts:
- not covered by the fundamental rights (e.g. working time, annual leave)
- lack of protection for liability for damages, industrial accidents and from dismissal
- inadequate remuneration and other work conditions
- trade unions have usually marginal interest in organizing these workers, therefore they very rarely become members of such organisations
- exempted from the right to coalition (**e.g. Poland**)
- not covered by a collective bargaining agreement or an internal company agreement, as these regulations are exclusively focused on employees
- implies insecurity and a lesser degree of entitlement to social protection and enterprise benefits. They need to insure themselves, and are mostly excluded from unemployment insurance systems.

Legal measures against false (hidden) self-employment

The exact definition is found in **Germany**, where the term of 'false self-employment' refers to one-person undertakings, where such persons, though according to the wording of the relevant contracts they are treated as entrepreneurs, as a matter of fact should be regarded as employees who deserve adequate social protection. The existence of false self-employment does not depend on the type of contractual relationship between the contractual parties (e.g. contract for work and service, agency agreement, franchise contract).

The following types of legislative measures have been passed against false self-employment in many MS:

- definition of dependent work and express obligation in the Labour Code of an employer to procure that dependent work is performed only in an employment or similar labour relationship, not in a commercial-law relationship (**Romania**, **Slovakia** and **Hungary** in 2003, **Czech Republic** and **Slovakia** in 2007);
- presumption of dependent employment regarding working at home, teleworking and piece work (**Greece** in 1998);

- constantly developing case law (**e.g. Hungary, Greece, Portugal**);
- enhanced inspection and increased labour fine by the Labour Inspectorate (**Hungary** in 2005, **Czech Republic** and **Poland** in 2007);
- reformed social provisions (**Germany, Poland**);
- failure to report an employee to social security constitutes a criminal offence (**Poland**).

In practice, it is not easy to clearly define the legal status of a given relationship, especially in case of mandate and services contracts, or other forms. Therefore, the burden to establish the nature of a legal relationship lies on the Labour Inspectorates and finally the labour courts in most MS. If features of an employment relationship and a civil law relationship are present at the same time, the court must consider which of them prevail. Supervision of work, an obligation to perform the task personally and some benefits like paid leaves or sickness benefits may guide towards an employment relationship, but each case must be considered separately and in detail. Therefore, the success of the abovementioned legal measures is rather time consuming and ambiguous. Labour inspection and fines may be a more effective device to confine the misuse of civil law contracts.

II.4 New phenomenon: triangular employment relationships

This chapter will analyse the triangular or – according to the Commission's Green Paper on Modernising labour law to meet the challenges of the 21st century – "Three Way" employment relationships. In these special new forms of labour, a "dual employer" situation degrades or transforms the subordination bond between employer and employee apparent in a traditional employment relationship. In the case of temporary agency work, subcontracting and posting of workers the complexity of employment derives from the shared employers' responsibility.

Agency work gained detailed regulation and increased in the majority of Member States; however, it is still not a wide spread form of employment. Besides, subcontracting is not generally regulated by special provisions, which makes this a rather masked sector with abusive practices. Finally, posted workers are granted several rights by Directive 96/71/EC.

II.4.1 Temporary agency work

Definition and general considerations

In most Member States, temporary agency work is a new and increasing form of employment. In spite of a rapid growth during the recent years (e.g. in **Germany**, **Hungary, Luxembourg**), its percentage of total employment is still quite low (around 1-2%). Recently introduced detailed regulation has given rise to a large increase for the sector in many MS (e. g. **Czech Republic, Greece, Hungary, Poland, Portugal, Slovenia**), while in other Member States temporary agency work is still unregulated and negligible (**Bulgaria, Cyprus, Estonia, Lithuania, Malta**). However, social dialogue has already started in a couple of these MS with regard to the future legislation thereof.

Member States use in practice the same definition for temporary agency work, described as a triangular employment relationship, where the employee is hired out by a temporary agency to a user undertaking for work. Thus, the work is performed for the benefit and under supervision of the user employer, even if the employment relationship is established between the worker and the agency. Besides, a civil law agreement is concluded between the temporary agency and the user company.

Written format and compulsory content detailed in statutory provisions are often required by national legislations for both contracts (e. g. in **Austria, France, Hungary, Luxembourg, Portugal, Romania, Slovakia**). Where the contract of the agency and the user determines the duration of the employment contract of the worker, the former agreement has to be stipulated first (e. g. **France**, **Poland**, **Romania**). In most Member States, temporary agencies have to obtain a licence from the labour authorities (**Belgium, Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Spain**). In **The Netherlands,** a license was required until the late 1990s, when the license system was abolished. Everybody is free to establish a temporary work agency now. The agency branche itself has developed a certification system to have some form of control against negative practices.

Just one exception could be mentioned from the above outlined regime. In the **United Kingdom**, in principle, agency workers are not considered as employees of the temporary agency, and different legal rulings are conflicting, determining whether and with whom an employment relationship might exist. At present the issue is unresolved due to recent court rulings that have again suggested that there might be a contractual relationship between agency worker and end user. This means that agency workers are generally excluded from most employment rights. Otherwise, the United Kingdom has one of the most developed temporary work sectors, with around 700,000 workers employed.

In the majority of Member States, the nature of the work performed through agencies is described as precarious (e. g. **Czech Republic, Denmark, Estonia, France, Hungary, Poland**). Temporary agency workers have worse working conditions compared to regular employees, as regards job security, protection against dismissal, wage levels, training, or holidays. On the other hand, in some cases, temporary workers enjoy more favourable conditions, like in the case for nurses and doctors (**Denmark)**, or highly skilled professionals (**United Kingdom**) and workers assigned to mid-level management (**Austria**); however, these cases are rather exceptional. In addition, studies show that a third of the **Estonian** temporary agency workers have a higher wage level than is for regular employees. To compensate the precarious nature of their employment, **French** law, with certain exceptions, grants temporary agency workers a special wage supplement, amounting to 10% based on the total remuneration perceived by the worker at the end of their contract. As a beneficial feature of their status, in a group of MS (e. g. **Hungary, Portugal, Romania, Slovenia**), agency workers are also paid between assignments.

Temporary agency work is basically meant to be a transitory solution until employment becomes available in one of the user undertakings. In this sense, agency work serves as a springboard to permanent employment. To this end, many Member States prohibit the use of any restrictions on the employees that forbid working in the former user company after the end of the assignment (**Austria, France, Hungary, Luxembourg, Romania**). In **Slovakia**, the user employer must inform the assigned employee about the vacant job/working position so that they are able to obtain permanent employment. Such bridge role is also apparent in **Germany** and **Greece**, where approximately 70% of the workers were unemployed before placement, and almost 86% of Greek temporary workers are between 18–30 years old. With regard to another aspect of the same phenomenon, the user companies often try to find suitable employees through assigned temporary work. Consequently, temporary work agencies not only assign staff, but also – under mottos like “lease and hire” or “try and hire” – procure employees directly to user undertakings (e. g. **Austria, France, The Netherlands**).

Despite detailed regulation, problems arise in many Member States from abusive practice and non-compliance with the rules (**Greece, Ireland, Poland, Portugal, Slovakia, Slovenia, The Netherlands)**, while in the case of **Cyprus**, the same can be observed despite the lack of a specialized institutional framework. In **Hungary**, liberal provisions encourage employers to use temporary agency work normally instead of establishing a regular employment relationship, although for no objective reasons; only because it is cheaper and easier to manage due to the remarkably flexible labour law provisions. In **Czech Republic**, labour inspectorates are facing serious problems, as only the fiscal authorities have competence to audit business law affairs, thus they do not have access to the key contracts between temporary work agencies and the users of their staff. In addition, there is no coordination between the inspection authority and the authority that grants or withdraws permits to run a temporary work agency. In **Greece**, the user may not employ the employee for a period of over eight months. If the employee continues to be employed by the user company after the expiry of the maximum period of the contract, then the employee's contract shall be automatically transformed into an open-ended employment contract with the user employer. Indeed, user companies using a succession of agencies manage to circumvent the workers' right to become employees of the user company, working under their command for more than eight months. Another major challenge of Greek labour law is in facing forms of discrimination at the workplace especially for temporary workers vis-à-vis core employees.

Polish jurisprudence argued that amendments to the act on temporary employment of workers aiming to pass more competences to the user employer could be beneficial for an employee and to a larger extent encourage this form of employment.

Limitations on temporary agency work

While one of the main objectives of temporary agency work is to enforce employment, nearly all Member States prescribe some limitations on this sector. Such restrictions are usually based on the nature of temporary agency work, as it supplies user companies with workforce only on a temporary basis and only in special situations when the need for additional employees is urgent and unforeseen.

a) **Sectoral** limitations are used in **Germany** (construction business), **Hungary** (public sector) and **Spain** (public sector, construction work), while in **Austria** limitations are generally forbidden, unless there are objective justifications for this.

b) Another typical limitation concerns the **duration of the employment** contract or of the assignments. In **Belgium**, if the temporary worker is replacing an employee whose employment contract has been suspended, the duration of the replacement contract cannot exceed two years. The parties can also agree that the temporary fill-in contract ends automatically when the replaced person resumes work, within two years. In **France**, for most of the situations, the total duration of the employment contract must not exceed 18 months (in certain cases 9 or 24 months), renewal included. Some provisions aim, however, at giving employers some flexibility for adapting the end of the contract. Firstly, the expiration date of the contract may be brought forward or postponed to a limited extent determined by law. Secondly, French law envisages the possibility for an employer to set an indefinite term to the fixed-term contract in certain situations (e.g. replacement of an employee on leave, seasonal work), when only a minimum duration must be mentioned. The same solution is used in **Luxembourg**, where the contract with the agency may include only a minimum period, in the case of a temporary substitute employment, a specified seasonal task or a task needed by the special nature of the work. Otherwise, except for a specified seasonal task, the duration of the contract cannot exceed 12 months.

It is worth mentioning that both in **France** and **Luxembourg** the termination of the employment contract by the employer before its term is restricted to grant agency workers more security. Other Member States also limit the maximum duration, like **Greece** (8 months for one assignment), **Italy**, (24 months), **Poland** (12 months within 36 months for one user employer, or 36 months if a temporary worker replaces an absent worker) and **Romania** (12 months for one assignment).

The contracts can be renewed unlimitedly within the **maximum period** mentioned above in **Belgium**, while only twice in **Luxembourg** and once in **France** (besides other detailed provisions to avoid abuses) and in **Romania** (where with the initial duration the assignment cannot exceed 18 months). On the other hand, in **Slovakia** the temporary work agency can concatenate fixed-term employment contracts with an employee without any restrictions. In **Czech Republic, Estonia, Germany, Ireland** and **Slovenia,** fixed-term employment contracts are common for temporary workers, while in **France** and **Poland** open-ended contracts are explicitly excluded for them. On the contrary in **Hungary**, employment contracts for agency work are usually stipulated for an indefinite length, which reveals the trend of replacing open-ended employment relationships with temporary agency work. Such trend is also apparent in **Denmark**.

If the temporary worker is employed longer than the maximum period laid down in regulation, the employment contract will become open-ended in **Belgium, France** and **Luxembourg**. **Greek** law establishes an open-ended employment contract between the employee and the indirect employer, if the latter continues to employ the former after expiry of the contract and any renewal thereof for a period not longer than two months. In **The Netherlands,** an open-ended contract with the agency is established when an agency worker exceeds the maximum duration of agency work or the maximum number of successive agency contracts, as arranged in the agency sector collective agreements.

c) As for another common limitation, many Member States prescribe certain **objective reasons** for the use of temporary agency workers, mainly describing the basic situations for which temporary agency work is the best solution to provide additional workforce. In **Belgium,** an agency worker may be employed by the user company in order to replace a normal employee (who either suspended or terminated their employment contract); to respond to a temporary increase of the workload; or to perform an extraordinary task. **French** law uses a double legal requirement as whatever the ground, the temporary contract of employment can have neither as an aim or effect to durably fill a job related to the normal and permanent activity of a company; and a fixed-term can only be concluded for a precise and temporary task. The possible cases of assignment are classified under four headings: the replacement of workers on leave; the temporary increase of activity; seasonal jobs or jobs for which, in some sectors it is of constant use not to hire workers on an open-ended contract; and fixed-term contracts concluded within the framework of employment policies. Similarly, in **Luxembourg** temporary work contracts can only be concluded for a specified temporary task, but not for a long-standing employment linked to the normal and permanent activity of the undertaking. Tasks that have to be considered as specified temporary tasks are listed in legislation (e.g. a temporary substitute employment, an occasional and limited task, a precise non long-standing task due to a temporary workload peak etc.).

For **Polish** law, the following works are adequate for the use of agency workers: seasonal, periodical works, works that could not be performed by employees of the user employer without failing deadlines or a job performed by an absent employee. In **Romania**, a user can call for the services of a temporary work agency only for performance of a precise and temporary duty and only in the following circumstances: to replace an employee whose individual labour contract has been suspended, for the duration of the suspension; to perform some seasonal activities; or to perform some specialized or occasional activities.

d) In the **Scandinavian countries**, liberalisation of temporary agency work took place in the early 90s and the integration of temporary agency work into the collective bargaining system has been a crucial issue. In **Denmark** and **Sweden,** this development has taken place through autonomous collective bargaining without any intervention from the legislator. In **Finland,** where the collective bargaining system has distinct features due to the fact that branch level collective agreements are made generally applicable (erga omnes) by force of law, the legislator has also been involved in the process. On the other hand, this development has led to a situation, where very few restrictions on the use of temporary agency workers are upheld in legislation.

Equal treatment of temporary agency workers

The most crucial issue regarding the labour law status of temporary agency workers is whether they have the same rights as similar, permanent employees of the user undertaking, especially as regards pay. The issue of equivalence also divided most Member States during the debate on the draft Directive on Temporary Agency Work. Only one aspect of equal treatment is harmonized at Community level. Directive 1991/383/EEC guarantees equal rights for temporary agency workers as regards safety and health at work, and was transposed by all Member States.

The principle of equal treatment, including equal pay of agency and permanent workers within the same user company is established in **Belgium, Czech Republic, Estonia, France, Germany, Italy, Luxembourg, Poland, Portugal, Romania, Slovenia** and **Spain**. In **Austria**, **Denmark**, **Greece** and **The Netherlands** collective agreements, in principle, guarantee that a temporary agency worker should be paid the same as similar, permanent employees. However, in Austria the employee is entitled only to the minimum wage according to the collective agreement, and not to the actually paid wages.

In **Hungary**, the principle of equal pay is applicable between agency workers and those employed by the user with two restrictions: only after a certain period of continuous work performed by the temporary worker (183 days) and only for certain elements of pay.

In **Slovakia,** an exception of equal treatment applies with regard to remuneration, which does not have to be equal for an assigned employee, who is assigned to work at the respective user employer for less than three months and/or is adequately protected under the collective agreement. However, the term “adequate protection” is not clearly defined and its closer specification is left to an agreement between social partners. Even though equal pay is not guaranteed, as for other working conditions, in Slovakia the agency must procure that all working conditions of the assigned employees are equally positive as those of a comparative employee of the user employer. In **Greece,** the provisions regarding the user’s staff performing the same job apply to the insurance rights of temporary employees.

Also in **Denmark**, the agency worker has no right to receive the normal pay level in case of sickness as stipulated in the legislation for white collar workers, but entitled to sickness pay which means lower remuneration.

In **The Netherlands**, the rights of the temporary worker depend on the type of contract with the agency, which depends on the length of time they are working for it. During the first half year they usually have an 'agency work contract': there is no protection against dismissal and no right of payment when they are absent of work. After that they might obtain a fixed-duration contract, with certain protections against dismissal. They also obtain the right to payment in periods of absence or in periods when there is no work. They build up training facilities, social insurance and pension rights. After 3 years, the agency has to offer them an open-ended contract with all the rights and obligations connected with it.

On the contrary, in **Ireland** agency workers can compare their treatment only with other agency workers. Finally, as mentioned earlier, temporary agency workers are not considered as employees of the agency in the **United Kingdom**. However, the government introduced changes as a response to the increasing concern over the exploitation of agency workers, but the changes do not address issues of unequal treatment in employment.

Responsibilities of the user company

Even though there is no legal relationship between the worker and the user company, legislation generally places some obligations on the latter. The fact that the agency worker performs his work within the user undertaking creates some legal obligations for the company. Thus, Directive 1991/383/EEC entailed that user companies shall be responsible as regards safety and health at work, but other aspects of the employers' responsibility have not been harmonized yet.

In **France**, during the assignment the user is responsible for all work conditions. Therefore, any damages caused to the agency worker during the assignment may lead to criminal or civil liability of the user. The user is also liable for all damages caused by the temporary agency worker to third parties. In order to guarantee an extended unfair dismissal protection to agency workers, **Irish** law declares that, for the purposes of unfair dismissal laws, the agency worker is an employee of the user enterprise, rather than of the agency.

In **Luxembourg**, the temporary worker will get paid leave in kind for each assignment from the user company regardless of, but proportionally to the duration of the assignment. In **Poland**, the user is obliged to register working time of a temporary worker on the same basis than the one applied to all employees. In **Romania** if the temporary work agency does not execute its payment obligations, the user is obliged to execute them. Otherwise, throughout the assignment, the user shall be responsible for providing all the work conditions to the temporary employee, in compliance with the legislation in force. In **Slovakia**, the user employer must enable an assigned employee access to training and education the same as to its employees, and if possible procure the same access to the social services provided to its employees. In **Finland,** there is a specific obligation on the subcontractor or user company to provide the main contractor or employer information concerning taxation, pensions etc. in order to make clear that the company is reliable.

In **Austria,** the temporary agency and the user company are both liable for the payment of social security contributions. Similarly in **Greece**, the temporary employment agency and the indirect employer are each jointly and severally liable with regard to temporary paid employees, in relation both to the fulfilment of their rights to pay and to the payment of their insurance contributions. However, the indirect employer's liability may be merely subsidiary if the contract contains a term to this effect.

Collective rights of agency workers (equality in practice)

As for collective rights, equality with other employees could be insufficient for temporary agency workers. Even if they are granted the same rights, those could be almost inapplicable for them. As these employees work away from the residence of the employer, they are not in daily connection with other employees, or do not even know each other. Thus, they hardly take part in "collective life" and trade unions or works councils often face physical obstacles in connecting them. Consequently, the **French** legislator in some cases supports agency workers having a mandate of representation with special provisions as regards credit of hours and discrimination. In addition, the authorisation of the labour administration is necessary for their dismissal.

The EU has not adopted any provisions concerning the collective rights of agency workers; furthermore, only soft rules are included in the draft directive on Temporary Agency Work. However, Directive 1991/383/EEC obliges the user employer to inform the workers' representatives at the user employer about the agency employees used.

In many Member States, the unionization level in the agency sector is very low (e.g. **Estonia, France, Germany, Greece, Hungary, Ireland, Poland, Portugal, Slovakia, Slovenia**). On the contrary, in The Netherlands separate employers' associations, trade union departments, collective agreements, social funds and inspection agencies were established for temporary agency work in the 1990's, so both employers' associations and trade unions play an important role in the developed system of self-regulation. Interestingly, in a couple of MS (e.g. **France, Luxembourg**) temporary workers' collective rights at the agency depend on the length of their employment relationship. All in all, while agency workers often have the same collective rights, in practice they hardly benefit from them.

Agency workers are covered by the collective agreements stipulated by the agency. As temporary workers are hardly organized, in most cases they lack the protection of collective agreements. On the other hand in **Denmark** and **Sweden,** most agencies have a collective agreement with trade unions, and some of the major agencies are members of various employers' associations. Besides, in Member States, where temporary workers are granted a salary not lower than the one applicable to permanent workers of the same user firm, collective agreements concluded by the user company are applied for agency workers as regards pay. **Austria** is an exception, where agency workers are entitled only to the minimum wage according to the collective agreement. However, only in **Germany** low pay-agreements were concluded in the agency work sector by weak trade unions without a sufficient number of members. Therefore, serious doubts emerge regarding the legal validity of these agreements. Furthermore, in a group of MS, collective agreements in force at the user company are applied, concerning not only to wage but all working conditions (e.g. **Italy, Romania**).

In other Member States, agency workers are covered by agreements reached at national level (**Austria, Italy, Spain**). In **Finland, Luxembourg** and **The Netherlands** separate collective agreements for the sector were reached in the 1990's. They give long-term employed agency workers more protective rights and more insurance provisions the longer they are deployed by the agency. The latter for instance creates a fund for learning in order to offer particular courses on safety and health at work to temporary workers. In **Belgium** and **Ireland,** special bilateral committees were set up where employers and employees can reach such agreements, in order to enforce collective bargaining.

In **Austrian** practice**,** representation of temporary agency workers is solved by workers' councils. According to the case law of the Supreme Court, matters relevant to dismissal protection are decided by the worker's council of the temporary work agency, whereas for instance, internal company agreements concerning internal order regulations in the premises of the user company may affect assigned temporary workers as well. However, only the assigned temporary workers with a contract duration of six or more months shall assume the capacity of an employee in the user company.

As for rather soft provisions on collective rights of agency workers at the user company, they are entitled to submit complaints through the workers' representatives in the user enterprise in **France** (only complaints related to discrimination), **Luxembourg** and **Spain**. In Luxembourg, agency workers in addition acquired a "modest" right to consult employees' delegations and to have access to their personal files.

II.4.2 Subcontracting

Another form of triangular employment is based on a chain of subcontracting. In this case the employee is obliged by their legal employer to work for the benefit of its commercial partner. The latter, called the principal contractor thus should have certain responsibilities to supervise whether their partner (the subcontractor) fulfils the requirements of employment legislation.

In most Member States there are no special provisions on subcontracting, or it is regulated only by the Civil Code (e.g. **Austria, Hungary**). In **Belgium**, subcontracting is only forbidden when it implies that an employer lends his workers to other employers and gives over the control to them.

If specific rules are given, they mostly concern the responsibilities of the main contractor towards the workers employed by the subcontractor. The main contractor remains responsible only for occupational safety and health matters in **Belgium**, **Estonia**, **Germany**, **Poland** and **Slovakia**.

Besides, the main contractor is obliged to inform the workers or the subcontractor of specific risks in the company in **Belgium** and **Estonia**. In **Spain**, there are detailed obligations of co-operation, information and instruction for the protection of workers and prevention of occupational hazards.

As for other aspects of responsibility, in **Germany** workers of subcontractors have to be equally treated in terms of non-discrimination by the main contractor; however, equal pay or equal treatment are not owed because of the lack of any contractual relationship. The **Spanish** law makes the main contractor jointly liable for wage and social security debts incurred by the subcontractor during the contract. However, he can be absolved of this in certain circumstances and this regime does not apply to all subcontracts, but only to those for the enterprise's own activity. This system is considered as not only inadequate, but also confusing. In the **United Kingdom,** the main issues have been with regard to the transfer of pension rights, while the responsibilities of principal contractor and subcontractor are determined by the nature of the contract – basically who the parties to the contract are. In **Italy**, the most stringent rules apply for contracts for public works, where the subcontractor must apply the economic part of the sectoral collective agreement, and must also furnish the commissioning firm with copies of social security payments.

Workers representatives have some basic informational rights in **Germany** and **Spain** about the use of subcontracted workers, but without any further indication. To enforce the collective rights of such workers, **Spanish** law prescribes that if employees of contractors and subcontractors have no legal representatives, they shall be entitled to refer to the principal contractor's workers representatives' issues on the conditions of performance of their labour, as long as they share the same workplace. Furthermore, their legal representatives may meet to coordinate their actions and as long as they share the same workplace.

In a couple of Member States subcontracting is misused to mask a working relationship (e.g. **Czech Republic**) or a fictitious business, or to avoid social contributions (**Belgium**), which underpins the necessity of detailed regulation on this task. In **The Netherlands,** specific regulations have been introduced to make main-contractors responsible and liable for malpractices of their subcontractors to this regard.

II.4.3 Posting of workers

Implementation of **Directive 96/71/EC** concerning the posting of workers in the framework of the provision of services harmonized the regulations of the Member States. However, in the **United Kingdom** doubts emerged about the proper transposition of the Directive, as the Trades Union Congress states that the narrow territorial scope tests that apply to different United Kingdom employment legislation and the absence of legally enforceable sectoral agreements in some industries means that the spirit of the Directive is not observed within the United Kingdom. However, recent rulings of the European Court of Justice in the Viking (C-438/05) and Laval (C-341/05) cases gave rise to new aspects of Community law, where two basic principles established in the EU treaties were in conflict each other. The ECJ ruled that the right of trade unions to take collective action may be limited by the employers' right to freedom of establishment. Industrial action to safeguard posted workers' rights will not be justified where the demand exceeds the extent of the protections provided to workers under the Posted Workers Directive and clearly defined national legal requirements.

Besides the harmonized provisions, some special rules are worth mentioning. In **Estonia**, the provisions related to recording of working time are applied to posted workers even when these are less favourable for them than the provisions of foreign legislation. Prior to posting an employee, the employer is obliged to notify the competent authorities in the **Czech Republic, Latvia** and **Lithuania**.

As for social security matters, if an employee, engaged with an employer based in **Austria**, is posted abroad for a maximum period of five years, they are still insured in the Austrian social system. If an EU Member State citizen is posted to Austria, the person remains in the original social insurance system of the posting nation for twelve, at the most 24, months and then switches into the Austrian social insurance system. For third-country nationals, the maximum duration for remaining in the original social system is limited to five years.

The **Czech Republic** is one of the few Member States that exploits the exception offered by the Directive and does not require the application of Czech labor law rules (relating to minimum wage and duration of leave) for posted workers where posting does not exceed one month or 22 days during a year, respectively. On the grounds of the respective regulation period, posting must not exceed 12 months. However, in case of unpredictable circumstances the period of posting can be prolonged by 12 more months with the consent of the relevant Department of the Czech Social Security Administration.

An exception accepted by the European Justice Court, **German** construction employer's substitute liability regarding the minimum wage, which foreign companies (as subcontractors) must pay their workers.

In EU Member States there is a prevailing presumption that a certain level of minimum labour standards must be maintained by all employers in a given industry or profession, regardless of whether or not they have concluded collective agreements. The methods used to achieve this vary, however. The vast majority of the Member States have some form of statutory minimum wage. It may be legislation on a minimum wage or systems for extending collective agreements and making them generally applicable (in other words giving them erga omnes effect) or a combination of both. This is also the case in **Finland,** where there is specific legislation in place.

Denmark and **Sweden** are different. They have neither mechanisms for making collective agreements generally applicable, nor legislation on minimum wage. Instead, another method is used, which might be called the autonomous collective agreements model. In this model, it is in fact the exclusive responsibility of the trade unions to safeguard a general level of wages and employment conditions. They do this by trying to force domestic or foreign employers who do not belong to any employers' organisation to conclude 'application agreements', i.e. collective agreements in which the employer undertakes to apply the collective agreement covering the branch of activity in question. If the non-organised employer refuses to sign a collective agreement, the normal procedure is that the trade union declares a boycott against this employer. The meaning of the boycott is that the members of the trade union shall refuse to work for the outside employer. However, this is seldom sufficient, as the trade union may not have any members at the workplace and the employer, particularly if it is a foreign employer that posts workers temporarily in the country, may not want to employ any trade union members to carry out work there. In this situation, the boycott is combined with sympathy (secondary) actions which make the primary boycott more effective.

These actions may be taken by the trade union itself, or by other trade unions. The sympathy actions usually aim at stopping deliveries to and from the outside employer. It goes without saying that an extensive right to take industrial action against employers who are outside the collective bargaining system is of key importance for the functioning of the autonomous collective agreements model. The legitimacy of this model was challenged in the Vaxholm case (ECJ C-341/05, Laval und Partneri Ltd.), with reference to the free movement of services. The **Swedish** labour market parties will have to somehow adapt to the European Labour market model in order to introduce some form of transparent minimum wages which can be applied on workers posted to Sweden. Also in **Denmark,** the labour market parties are facing the same problem.

II.5 Common characteristics and differences

II.5.1 Classification of legal forms

The open-ended, full time employment contract is still conceived by national labour laws as the 'basic' legal form of employment. Evidently, this 'standard' employment relationship is profusely regulated in every country; therefore, it is significantly the basis of comparison, and also regulation, of new special forms of employment.

As regards the legal character of these new forms, the following groups of legal relationships may be identified:

- 'atypical' employment relationships (fixed-term/temporary, part-time work, mini-job, midi-job, job sharing, on-call work, temporary agency work): these employment relationships are different from standard (full-time, open-ended) employment relationships in certain aspects and to various extents concerning their labour law regulation;

- ‘almost standard/atypical’ employment relationships (flexitime, overtime, on-call/stand-by duty, stand-by job, shift work, night work): only certain rules of working time are modified in a standard, respectively atypical employment relationship;
- ‘miscellaneously regulated’ labour relationships (home working, telework, training, apprenticeship, insertion, juvenile, work-and-learning contracts): these legal relationship aimed at employment are considered as (atypical) employment relationship in some MS, and they are regulated as non-employment relations in other MS;
- special ‘non-employment’ labour relationships (civil law contracts, occasional employment): these are special legal relationships, regulated separately; therefore, they are not or only partially governed by labour laws on (standard/atypical) employment relationships.

Apparently, the classification of legal relationships described above somehow simplifies the situation, as any such an attempt. However, it may contribute to the understanding that many similar and also different legal forms of labour exist in the Member States, and even these forms have many ‘subforms’ within each legal system (e.g. temporary and part-time work).

Moreover, a recent trend has been that the number of ‘special’ forms is constantly increasing. Consequently, it has become very hard to classify legal forms of labour, since the boundary between employment relationships and non-employment labour relationships is slowly but constantly fading away. Occasional work, home working, training and apprenticeship contracts are suggestive examples of this process. This is not a completely new phenomenon, but rather the ingenuous effect of legal developments in the last decade.

These legal developments may be characterized by an increasingly complex, elaborated and polarized legislative framework in national labour laws. Besides, there is still a notable difference between open-ended, full time employment contracts and all other types of contracts, respectively legal sources of flexibility. However, the border between these forms is less and less clear, due to complex and rapidly changing labour regulations.

II.5.2 Common characteristics

There are general trends concerning the regulation of the legal forms presented in the study. The following legal and employment developments were reported from all Member Sates:

- detailed regulation and wide use of fixed-term employment;
- detailed regulation of part-time employment; however, its use is hampered by several conditions in many MS;
- very recent regulation and rapidly increasing use of temporary agency work,
- self-employment and economically dependent employment by civil law contracts, which is a remarkable source of flexibility in many MS;
- regulations on posting of workers;
- lack of definition of economically dependent work, though this concept has been developed in some MS;
- lack of labour law provisions on subcontracting.

Several trends are common across MS:

- wide use of flexible forms of working time in several MS;

- regulation of various forms of training and apprenticeship contracts;
- regulation of home working in several MS, but it is scarcely used;
- very recent regulation of telework, but it is scarcely used;
- recent regulation of occasional work in several MS;
- regulation of mini-jobs, on-call work and job sharing in several MS;
- multiple-job holding as a form of part-time work in some economies.

II.5.3 Groups of member states

There are fundamental differences between the situations and developments of the national labour laws and labour markets. The following models may be identified:

a) **Standard employment relationship model**: full-time, open-ended contracts remained the dominant form of employment (Cyprus, Denmark, Estonia, Finland, Latvia, Lithuania, Luxembourg, Malta, Portugal, Sweden)

   In **Denmark, Finland** and **Sweden,** the limited interest on new forms of flexible employment is explained by the general level of flexibility in standard employment. These labour markets are very flexible, with numerical flexibility and employment security within the standard employment relationship. This can be explained by the combined effects of very liberal regulations of employment relationships and a high level of social security. In **Denmark** the share of fixed-term contracts is low and the number of self-employed persons has been declining.

   Especially in **Finland** and **Sweden,** the amount of fixed-term work is still quite high especially among female workers (up to 20 %) and temporary agency work has been increasing. On the other hand, the system for taxes and social security is based on the existence of an employment relationship and there are no signs of any increase of new types of forms of work outside the employment relationship (contract labour, self-employed etc).

   In the **Baltic States,** non-standard types of work are not widespread, so they are among the least 'atypical' labour markets in the EU with the lowest proportion of "atypical" workers (below 20%). **Estonia** is the least flexible employment market in the EU, since employees with open-ended or fixed-term contracts constitute 85 to 95 per cent of the total number of workers.

   The popularity of non-standard employment forms might have been limited by shortages in qualified workforce and very low unemployment rate; thus, both employees and employers, while facing uncertainties related to establishing 'atypical' work contracts in a situation where almost no related regulations and good practices exist, have preferred to establish standard agreements. **Lithuania** is one of the few Member States where the proportion of 'atypical' workers decreased from 22% to 19%. In all **Baltic States,** the possibilities for defining an employment relationship are limited by strict regulations and the vast majority of 'atypical' employment relationships are not regulated. Legislation provides for a few exceptions from the general rules, but these divergences are not going sufficiently far so as to promote working flexibility.

In **Cyprus**, the reason of the limited use of flexible forms is the predominance of standard employment. In **Luxembourg,** the open-ended, full-time labour is the dominant form of employment. However, there is a trend to make fixed-term contracts become "common law" in the higher education and research sector.

b) **Self-employment and undeclared work flexibility model**: self-employment and undeclared work are the main sources of flexibility (Bulgaria, Greece, Romania).

In **Bulgaria**, **Greece** and **Romania** "atypical employment" (fixed-term, part-time and agency work) is still limited, compared with self employment performed by economically dependent workers, which play a crucial role. In terms of atypical and typical forms of employment, full-time and open-ended contracts remain dominant. The low extension of temporary work is caused by inefficient regulation and development of temporary agencies. In **Romania**, self-employed people represented 43%, whereas fixed-term employees only 1.8% of total employment in 2006. In **Greece**, self-employment (26%), undeclared and overtime work are the dominant 'flexible' forms. The alarmingly high level of undeclared work is interwoven with an enormous underground economy (25-40% of GDP), which is still well accepted by employers and employees. The dimension of undeclared work is also significant in **Romania** (22-23%) and **Bulgaria** (32-35%). Regarding the inclusion of new forms of labour, **Romania** has a very "protective" system for all employees, and the new **Bulgarian** Labour Code has not solved the problems of the new forms of employment.

c) **Moderate flexibility model**: Flexible forms are regulated and used, though at a moderate level (Austria, Czech Republic, Hungary, Italy, Malta, Slovakia).

In **Austria,** the new forms of employment are common, such as fixed-term, part-time, agency work and only economically dependent persons work without subordination by quasi-freelance contracts. Nevertheless, atypical employment has not been as widespread as in many other highly developed countries.

This applies in particular to marginal part-time jobs, but one big exception is temporary agency work, which is more widespread than, for instance, in Hungary or Slovakia.

The **Czech Republic, Hungary** and **Slovakia** are still characterized by a high share of open-ended, full-time employment. However, economic developments have led to a gradual development of flexible forms of employment (fixed-term, agency, occasional work, home working), except part-time work. Flexible forms of working time are widely used. There has also been a remarkable increase in (false) self-employment and undeclared work. As a whole, these MS regulate and use a set of flexible forms of external and internal flexibility, though at a moderate level.

The **Italian** labour market has always been characterized by open-ended, full time contracts and the spread of self-employment. As a consequence of deregulation, there are open-ended contracts, self-employment and atypical work. Atypical work amounted the 11.8% of total employment. The differences among these forms concern not only their spread, but also the regulations. The great number of atypical contracts with different regulation risk raising inequalities among workers. In **Malta,** the vast majority of the labour force is still engaged in a standard employment relationship. Nonetheless, there are several forms of non-standard occupations which are newly emerging. These include part-time, fixed-term contracts, telework, agency work, camouflaged self-employment, and above all, undeclared work.

d) **Temporary employment dominated flexibility model**: The main source of flexibility is temporary employment (Portugal, Slovenia, Spain).

From 1980 onwards, the **Spanish** labour market has been characterized by a very high rate of fixed-term contracts to fight unemployment. Fixed-term contracts were used like the only way to obtain flexibility, but it produced a progressive segmentation of the labour market. Presently, almost a third of employees have a fixed-term contract. There has been a growing concern about the social, labour and economic problems caused by temporary work. Legal reforms have tried to reduce it without convincing results; therefore, the latest national framework introduced new measures in 2006. Fixed-term contracts are not really a good measure to create employment, especially during an employment crisis. Moreover, once this measure is introduced structurally in a system, it is too difficult to reduce or eliminate it later.

In **Portugal**, the use and abuse of fixed-term contracts, regular or irregular temporary agency work and false self-employment is usually explained by the "tight" rules on dismissals. In spite of this rigidity, which makes it particularly difficult to dismiss an individual employee, a high turn-over reveals itself in the labour market. The main problem is that the elimination of marginal undertakings in traditional industries has been throwing out thousands of under-qualified and ageing workers into unemployment and their employability is extremely limited.

Slovenia is one of the MS with the highest share of fixed-term employment, which is still growing (17.4% in 2005). Major problems occur in connection with successive fixed-term contracts. The majority of temporary workers are employed by agencies under a fixed-term contract (90%). A special characteristic is the temporary and occasional work of students. Part-time work is not as widespread but it is also growing (9%).

e) **Mixed high flexibility model**: several sources of high level of flexibility (Belgium, France, Germany, Ireland, Poland, The Netherlands, United Kingdom).

In **Belgium, France, Germany** and **The Netherlands,** the open-ended contract is the typical form of employment. The basic distinction is the difference between open-ended, full-time employment contracts and non-standard employment contracts (fixed-term, part-time, agency), which are the main sources of flexibility. There is a diversification of the contracts of employment. Part-time work, agency work contracts and fixed-term contracts are not really new forms of employment; however, the spread of these contracts and the implied diversification is new. In **The Netherlands**, the most common types of flexible work are part time, fixed-term, on-call, agency and freelance work. The share of flexible work in the total workforce has fluctuated only slightly over the past two decades, only the number of self-employed workers has increased gradually.

The impact of new forms of work is particularly visible in individual employment relationships. The greater the flexibility of the employment relationship, the lesser the protective rights of workers related to labour law. The **German** labour market is characterised by a decreasing number of "normal" employment contracts (56%) and a constantly increasing part-time (women) employment (18%). Fixed-term employment, temporary agency work and self-employment represent about 20% of the labour market. Social risks associated with new forms of labour, in particular petty employment (17%), dominate the German social dialogue concerning the topic of a new balance between atypical employment and social security. The German way to "flexicurity" primarily leads to internal (temporal) flexibility.

In **Ireland,** employment has grown by nearly a third in the last nine years. Female participation rates have increased, particularly in part-time employment, since almost a third of women workers are part-timers. The labour market is very flexible, with significantly less strict hire and fire mechanisms than most other MS. The predominance of the contract of employment, as the primary indicator of employment rights, has 'encouraged' the development of flexible working patterns. There has been a significant growth in work sourced through employment agencies.

In the **United Kingdom,** the development of employment law and in particular its basis in the Common Law, has provided an environment conducive to the growth of flexible working arrangements. Consequently, the standard contract of employment now represents the contractual situation of fewer than 50 per cent of the labour force. However, flexible working arrangements have not been accompanied by greater employment security. Indeed those in atypical employment are among the most vulnerable sections of the workforce. Employment rights are dependent on the individual's contractual status, which together with the fact that this status is often obscure (e.g. agency workers) adds to the difficulties experienced by workers engaged on atypical contracts.

Poland is one of the leaders of the EU in terms of labour market flexibility with over 35% of 'atypical' workers. The increase of flexibility has been remarkable, because the new labour regulations are detailed and far from restrictive; respectively, the number of civil law contracts is rapidly growing. Apparently, flexibility is not limited to self-employment, although this is the most debated issue, but fixed-term employment (28%) and telework (18%) are also new widespread forms.

III - IMPACT OF RECENT CHANGES ON LABOUR MARKETS

An analysis of the European labour markets with regard to the object of our study is presented in Volume III of this report. The latter provides significant findings and investigates the dualism of labour markets as well as the different forms of "insiders" and "outsiders" (including of course the situations of unemployed people).

In this section, we highlight elements showing the links between the forms of labour presented in the previous sections and the segmentation of the labour markets.

Fragmentation of the labour market is a reality in all national MS and takes various forms. Even if European statistical averages show an increase of this phenomenon, they also "hide the fact there exists important pockets of precarious work situations, with some group of workers, (as women, youngsters, migrants and older workers) and some MS being hit the most"[7]. The growing number of fixed-term and part-time contracts challenges the standard of the open-ended full-time employment contract. Agency work and self employment is also a growing phenomenon in most of the MS.

Labour laws and social security systems have been created on the basis of a standard form of employment, full-time and open-ended. Therefore, workers who are not employed under such a contract are part of a potentially vulnerable group. In addition, a large number of persons exhibit several atypical work characteristics at the same time, such as employees holding a fixed-term contract and working part-time. This of course may make their situation more precarious.

However, segmentation can also consist in the exclusion of some workers from the most basic protective rights. Moreover, so as to better assess the actual segmentation of labour markets, it is worth trying to analyse transitions between different statuses of employment.

With respect to these general observations, undeclared work shall be addressed first, taking into account both labour market analysis and the ways this concern is addressed at national level. The links between atypical forms of employment and segmentation of European labour markets will then be addressed, including data related to transitions experienced by "own-account" workers".

III.1 Undeclared work in the EU

III.1.1 Undeclared work: a common concern for many European Member States

Undeclared work is a reality in many European MS even if, by definition, it is difficult to estimate this phenomenon precisely[8]. In **Austria**, the "black" or "hidden" economy is estimated at 9.37 percent of the GDP. In **Bulgaria**, studies indicate that the share of the undeclared word varies from 32 to 35 per cent. For **Cyprus** no available data exist. However, in a report regarding the construction industry, published in December 2003, which concerns 789 inspections carried out by the Ministry of Labour and Social Insurance, it was found that 11.3% of employers and 29.9% of workers inspected were not registered with the social insurance scheme.

[7] See results from a recent study carried out by the European Trade Union Confederation, "Quality of jobs at risk. An overview from the ETUC on the incidence and rise of precarious work in Europe" http://www.etuc.org/IMG/pdf_PRECARIOUS_WORK_IN_EUROPEupdate-kh1.pdf.

[8] On this issue, *Undeclared work in the European Union*, Special Eurobaromater, European Commission, 2007.

Undeclared work is also high in **Denmark** where according to the last Eurobameter report, 24% of the persons interviewed acquired undeclared services within the last 12 months. In **Estonia**, a research on undeclared economy by the Estonian Institute of Economics published in 2006 concluded that about 9%-14% of wage earners, receive undeclared work. **Germany** is also a country where irregular work is widespread. In 2006, the dimension of irregular work was between 6 and 7 percent of the GDP. **Greece** is the country where undeclared work reaches the highest level. Underground economy is estimated between 25% and 40% of the official GDP. In **Latvia**, a study of 2006 found that 24% of workers were employed without a contract or with undeclared wage. In **Poland**, some data shows that undeclared work ranges between 16 % and 20% of the GDP. In **Portugal**, undeclared work is estimated between 25% and 30% of the labour force, but an important part of it comes from regularly employed people with (undeclared) secondary jobs. In **Spain**, 10% of the population is considered working in an irregular way. For the **United Kingdom,** the data indicates an important increase of the informal sector's share of the GDP. It has risen from 6.4 % to 10.5% of the GDP. In **Italy**, a study estimated in 2004 such work as constituting 13.4% of total employment.

It is worth noting that the evolution is different amongst the MS. While undeclared work increases in some MS **(Spain, United Kingdom),** this is the opposite in others (**Austria, Romania, Slovenia**).

Undeclared work is mainly present in the catering, agriculture and building sectors. In these sectors, the phenomenon is related to illegal workforce. In **Latvia**, unregistered employment amounts to 38.3% of employment in the building industry. In Bulgaria, undeclared work is often related to illegal activities like illegal imports of cigarettes or liquor. Workers in the informal economy include both wage workers and own-account workers. The latter category may be in a very vulnerable situation moving from self-employed to wage worker situation. It is reported that these workers are often trapped in poverty. Most workers in the informal economy have little or no social protection. In **Cyprus**, undeclared work affects specific categories of workers who are already vulnerable, particularly foreign workers and Turkish Cypriots and to a lesser extent women and new labour market entrants. In **Ireland**, undeclared work is related to traffic with immigrants, especially with women from Eastern Europe. In **Greece** the statistics also show that the population concerned by undeclared work belongs to vulnerable categories of workers (self-employed, family and immigrant workers). In the **Czech Republic**, an illegal form of employment named as "Svarc System" also regards self-employed persons. This form of work has been recently prohibited.

In **Malta**, the conditions of employment of persons performing non-standard work may be varied but are generally sub-standard. This applies particularly to workers in the informal sector. Such is the case of irregular migrants, whose working conditions are very poor due to the lack of adequate regulations. Many of these who work in the construction industry are recruited by day, are often paid one half of what the local workers in the sector receive, and are expected to give little regard for established safety and health standards.

Reasons

Several reasons are given for undeclared work. In **Denmark**, **Greece** and **Slovakia**, the main background and argument is that the high tax rates are the main reason for this presumably high amount of undeclared work. A related concern is that a lot of the undeclared work is performed by unemployed persons who get unemployment and social benefits without reporting that they also make money from undeclared work. They are cheating the welfare state in a double way: both as non-tax payers and as recipients of welfare benefits.

In this sense, undeclared work is perceived as a negative phenomenon from different perspectives. Firstly, public finances suffer from undeclared work due to the fact that it reduces the amount of money paid by the State. In **Greece**, the loss from undeclared wage labour is estimated at almost 30% of the taxes received. Secondly, undeclared workers are excluded from the scope of labour and social security laws. Thirdly, it creates unfair competition amongst employers.

In **Bulgaria**, where undeclared work is important, diverse views exist about the subject. Some people argue that individuals often have little choice but to undertake illegal work in order to survive. They also suggest that such work contributes to the creation of new jobs and the generation of income. These arguments are supported not only by those registered officially as unemployed but also by the so-called 'working poor' for whom current regular employment does not provide sufficient income to maintain a decent standard of living. Certain employers have suggested that disguised or ambiguous work acts as a generator of employment and an incubator for entrepreneurial development. They argue that extreme poverty is created when such work does not exist. They also believe that the main factor for the development of informal working is normative "over-regulation" in the labour market. Trade unions have a diametrically opposed view, and do not articulate any relaxing of public attitudes towards so-called 'dualistic' workplace rights. They suggest that responsibility for addressing this phenomenon lies with the Government and with employers. Within Bulgarian society, there is little consensus on whether there should be a total clampdown on all forms of disguised work, or whether a policy of tolerance should be allowed.

Strong concerns exist in **Cyprus** about the use of migrant workers as a source of cheap labour, in particular in the hotel industry. According to the trade unions, by imposing poorer terms and conditions of employment for migrant workers, compared with those provided under the industry-wide collective agreement, employers violate the terms and conditions of employment in the industry on the one hand, while on the other hand such practices may result in a gradual exclusion of the local labour force – an issue that has also been of concern for Cypriot trade unions in the past. The exploitation of migrant workers represents an increasing trend which is giving rise to two classes of employees, while the gradual increase in the number of migrant workers at the expense of Cypriot workers has, in turn, had a negative impact on the prospects and terms and conditions of employment of the domestic labour force, particularly in certain sectors of the economy such as tourism and catering, where seasonal unemployment is high. As a whole, both the employers' organisations and the trade unions in Cyprus are against undeclared work. For the unions, the basic issue is ensuring the employment rights and social rights of all workers, while for employers' organisations undeclared work sustains unfair competition amongst enterprises.

In **Portugal**, the reasons stated to explain the amount of undeclared work are mainly related with the "rigidity" of labour legislation and the costs induced by social security law. In this country, control over the evolution of labour market is rather vague: the Administration has virtually no intervention in the processes through which labour relations are established and terminated. Even redundancies are regulated in terms of consultation and negotiation, and not submitted to any administrative approval. The ways jobs are created and lost are, to a large extent, informal and only come to the surface when courts are seized to decide conflicts. And even this situation is comparatively rare: some sort of a "social consensus" is the main support of the large amount of undeclared work.

Forms of undeclared work

One of the problems regarding undeclared work is to identify its various forms:

a) Working without any legal relationship constitutes the most extreme form of undeclared work. This form of undeclared work is the most detrimental for workers. Falling outside the scope of labour law and social security law, they are deprived of any protection. This form of work might also be associated with illegal work in the sense of illegal immigration.

b) Another form of undeclared work exists when formally the employee receives a minimum wage but in fact receives supplementary payment in cash.

c) A third form of undeclared work relates to disguised employment relationships. In this situation, the parties have deliberately disguised their working relationship under another contract other than the employment one.

d) A fourth form of undeclared work exists when an employer does not declare all the working time of employees.

Combating undeclared work

The fight against undeclared work has become a priority in many MS. In 2007, the **Hungarian** government announced a national campaign against underground work. In **Latvia**, the reduction of illegal employment was one the priorities of the state labour inspection for 2007. All MS have adopted specific rules to prevent and fight undeclared work. In many MS (**Austria, Belgium, France, Poland**), employers have to declare new working persons before commencement of work. In Belgium, no work can be done on Saturdays in order to avoid abuses. The failure to report an employee to social security leads to civil and criminal liability in many MS. National laws have also introduced some measures to facilitate the payment of taxes and social insurance for employers, in particular in the case of household work. In Austria and France a household service voucher has been created. It includes work accident insurance and taxes. This system also contributes to fight illegal immigration. A similar policy has been carried out in The Netherlands. In particular VAT taxes for household services were lowered.

In **Estonia** and **Latvia**, a response to undeclared work has been to create a relatively simple regulation for business, improving the legal and administrative environment for firms. Another measure taken in Estonia to combat undeclared work is to increase the minimum wage. This reduces the risk of undeclared wages. In order to reduce the share of undeclared work, the social security system has been reformed so that social benefits are more related to personal contributions and hence give incentives to be employed formally. **Greece** has recently reformed the Labour inspectorate with a new corps of labour inspectors. The Greek government has also reduced the contributions to social insurance for low-wages employees as a disincentive for not declaring part of the wage.

In **Cyprus**, the Ministerial Committee has taken in December 2003 a decision on medical care for migrant workers following an agreement by the social partners. Since the employment of foreign workers in Cyprus is clearly linked to the phenomenon of undeclared work, this decision makes healthcare insurance for migrant workers mandatory and also makes such cover a precondition for issuing entry permits or renewing temporary residence and work permits to such workers.

In many MS, specific services within the administration are dealing with the problem of undeclared work. In **Belgium**, a specific body has been created in 2006, the SIOD (Intelligence Service to inform and detect social fraud and illegal employment). This structure is in charge of the problem of undeclared work and illegal immigration. Insufficient staff of labour administrations is presented as a reason for the lack of control.

In **Cyprus**, controls have intensified. In **Denmark, Finland** and **Germany**, the state authorities have created 'task forces' with members from the police, the tax authorities and the employment and social state departments. In **Estonia**, the main actors of the policy against undeclared work are the labour inspectorate, the Estonian Tax and Customs Board and the local governments.

In **Slovenia**, a special legislation on undeclared work was passed in 2000 and amended in 2006 – Act on the Prevention of Illegal Work and Employment[9] and a special Commission in charged of uncovering and preventing illegal employment has been established, which determines, coordinates and monitors activities aimed at the prevention of illegal work and employment. This Commission coordinates the work of inspection bodies and, once a year, prepares a report on the activities and the effects of the prevention of illegal work and employment.

In **Spain**, the fight against undeclared work goes hand in hand with illegal immigration. The difficulty to obtain the necessary authorization to work forced not only to immigrant workers but also managers on many occasions to maintain their activity undeclared. To fight this situation, the main Spanish Unions and Employers' Associations agreed an important process of regularization –finally endorsed by the Government- of immigrant workers in an irregular administrative situation during 2005. This extraordinary process is reported as being very successful: more than 500,000 immigrants obtained a legal working situation, with a high increase in the number of workers affiliated to Social Security. Such a solution has also been adopted in **Austria** regarding foreign nursing staff. The government decided in 2006 to legalise most of the illegal working relationships. The new legal situation provides two alternatives: first, the engagement of (geriatric) nurses is possible under the term of the well-known Private Household Act in a dependent employment with standard social insurance. These nurses shall work for a two-week period, at a maximum of 64 working hours a week plus stand-by duties at a maximum of 34 hours per week, following two weeks off. Secondly, the new legislation allows private nursing on a self-employed base, requiring a trading license and a registration with the Social Insurance Association for Entrepreneurs and Self-Employed Workers.

In **Italy** also, the regularization of immigrant workers can be regarded as one of most successful initiatives undertaken to combat the underground economy. Other instruments used are more stringent inspections and the tightening of controls (fiscal, administrative, etc.).

In **The Netherlands**, an important instrument to tackle undeclared work is the Law on Chain Responsibility (*Wet op de Ketenaansprakelijkheid*), applicable to all contracting and subcontracting relationships. According to this law the main contractor of a work or project can be held responsible for the contribution of taxes and insurance premiums by all the subcontractors and sub-subcontractors working with him in the chain. The law stimulates main contractors to request extra guarantees. Furthermore, undeclared work is tackled with a system of controls and inspections carried out by various institutions.

[9] *Zakon o preprečevanju dela in zaposlovanja na črno (ZPDZC)*, Uradni list RS – Official Jounal of the Republic of Slovenia, No. 12/07 – consolidated text.

III.1.2 Undeclared work and migration

It is difficult to take into account the existence of **undeclared work**[10] among migrants, although this is suspected to be relatively widespread in some EU MS. According to the European Foundation for the Improvement of Living and Working Conditions, the available data and estimates for some MS suggest the following picture:[11]

- For **Austria** it is estimated that 109,000 migrant workers were employed full time in undeclared jobs in 2002, particularly in the areas of agriculture, construction, catering, tourism, household services and cleaning.
- In **Belgium**, public authority inspections have discovered a sizeable proportion of immigrants in undeclared work, particularly in the hotel and restaurant trade and construction sectors.
- In the **Czech Republic**, a considerable number of immigrants seem to be illegally employed as unskilled building workers, cleaners, dish washers, packers, sawmill workers, woodcutters or warehouse workers.
- In **France**, a correlation is found between recruitment difficulties in specific sectors, such as construction, hotel and restaurant trade, retail and agriculture and the illegal employment of foreigners.
- In **Italy**, within the active migrant population, 55.3% of men are estimated to work as employees in regular employment and 14.4% in undeclared employment. The corresponding values for women are 59.7% and 19.7%, respectively.

Overall, it may be concluded that in several MS foreigners face exposure to undeclared employment, which seems to be associated with poor or even bad working conditions.

III.2 Atypical work and segmentation of labour markets

III.2.1 Atypical employment and the segmentation of labour markets

It appears that each atypical form of employment may bring about a precarious situation for the worker. In **Denmark**, studies show that people, who are working as employees in non-standard conditions, are more vulnerable and less secure than ordinary employees, though people, who are in high paying jobs and often self-employed, appear to be more satisfied with their work than permanent employees are. A similar conclusion may be drawn from other MS.

In **Slovenia**, ETUC[12] reports that, as the number of atypical workers is rising, "these workers" "have less access to credit and loans (53% of young men and 45% of young women between 18 and 34 years of age live at home with their parents). It is therefore no big surprise that precarious, insecure work also has negative consequences on fertility. Despite good social policies, youngsters are postponing the decision to have children to a later age out of concern for the insecure labour market position"

[10] Although there is probably a strong relationship between illegal immigration on the one hand and undeclared work of migrants on the other hand, it is not necessarily the case that illegal migrants are working undeclared and that all migrants working undeclared are illegally staying in the Member State.
[11] European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 16.
[12] See ETUC report p.21

i) Part-timers are in particular a vulnerable category mainly due to their earnings. Their earnings being low there is a risk to become working poor. Part-time work is a form of work mainly occupied by women. However, this situation is changing in some MS like **Denmark**. In this country, the trend towards part-time work has been reversed. A reason that may have influenced this change to some degree is that the changes in the unemployment insurance system in 1979 made it less favourable to take part-time insurance and part-time jobs because the access to supplementary benefits for part-time employed full-time insured persons were restricted and the conditions for part-time insured were tightened. In **Austria**, 48.7% of all female workers engaged in retail and wholesale trade sector were working part-time in 2004, corresponding to 43% in the health and social services sector and in the business-related services sector. All sectors mentioned are characterized by relatively low wages. Different elements may be identified as increasing factors of precariousness.

Part-time and low qualification is for instance a significant factor of precariousness for women: the lower the formal qualifications and/or occupational position of the female employees, the higher the proportion of part-time workers among them. For this reason, an increasing level of female part-time employment in typical low-wage sectors tends to widen the gender-related pay gap and frequently results in precarious living conditions ("working poor"). The equal treatment rule enacted in the MS does not totally prevent this phenomenon.

In all MS, part-time workers must enjoy an equal treatment with full-time employees. However, this rule has a limited effect on the precarious situation of part-time workers.

In the **Czech Republic**, part-time work is not widespread (5%). This trend is due firstly to little demand for part-time jobs because of the low wages they entail in reality. Secondly, few Czech employers are keen to offer part-time jobs (due to high labour costs). Even though part-time workers formally enjoy the same status as full-time workers, this form of employment is usually a source of social disadvantage in practical terms. Their wages are reduced proportionately to their working hours. As a rule, however, there is seldom the proportional reduction of the employer's requirement for the workload the part-time worker is expected to absorb. As a result, a part-time worker must cope with the same extent of work and working time for lower wages. This is due to the absence of the duty to set standards for workloads and working rate, something the employer is not legally bound to provide.

In **Slovakia**, part-time work is not so widespread. The reason for non-interest in part-time work on the side of employees is particularly the low wages (caused by the law wages in general) and high costs connected with working (e.g. travel expenses, costs of child-caring services etc.) as well as the low offer of part time work. Low offer of part-time work and non-interest in part-time employees on the side of employers is caused mainly by the fact that jobs suitable for part-time can be performed by employees working under the agreements for work out of the employment relationship. Such agreements are (in comparison with part-time contracts) "cheaper" and less administratively burdening for an employer as they can be easily terminated and no social and health insurance contributions must be paid upon them (save for the work injury social insurance contribution).

In **Malta**, in the case of part-time workers in the formal economy, the minimum conditions of employment as prescribed by law are 'pro-rata' with reference to those of full-timers in all aspects. Nevertheless there may be specific conditions, depending on the nature of the sector and of the work performed. Casual workers, for instance, many of whom tend to be women, are employed only when requested by their employers, often on a part-time basis.

In the case of teleworkers based in their own homes, employers have no other means of supervising their performance except by deliverables. One of the unintended by-products of the recent extension of pro-rata benefits to part-time workers has been an increase of 'fictitious self employment'.

In **Slovenia**, the share of part-time workers is reduced (9%) compared to other MS. One of the reasons why there are no more part-time contracts is that according to Slovenian legislation and collective agreements, the principle of non-discrimination applies strictly, most of the rights are determined on the pro-rata principle, but certain rights are guaranteed to the part-time workers in the same amount as to full-time workers, meaning that for the employer, employment of part-time workers is relatively more expensive than employment of full-time workers.

In the **United Kingdom,** the granting of equal rights to part-time workers, while probably not being significant in terms of the reasons for the growth of such work, have certainly strengthened the employment rights of those who have chosen to work part-time.

In **Italy**, despite the existence of an equal treatment rule, surveys on labour-market participation by women confirm the existence of both horizontal (by sector) and vertical (by career opportunity) occupational segregation. Part-time employment is predominantly used by women. Hence the wage gap between men and women in favour of the former is due to the sector in which the women are employed, to the tasks performed, and to the difficulties encountered by women in pursuing careers.

In many MS, factors or weaknesses are often combined for employees. In **Greece**, part-time job positions usually tend to combine part-time work under a fixed-term contract, characteristics that constitute those jobs as insecure, precarious and thus highly unattractive. Part-time employment in Greece is directly related to low-wage, low-skilled jobs, slim prospects of career advancement, and partial insurance coverage which also entails poor pension rights.

ii) Fixed-term work may be a way for workers to become "outsiders" with the risk to remain in a precarious situation. In **Bulgaria,** some workers are thus trapped in a vicious circle of excessive employment flexibility and a low level of skills and professional mobility, which aggravates their employment insecurity. In **Cyprus**, fixed-term work regards mainly foreign workers.

In the **Czech Republic**, this type of work has long been a major source of social dumping. Until 2004, the position of these employees on the Czech labour market was quite weak, and although their legislative protection has slightly decreased since then, there is still a yawning gap between the levels of protection of fixed-term and permanent workers. Since the misuse of fixed-term work by employers without an apparent reason is not limited to the CR only, the social partners have concluded a framework agreement on the conditions of proving fixed-term contracts, which was adopted at European level as Directive 1999/70/EC.

As to fixed-term work the precarious character lies in the short duration of the employment relationship. Pursuant to the European Framework agreement signed in 1999 and implemented by Directive 1999/70/EC, MS have introduced an equality rule between fixed-term and open-ended contracts. The restriction established in the Directive regarding the use of fixed-term work does not prevent abuses at national level (**Czech Republic, Slovakia**).

In **Portugal**, the termination of fixed-term contracts is by far the main grounds to access unemployment allowances – much more than dismissals or redundancies. This kind of contract is used as the normal recruitment instrument, especially for youngsters and female candidates to employment. As such, it has become, *de facto*, an instrument of discrimination.

iii) Agency work is also a factor of vulnerability for workers. In the **Czech Republic** the problem relates to the difficulty for the labour inspectorate to have access to the user company and to control the application of labour standards. The elimination of most of the current problems and of the low level of protection of a certain proportion of work agency employees in the CR requires above all effective labour inspection not only of the work agencies but also of the users of agency employees, in coordination with control bodies and the authority that issues operating licenses to work agencies. Other measures to boost the protection and position of agency employees should include the limitation of the frequency of agency employment by setting a fixed percentage of agency workers amongst the employees of the user. Labour offices should be empowered to curb or deny agency employment in the regions with higher unemployment. First of all, it is necessary to clearly define comparable working conditions for agency employees and user's employees, especially in blue-collar professions. It is also necessary to tighten the rules of granting operating permits to work agencies in the CR. Once again, but this time regarding temporary agency workers, the legal principle of equal treatment is not necessarily applied in practice for different reasons.

Some of the latter can be linked to deviations from statutory provisions by means of collective bargaining. **In Germany**, labour law imposes equal pay for equal work. However, in practice, "competition between trade unions has led to collective bargaining agreements using the possibility of deviating from the equal pay principle"[13]

iv) Self-employment may also be a factor of precariousness and poverty for some categories of workers. The main problem is that this category of workers falls outside the scope of social security law. This category of workers is also excluded from some core labor rights such as a right to rest or minimum wage. The people employing self-employed persons are not considered responsible for making social insurances, nor taking any responsibility in case of accident at the workplace. Self-employed persons must contribute on a voluntary basis to the social security system. To this extent, economically dependent work is clearly an issue, especially when it conceals forced self-employment.

In **Belgium,** false independent workers are seen as a main problem, especially considering the fact that employers may use workers from Central and Eastern Europe as so-called self-employed, avoiding to pay wages planned by either collective agreements or statutory law. To address this issue, a new law (December 2006) plans three sets of criteria to assert the legal nature of an employment relationship, including criteria not to be used in these situations[14].

In **Italy**, 'collaboration' contracts have formalised the so-called 'parasubordinare' a category between the statute of regular workers and the self-employed. In many cases, these workers are doing the same job as regular workers but without full access to social security rights. In 1995, these 'collaboration contracts' have been made 'official' by charging social security contributions which are however substantially lower than the contributions to be paid to regular workers. In **Poland**, a new type of contract will appear: non-employee contract, provided for workers employed on the basis of civil contracts, performing work for the same contractor (employer) of a continuous or repetitive character for remuneration not lower than half of minimum wage. These workers will be entitled to some of the rights currently provided only to employees: at least a one-week period of notice of termination of the contract, unpaid holidays and unpaid maternity leaves and (as it is now) safety and health provisions.

[13] See ETUC report p.13
[14] See ETUC report, p. 6-7.

In **Greece**, atypical workers are also in a vulnerable position. In practice, atypical working seems to lag behind standard employment in terms of subsistence income, health and pension insurance scheme, and continuous training. In **Malta**, many of the workers engaged in the new forms of work have little or no access to the provisions regarding social security, public health institutions or unfair dismissal provisions. This particularly applies to the formally self-employed and to those in the informal sector. These categories of workers are excluded from a wide range of rights (sickness leave, bereavement leave, marriage leave, injury leave, birth leave, and jury service leave entitlements). There is agreement among the social partners that this matter ought to be rectified and it is expected that a recommendation will be made to government through the proper channels in the near future.

In **Poland**, one of the reasons of popularity of this form of employment is that these persons must contribute to the Social security system, but they can also pay more favourable income taxes on the basis of 19% flat rate characteristic for legal persons.

Self-employment in Poland

While discussing the phenomenon of self-employment in Poland it is important to remember that it is not the fact of its relative popularity that makes it interesting and unusual (even though estimations of the National Statistic Office, GUS, place Poland, with 27 per cent of self-employed, among the most entrepreneurial MS), but rather a significant share of "forced" self-employment driven by the employers trying to avoid high employment costs and strict Labour Law regulations so as to remain economically competitive.

For most of the Polish self-employed, such a work arrangement is not only acceptable but also satisfactory (results of the latest studies indicate a satisfaction level of 75 per cent). A similar approach can be seen from the side of employers: they are very keen on employing individual contractors; two thirds of them are of the opinion that eventually regular employment contracts are to disappear almost completely[15].

However reassuring the above figures may be, it cannot be forgotten that a group of former employees exists who were forced into self-employment and/or remain in a very dependent and employment-like relationship which should not be qualified as individual economic activity – firstly because of the legal constraints, secondly because of its nature: can a secretary be a sole trader?

It is not known exactly how many falsely self-employed people work in Poland, but expert estimations point to ca. 5 per cent of the total workforce. And this number has supposedly not changed significantly over the last years. The social partners have not been able to agree on constructive solutions, when both employers' associations and employees' organisations presented their particular opinions (the former supporting more entrepreneurial freedom, the latter – proclaiming a need for even more strict labour security measures) with not much space for negotiation.

Consecutive governments, on the other hand, have not come up with structural solutions. The Polish employment market is relatively flexible (or even very flexible when compared to other states in the region). Many of the 'atypical' forms of employment do exist and are included in the legislative system. The discussion on flexicurity has, however, started only recently. And, without any doubts, self-employment and economic dependence of workers will also have to be included in it. Perhaps one of the first steps towards this goal will be the planned changes to the Labour Code and introduction of a new "non-employee contract" as an attempt to marry the flexibility- and security-related sides of the problem. The next steps, however, probably even more important, will have to include measures to remove the economic 'driver' of the phenomenon: excessively high employment costs. Without it, even the best laws will not convince financial directors of Polish companies that forced self-employment should not be used.

The segmentation of the labour market has consequences on individual labour rights. For instance, the growing number of atypical work has led to an increase of precariousness. In **Spain**, the high rate of non-permanent work has significantly reduced the security of a large part of Spanish wage earnings, at the same time that it has also reduced the capacity for workers to claim their rights, their possibility to obtain lifelong learning, or their chances to develop a significant career in their undertakings.

[15] J.Fudala, D.Steczkowski: „*Fikcja samozatrudnienia*" Ozon no. 12 (www.ozon.pl)

In addition, "one of the consequences of the high incidence of fixed-term work is that many fixed-term workers have difficult access to unemployment benefits, since such access is restricted to workers with a minimum period of social security contributions of 12 months. Two thirds of fixed-term contracts are indeed six months duration or less"[16].Besides, non-permanent jobs seem to suffer more dangerous accidents than permanent ones or, at least, have a higher accident rate. The fragmented labour market serves to exclude many workers from basic and fundamental employment rights, like the right not to be dismissed save for a fair reason.

In the **United Kingdom,** there is a large and now more or less permanent group of workers who are and remain outside the labour market. This group lacks the skills, training, and education or drive to move back into the labour market. There are large residential areas where unemployment is endemic.

Additionally, atypical work is often associated with precarious employment and the growth in temporary and agency work attests to this. In these areas, the United Kingdom government has shown itself reluctant to legislate to guarantee sound employment protection to workers in atypical employment.

III.2.2 Focus on involuntary atypical work

Involuntary atypical work contributes to increase the gap between so called "insiders" and "outsiders". It is thus very significant to consider some data related to this issue regarding different forms of atypical employment.

Part-Time work

While the proportion of part-time workers has been increasing in most EU MS over the last 15 years, the proportion of **involuntary part-time workers** has also increased. The latter group refers to employees who report in surveys that they work part-time because they can not find a full-time job and that they prefer to work longer hours. At EU level, the share of involuntary part-time employment has been rising since the 1990s, reflecting a strong increase especially in the **Czech Republic**, **France** and **Germany**.[17] Involuntary part-time employment has risen both among men and women. In general, the rate of involuntary part-time work is higher for male part-time workers. However, women still account for the majority of involuntary part-time workers.

It is interesting to note that in the two MS with the highest proportion of part-time employment among young workers, i.e. **Denmark** and **The Netherlands**, the incidence of involuntary part time working in relation to overall part-time work is relatively low.[18] **Sweden**, **France** and **Italy**, on the other hand, show a high incidence of involuntary part-time work among the young.

[16] See ETUC report p.19
[17] According to Eurostat. See: Anxo, D. et al.: Part-time work in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 6.
[18] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 47.

Fixed-term work

There are a number of reasons why persons work on the basis of fixed-term contracts. One important reason is that they cannot find a permanent job. Employees who in principle want to work on a permanent basis but are unable to find such a job are considered to work on fixed-term contracts **involuntarily**.[19] In the EU as a whole, men and women holding fixed-term contracts involuntarily amount to around one half of all workers with time-limited employment relationships. Women working involuntarily in fixed-term jobs represent 7.5% of all female employees, while for men the proportion is 6.7% (2005). The development between 2000 and 2005 exhibits a slight increase of involuntary fixed-term work. Over these five years the relative number of women in fixed-term jobs increased from 14.1% of all female employees to 14.9% and for male employees from 12.5% to 13.9%.

The proportion of workers employed in fixed-term contracts varies considerably across MS. For instance, in **Spain**, 24 % of all female and 22 % of all male workers are employed in fixed-term jobs involuntarily in 2005. Corresponding numbers for women are also high in **Cyprus** (19 % of all female workers), in **Finland** (15 %), and **Portugal** (14 %). On the contrary, in **Cyprus** and **Finland** the proportion of men working in such jobs is substantially lower and in **Portugal** the proportion of male workers in fixed-term work involuntarily is slightly lower than for women. On the other hand, there are several MS with very low proportions in 2005. The proportion of female employees working involuntarily on a fixed-term basis is only around 2% or less in **Austria, Germany, Ireland, Latvia, Luxembourg, Romania** and the **United Kingdom**. The corresponding numbers for men are very similar in all these MS except in **Latvia**, where it is remarkably higher than for women.

A differentiated look at **age-groups** reveals that almost one third of all employees under 30 hold fixed-term contracts in 2005 (EU-25). This is significantly higher than the 14% average. In the age-group under 30 the proportion of persons working in a fixed-term job involuntarily amounts to around 40%. This proportion is particularly high for both young women and men in **Spain, Poland**, and **Portugal**. The proportion is also high in **Cyprus, Finland** and **Sweden**. In contrast, very low shares (under 2%) can be found in **Austria** and the **United Kingdom**.

A large number of persons working in fixed-term jobs involuntarily hold **very short employment contracts**. In 2005, 43% of women and 48% of men in such employment relationships held contracts with a duration of less than six months. In general, more than three quarters of all employees in such positions held contracts of less than one year. In **Spain**, where the proportion of fixed-term contracts is larger than anywhere else in the European Union, 64% of all women employed in such jobs involuntarily in 2005 had contracts of less than 6 months, while the proportion of men was only slightly smaller (62 %).

Finally, it is worth noting that **low skilled employees** exhibit higher rates of working on fixed-term basis involuntarily than high skilled employees.

Temporary Agency Work

One main reason for workers to engage in Temporary Agency Work (TAW) is to find a permanent job outside this sector. Other aspects, such as diversity of work and achieving a work-life balance, are typically attributed a lower priority.

[19] The EU Labour Force Survey includes information on the inability of finding a permanent job as one of the reasons for people holding a fixed-term contract.

More than half of the temporary agency workers reported that there is no alternative job for them (54.8%) and that TAW provide an opportunity to maintain freedom and independence (53.3%). For some employees TAW provides a possibility of temporarily gaining extra income (43.7%), while approximately a quarter of the agency workers chose TAW because it facilitates the combination of family and work (27.2%). Over three quarters of the temporary agency workers report that they chose TAW voluntarily with age and work experience being important factors. For some of the temporary agency workers, age seems to be an obstacle in finding a permanent position. Some of the younger women in childbearing age reported that getting another job is difficult. Others stress lack of work experience as a main obstacle for a permanent job.

III.2.3 Transitions between different statuses of employment

Reporting about professional transitions is not an easy task. However, some partial data regarding some MS and some forms of work can be presented[20].

For instance, no substantive and clear evidence exists on whether temporary agency work can serve as a stepping stone towards a permanent job for individual workers. On the contrary, in **Germany**, "temporary agency work does not function as a 'stepping stone' but as a 'bad job trap': only 15% of workers transit to permanent employment while the remaining workers tend to suffer a worsening of their professional career development"[21]. In The Netherlands, even in years of robust economic growth, "only one third of temporary agency workers have access to a permanent contract afterwards"[22]

In **France,** "it is not clear whether fixed-term work is functioning like a 'stepping stone': Whereas three quarters of youngsters with a degree succeed in moving out of temporary work into a permanent contract after a period of seven years, this is not the case for those youngsters not holding a degree where only half of them transit from temporary into permanent contracts"[23].

In **Portugal**, fixed-term contracts are clearly used as "normal" instruments for recruitment; more than 80% of jobs are obtained this way, but only 21% of employees are actually working under such a regime. Nevertheless, transitions are not as easy as these figures suggest. Many agency workers – and of course the false autonomous people disguised under *recibos verdes* – never have the chance of becoming permanent employees.

As for wage transitions, in the **United Kingdom**, over 20 % of the population has an income lower than 60% of median income and the probability of transiting from a low paid job into a better paid one is one of the lowest in the European Union.

Own-account work as a transition phase during working life

The share of self-employed workers operating their enterprises without the support of dependent employees is particularly growing also. Members of this category of self-employed are also known as "own-account workers".

[20] These data result from the abovementioned ETUC study.
[21] See ETUC report p.13.
[22] See ETUC report p. 17.
[23] See ETUC report p.10

It seems that own-account work becomes more attractive as a **transition phase during working life** for a growing number of people. In the area of own-account work it is important that robust bridges should be built in both directions, both into self-employment and dependent employment. The mobility created in this way also increases the opportunities for "outsiders" to regain "regular" employment. An in-depth analysis of four European MS (Germany, Italy, The Netherlands and the United Kingdom) suggests the following results on mobility into and out of self-employment:[24]

- The mobility rates in the area of own-account work suggest that this is a very dynamic segment of the labour market, i.e. flows into and out of own-account work are relatively high. Furthermore, it seems that a considerably higher share of workers experiences a period of own-account work over time than is reflected by the self-employment rates for a specific point in time. For instance, in 2001 of all persons in working age (16-64 years), **5% in Germany, 6% in The Netherlands** and **8% in Italy** engaged in own-account self-employment at least once during the past 8 years (1994-2001). The highest share of 12% was found in **the United Kingdom**.
- The **mobility rates** of own-account workers are significantly higher than those of dependent employees. In the comparison between **men** and **women** it seems that in almost every year women in all MS exhibit higher mobility rates than men. In particular**,** transitions from non-employment are much more frequent among women than among men.
- Over time and in all MS, considerably more individuals have the status of own-account workers than is revealed by the aggregate data for individual years. The share of people who were own-account self-employed at least once during the period 1994-2001 is around twice as high as the share of own-account workers in 2001 (with the exception of **The Netherlands**).
- **Germany** displays the highest mobility rates for own-account workers since 1996. However, compared to other MS it (still) exhibits the lowest share of own-account workers compared to total employment. Compared to the other MS, the share of transitions between dependent employment and own-account work is the highest in Germany as well. Exits from own-account work leading to dependent employment are also on an upward trend – and more so among women than men.
- **The United Kingdom** differs from other MS by displaying the highest share of own-account workers compared to all self-employed. In 2003, no less than three quarters of all self-employed were running own businesses without employees. Additionally, the United Kingdom has the second-highest mobility rate (after Germany) for own-account workers. Finally, the share of repeated short-term phases of own-account work was the highest in the United Kingdom.
- In **The Netherlands,** 7% of all the employed are own-account workers and the latter account for two thirds of all self-employed. Compared to other MS, the share of transitions from own-account work into non-employment is by far the highest in The Netherlands. By contrast to the other MS, very few exits from own-account work lead into dependent employment.

[24] See Schulze Buschoff, K.; Schmidt, C.: Own-Account Workers in Europe – Flexible, mobile, and often inadequately insured, discussion paper SP I 2006 – 122, Berlin 2006, p. 3ff.

- **Italy** has by far the highest share of self-employed compared to the other four MS. In 2002, 23% of all employed individuals were self-employed. Similar to Germany, in Italy around half of all self-employed are own-account workers, i.e. 11%. Italy is also outstanding for the low mobility rate of its own-account workers compared to other MS.

It must be emphasised that transitions from and into self-employment should probably be considered within the flexicurity debate.

Employment policies and atypical work of the vulnerable groups of workers

The number of instruments put into practice to protect vulnerable groups and individuals in the labour market is extremely high, and there is a lot of diversity, although three kinds of ad hoc measures can be found in all national labour laws: i) specific employment measures, tailor-made for these persons; ii) special health and safety measures, adapted to the specific features of some of these groups (like female or younger workers); iii) and social protection and labour market services designed to match their needs.

In particular, employment policies long ago abandoned the idea of general measures to be applied indistinctly to all citizens demanding employment, and a different model based on policies tailor-made for each group of job applicants is the rule. The target groups for special employment promotion measures are chosen not because of their distinctive features, but precisely for the difficulties they face to access employment. There is a common trend in most EU member States to find an important presence of vulnerable workers in non-standards contracts. This can be explained since being part of a vulnerable group makes it difficult to access employment, and hence they are forced to accept positions that are less desirable due to their contractual and economic contents.

In many cases, this gives rise to a situation of double discrimination, as they suffer worse conditions for two reasons, their personal characteristics and the kind of employment they are part of. The paradox is that in order to confront their difficult position in the labour market, a special set of measures is put into practice by public authorities, becoming the target groups for employment policies. And in many cases these policies include special schemes of employment, mostly through fixed-term contracts.

IV - THE IMPACT OF THE EVOLUTION OF CONTRACTUAL ARRANGEMENTS ON COLLECTIVE RIGHTS: TRENDS AT EU LEVEL

It is difficult to identify a common trend at EU level regarding the impact of the recent developments concerning the evolution of contractual arrangements on collective rights. One reason is that the evolution of new forms of labour itself is not the same in all the European Member States and the responses to these different changes can not be the same. Thus, in MS where open-ended, full-time employment still predominates, there have not been specific changes in the system of collective bargaining or representation of workers. This stability is reported, for example, in **Estonia**, where the flexible forms of work are not high on the agenda on trade unions, as they are not widespread. In **Latvia**, "new labour forms have little impact on collective rights of workers". In **Denmark**, numerical flexibility is mainly due to relatively short job tenures on normal open-ended jobs and not temporary employment contracts. This relatively stable environment has not had any significant impact on labour law and social dialogue in terms of a major concern about new forms of regulation to adapt to a more flexible and insecure employment pattern. Another example is **Romania**: the institutions of temporary work and temporary agencies are very new (2003). Therefore, there was no necessity to provide for specific rights for temporary agency workers.

A more common trend is visible. For many MS a distinction has to be made between atypical employees, employed under employment contracts, and other types of work like freelancers or economically dependent persons who are left outside the scope of collective rights.

Most of the workers working under flexible employment arrangements (fixed-term employments, part-time employments, marginal part-time employments, home-workers and teleworkers) are regarded as employees and as such they belong to a company. Regardless of whether they have an "old" or a "new" form of labour work contract, they enjoy the same collective rights than workers with an open-ended contract (see **Austria, Belgium, Estonia, France, Germany, Greece, Hungary, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, The Netherlands**). Generally, atypical employees have the same right to join a trade union, to strike, to elect works council members, to become a trade union official or a works council member, even if a certain minimum period of employment is prescribed. Depending on the national rules on collective agreements, they are covered by the collective agreement stipulated by their employer. They shall also be taken into consideration in calculating the threshold above which workers' representative bodies may be constituted in the undertaking. Because of the EC directives on fixed-term contracts and part-time work, the principle of equality between typical and atypical workers is now widespread.

However, all the MS also notice that in practice "*while atypical employees have the same collective rights, they hardly benefit from them*". The precariousness of the employment relationship sometimes hampers the full exercise of collective rights because most employment rights have been elaborated according to a model of open-ended contract. Thus, employees with a fixed-term employment contract have little opportunity to become a union representative or to seat the works council or the Safety and Health Committee. It can also be more difficult for them to join a union. Most agency workers could hesitate to join a trade union or to stand for professional elections mainly because they fear reprisals from the temporary agency firm. To be more precise, they fear no to be offered further assignments. In a sense, it may be wondered whether this form of employment is compatible with collective rights.

The performance of the assignment within the user company, the short duration of the assignment and the permanent change of employer make it particularly difficult for agency workers to exercise collective rights (**France**).

As a result, the **increasing number of atypical forms of labour could have a negative impact on collective rights of workers** and it could undermine union density and therefore their bargaining power (**Greece**). **Spain** seems to be a good example of this negative evolution. The high rate of fixed-term contracts in the Spanish Labour market has had a strong impact not only in individual aspects of the employment relationship but also in the unions' capacity and power. This high rate of non-permanent workers has significantly reduced the security of a broad part of the Spanish wage earnings, at the same time that is has also reduced their capacity to claim for their rights, their possibility to obtain lifelong learning and their chances to develop a significant career in their undertakings. Besides, non-permanent jobs seem to suffer more dangerous accidents than open-ended jobs or at least have a higher accident rate. And there is no doubt that this kind of employees has more difficulty to exercise their unions' rights. In **United Kingdom** also, the increasingly flexibilised nature of the labour market has contributed to the decline in the number of organised workers. This in turn has meant that collective bargaining, which in the United Kingdom relies on the employer's acquiescence to recognise the union through agreement, has been severely restrained.

In some MS, trade unions have sought some solutions especially for agency workers. These particular provisions aim at allowing temporary workers to make the collective rights effective. For example in **The Netherlands**, with the rise of the number of temporary agency workers, some union federations have established special departments to deal with their interests and those of other flexible workers. As agency workers are not usually covered by the collective labour agreements in the sectors where they are employed, a separate collective labour agreement for these workers was introduced in the nineties. This agreement develops the rights and obligations of agency workers in many fields like: job description and evaluation, periods of notice and dismissal, terms of employment, fringe benefits, holiday rights, sick leave provisions, social insurances, pensions, training facilities, safety and health protection. The agreement includes a phase-system for long-term employed agency workers, which gives them more protective rights and more insurance provisions the longer they are deployed by the agency.

In **France** as well, in 1983 a collective agreement was concluded at national level by the national federation of temporary agency work and trade unions. This agreement has organised vocational training for agency workers. A training insurance fund has been created that aims to subsidise vocational training for agency workers. In 1990, the contribution of temporary work firms to the development of vocational training was raised to 2% of the total wage bill while the rate is generally fixed in the other sectors at only 1.5%. This measure shows the significant place given by social partners to training in the temporary work industry. In order to give access to training to agency workers, the collective agreement has created a specific regime. Firstly, seniority conditions are calculated on the basis of a number of hours performed as agency workers. Therefore, the seniority is not calculated, as usually, on a company basis but on a sectoral basis. Any assignment counts, whatever the temporary work agency. However, the collective agreement imposes that at least half of these hours are undertaken within the temporary work agency where the leave for training is performed. Another adjustment of the common legal provisions relates to the calculation of remuneration of temporary workers during their leave for training.

Remuneration during the leave is calculated on the basis of the wages perceived during the mission at the time the leave was requested. These collective agreements make it possible for agency workers to exert their right to vocational training.

In fact, temporary agency firms and workers have a common interest to develop training in the framework of agency work. Agency workers, being disproportionately young and low qualified, find special interest to increase their qualification. As to temporary work firms, developing training may be a way to have better qualified agency workers. They may also develop training in accordance with needs on the labour market.

In **France**, in order to give agency workers such a possibility, a specific regime has also been established for collective rights. The first problem has been to determine how to calculate agency workers within the workforce of the user company for all matters related to collective rights. The law includes agency workers within the calculation of the workforce in order to decide whether the number of employees of the temporary work firms is beyond the threshold established for a trade union representative or elected working committee. Not only permanent employees but also temporary workers employed for at least three months during the last calendar year must be included within the total workforce of the temporary agency firm. The second problem relates to the rights of the agency workers to vote and to stand for elections. French law has organised specific rules to permit agency workers to exercise these collective rights. Agency workers may vote to elections within the temporary work agency when they may justify three months seniority during the last twelve months preceding the setting of the lists. In order to stand to the elections they must have been employed by the temporary agency at least six months during the last eighteen months before the election. Besides, the workers must have been employees of the temporary agency firm at the time of setting the lists.

Two others aspects of the collective rights of agency workers are worth mentioning because they relate to the specificity of this form of employment. One interesting development of French law regards the credit of hours given to agency workers acting as trade union representatives or representatives elected by the workforce. French law gives these categories of workers a credit of hours to perform their task. However, the specific nature of the agency work relationship required establishing a specific regime for this category of workers. A sectoral collective agreement establishes that agency workers having a mandate of representation enjoy the full monthly credit of hours without taking into consideration the duration of the assignment month. Moreover, periods in-between two assignments of less than a month do not interrupt the mandate. Therefore, agency workers with a mandate of representation will be able to perform their task even though they have no assignment if this period is less than a month. The hours of delegation can be taken during or apart from the periods of the assignment. Hours taken outside from the period of assignment are paid at 25% more than the normal wage. This provision aims at encouraging agency workers who are representatives of workers to exercise their task outside the assignment period.

Another interesting development of French Law relates to the protection of agency workers who are trade union representatives or elected representatives of workers. Collective agreements establish that these agency workers should not suffer any discrimination in the proposals for assignments. Besides, these workers are presumed to ask for new assignments when the last one comes to an end. A presumption of extinction of the mandate is set when the agency worker trade union representative has not performed any assignment with duration of at least three months. This period is extended to six months in the case of agency workers who are members of the working committee.

Finally, the dismissal of these categories of agency workers is subject to the special rules concerning trade union representatives and workers elected as representatives of the workforce. The authorisation of the labour administration is therefore necessary. Despite all these innovative provisions, the collective representation of agency workers remains very low.

In **Austria**, since 2002, a particular collective agreement concerning assigned agency work has also entered into force. As far as wages of assigned temporary workers are concerned, the law[25] provides that the employee is entitled to a wage which is adequate and customary for the respective place of work. The adequacy of the wage is determined for the duration of the temporary worker's assignment along the lines of the collective bargaining agreement of the user company. The employee is entitled only to the minimum wages according to the collective bargaining agreement though not to the actually paid wages. Insofar as a collective bargaining agreement for the temporary work agency is also at hand – which has been the case since 2002, as mentioned directly above – its provisions must also be taken into consideration. The latter collective bargaining agreement is, however, only to be taken into account when the collective bargaining agreement of the user company establishes a lower wage claim. Also, in those periods when the temporary worker is not assigned to third parties, the collective bargaining agreement of the agency must apply.

In **Spain**, in relation with temporary workers hired by a temporary work agency (TWA), a national collective agreement has introduced two important new rules. On the one hand, this agreement has laid down a new electoral unit different from the legally settled. According to this new rule, the workers committee shall not be elected in each work centre –most of them don't reach the necessary size-. Instead it will be elected by all the workers of each province. In this way it will be easier to obtain the necessary size to constitute this workers' representation[26]. On the other hand, it creates a new form of worker representation creating the position of "territorial union delegate". The joint commission which administers the agreement is empowered to determine the number of territorial delegates and their duties. The funding of these new posts will be provided from the general funding for the activities of the joint commission. Besides, Section 17 of Act 14/1994 of 1st June - regulating temporary work agencies and entitled "Rights of workers in user enterprises"- lays down that workers hired out by TWA shall be entitled to submit complaints about their working conditions through the workers' representatives in the user enterprise. These workers' representatives in the user enterprises are therefore the legal representatives of temporary workers in this undertaking while they continue their activity in this firm. Nevertheless, they shall not apply claims against TWA.

In **Italy**, at the end of the 1990s, the three largest trade unions, Cgil, Cisl and Uil, created organizations to represent atypical workers falling outside their traditional memberships of dependent employees[27]. The main aim of these organizations is to obtain rights and protections for atypical workers: for instance, norms regulating individual contracts, accident and sickness insurance, and supplementary pensions. They also furnish advice and information services on legal, fiscal, and social security matters.

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[25] Cp. § 10 (1) Temporary Agency Work Act (*AÜG*).

[26] Spanish Labour Law had not provided any kind of workers representation in the undertakings of less than six workers, nor legal representation for all the undertakings of a specific activity in a certain territory.

[27] The Cgil created *Nuove Identità di Lavoro* (Nidil), and the Cisl the *Associazione Lavoratori Atipici e Internali* (Alai). The Uil extended the action of the *Comitati per l'Occupazione* (Cpo) – which were mainly concerned with the unemployed – to include atypical workers.

The difficulty encountered by the unions in representing atypical workers is highlighted by the low number of enrolments: 29,408 for Nidil-Cgil (0.5% of total members and 1.2% of active ones) and 27,376 in 2006 for Alai-Cisl (0.6% and 1.2% respectively). However, the creation of organizations to represent atypical workers has been accompanied by the development of collective bargaining, although this is still in its early stages. The first collective agreement for temporary agency workers was signed in 1998. This covered a variety of aspects, the most important being the maximum duration of temporary contracts with the same firm (24 months), remuneration (the same as that of dependent employees with the same job grades), pay in the case of sickness and accident, trade-union rights (right to assembly and to nominate union delegates), and training. The agreement was renewed in 2002. Moreover, a number of sectoral collective agreements (for instance, in transport, textiles, and banking) regulate the use of temporary labour. Other agreements have been signed at company level. In the **United Kingdom** also, trade unions have recently renewed their effort to recruit and organise agency work. The public services' union PCS has concluded a recognition agreement on agency staff with ADECCO, while the communications union CWU signed an agreement with Kelly Services in 2006.

Another sphere of problems relates to **economically dependent workers employed under contracts for services**. Economically dependent workers are legally self-employed persons and therefore they can not reach collective agreements as employees. Also, as they are employed under contracts for services instead of a regular employment relationship, they are not covered by the collective rights applicable to workers under employment contracts. Freelancers are in the same situations. Here again, some MS have developed some solutions. In Italy, in the case of employer-coordinated freelancers and project workers, around one hundred company-level agreements have been signed in the past 7-8 years. The firms involved are of various kinds, but they can be grouped into three broad categories: the public administration, third-sector organizations, and services (call centres, market survey firms, services to businesses, etc.). In the case of the public administration, the purpose of collective bargaining is to provide greater transparency to the use of freelance contracts.

In **The Netherlands**, freelance workers felt out the scope of the trade unions for a long time. They were seen primarily as self-employed entrepreneurs. However with the rise of freelance work, some unions have developed special services for freelance workers in recent years: information services on the internet, help-desk or consultancy. Such services are for instance open to workers who have the intention to start their own business as a freelancer or subcontractor. Apart from that, freelancers are increasingly organizing themselves. Many networks have been established already, where freelancers can join to develop their business. Networks can be sectoral (building, industry, media and arts) but can also be cross-sectoral and cover different type of businesses. Their goals are usually commercial, but they also might function as platforms for presentation and exchange of information. Networks often have a sectoral, local or regional basis. There are no fixed institutions at national scale. The networks are fluent. The internet plays an important role in communication and coordination of these networks.

V - ROLE PLAYED BY SOFT LAW AND OTHER VOLUNTARY AUTONOMOUS AGREEMENTS

The role played by soft law is very different among the MS and there is no common trend at EU level concerning this issue. Thus, in **Austria, France, Portugal, Slovakia, Slovenia and Spain** it seems that the regulatory role of soft law is negligible in these MS and that soft law does not play any significant role while in **United Kingdom** the role of soft law is important and increasing and the United Kingdom government has increasingly moved towards the use of soft law measures in the sphere of employment law in general. One reason of this important difference could be the role played by the law in regulating employment relations. In all the MS reporting a marginal role for soft law, labour law is still regulated by legislative acts in detail. The marginal role of soft law could also be related to the major role of collective agreements to regulate working relations, like in **Belgium**.

The notion of soft law itself remains a major question. In **Luxembourg** and **Belgium,** some forms of regulation, in particular collective agreements are related to soft law. In some others, collective agreements are not analysed as soft law as they are fully binding upon the parties. Here again, the national differences in the binding effect of collective agreements could explain these different notions of soft law. For example, the **Irish** report states that the system of national agreements could be seen as representing a major soft law initiative of social partners setting standards in employment. Distinction between collective bargaining and soft law can also be difficult to draw because collective agreements themselves can include some elements of soft law.

In **The Netherlands**, collective agreements might contain soft law. They can include annexes that describe systems and arrangements which are recommended to employers without being obligatory. They can also include references to documents with good practices or common arrangements in a sector, as recommendations to employers. According to the Dutch report, collective agreements will probably become less detailed in the future and will leave more space to actors in companies to apply such kinds of recommendations. The Dutch experience also shows the relation between soft law and collective agreements: with the increasing decentralisation and deregulation in the sphere of labour relations and with the increasing space for social partners to make tailor-made agreements at the level of sectors and companies, the role of soft law becomes increasingly important. The same evolution can be seen in the Scandinavian EU MS: “There has been a strong trend towards flexibility in setting wages through the adoption of mechanisms to set wages at local level. One can even talk about a kind of *soft law-development within wage setting*. The development has been very strong in **Sweden** and clearly more cautious in **Finland**. The situation in **Denmark** is somewhere between these extremes”.

If we leave aside the notion of soft law collective agreements, here again developments regarding soft law are very different from one country to another. In most MS, the role of soft laws in implementing more employment flexibility and their influence on the situation of an individual employer are not significant (**Austria, Estonia, Czech Republic, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, Spain)**. There is no visible trend towards a retreat of State authorities from steering the employment law; soft law is not replacing traditional labour law and labour law has still a pivotal role to play in the shaping of working relationships and labour organization (Czech Republic). In **Cyprus**, given that State intervention is traditionally limited to the minimum, the role of the State is rather increasing in part from the enforcement of the EU acquis in the area of labour law.

In **Germany, France, Portugal and Romania**, Code of conducts can occur, but they must adjust to German or French "hard law". For example, in **France**, debates have concentrated on the legal nature of the Code of conduct in French undertakings. Judges control if they should not be integrated in the work rules of the undertakings. A very interesting example for this "clash" of legal cultures took place recently when the US-american supermarket-group "Wal Mart" extended to **Germany**. Its code of conduct led to a heated conflict with the works council because its German participation rights seemed in parts to be incompatible with certain features of German workers' right to privacy and German features of social dialogue concerning collective rights in industrial order.

However, in some MS the role of soft law is more important and sometimes increasing. The important role of Code of Conducts is reported in various MS. For example, as regards labour law, the instrument of 'Code of Practice' is especially relevant in **The Netherlands**. Codes of Practice usually contain descriptions of methods, techniques, standards and cases that can help employers to find solutions in daily practice that fit optimally with legal prescriptions. Codes of Practice do not have the status of a law. Employers are not obliged to follow the Codes. But they do have the status of a kind of insurance against bad practice. If employers follow the Codes, they can be sure they do not offend the law and that they will not be sanctioned when inspected by official authorities. Codes of Practice are widely applied in fields such as working conditions and work safety and health. They play a minor role in the field of labour contract law.

In the **United Kingdom**, codes of practices are well-established mechanisms for encouraging good practices in the field of employment. Like in The Netherlands, a breach of a code does not render the employer liable to legal proceedings, but they are admissible in the courts and tribunals as evidence and can be used to establish whether or not the parties acted "reasonably", as a common test in United Kingdom employment law. Ireland also reports the role of Code of Practices issued by the Equality Authority. The Equality Authority is currently drawing up two Statutory Codes of Practice relating to Parental Leave. One will deal with the manner in which parental leave and *force majeure* leave may be taken. The second will deal with the manner in which the employer can terminate parental leave. The Labour Relations Commission has also issued eight Codes of Practice to date. In **Lithuania**, codes of conduct are also playing a role. There are basically two types of codes of conduct: those related to certain professions (e.g. journalists, procurators, civil servants) and those adopted by associations of enterprises (not necessarily employers' organisations). The role of the State or Social partners is not decreased by this voluntary form of labour organisation.

Another development of soft law is reported through the development of Corporate Social Responsibility (CSR). Here again it is difficult to identify a common trend in the EU even if this development has often started in relation with European debates. This is the case for example in **Latvia**, in **Poland** and in the **Czech Republic**. It seems that in the Czech Republic real developments of Corporate Social Responsibility policies in general were brought about mainly by entering the EU. However in **Latvia, Poland, Estonia, Hungary, Latvia and Poland**, CSR seems to be a relatively new idea. In Latvia, the Ministry of Welfare and other governmental institutions and social partners have issued several sets of guidelines concerning basic principles of CSR. One of the most important achievements in this area was launching the Handbook for employers in 2002. It contains detailed information about the legal framework and practice of labour relationships as well as information about good practice and the principle of good faith in relationships between employers and employees. The handbook will be revised in the near future.

In 2001, after the discussion on Business sector's role in development of society in Latvia, the "The UN Global Compact" movement was launched. In order to promote dissemination of information about the movement, a special Handbook was prepared and published with the financial support of the UNDP. In **Italy**, this issue has also recently attracted the interest of firms, institutions and public opinion.

A last evolution concerning the role of soft law can be observed. There is a tendency of using soft law measures in the competence of employment law. It is very clear in the **United Kingdom**. In other MS, without replacing the traditional regulation of labour law, some soft measures can often be taken in relation to the European Employment Strategy. Thus in **Luxembourg**, the European Employment Strategy, combined with the evolution of European social dialogue, has changed the relationship between the State and the social partners. In **Estonia**, some EU soft law principles were included in the Estonian Action Plan for Growth and Jobs for the implementation of the Lisbon Strategy. In its National Reform Programme – Annual Progress Report 2007, **Malta** confirms its commitment to the Integrated Guidelines of the Lisbon Strategy.

VI - SOCIAL DIALOGUE AND CHANGES IN LABOUR

This chapter analyses the relationships and mutual influences between the different expressions of social dialogue and the deep changes that have taken place in the national labour market structures and the new forms of labour.

Few argue nowadays that social dialogue constitutes an essential component in the development of industrial relations in Europe, the so-called the European social model. With this premise, we examine the role played by social dialogue in the context of the changes that have taken place in the last few years, and in particular:

- In national debates on new forms of labour, the reforms of labour rights and the introduction of the flexicurity concept.
- In bargaining and agreements, when they have taken place, which have favoured the incorporation at national level of new regulation frameworks regarding new forms of labour.

In short, the question is to what extent have the European and national social partners been involved in the recent transformations of labour, what role have they played and in which way has social dialogue been capable of satisfying the need to manage labour changes in Europe.

Social dialogue offers several expressions. Although national collective bargaining and the agreements reached have their own legal regime and particular legal nature, for transnational analysis purposes, social dialogue *within the undertaking* (or the sector) is usually taken into consideration. On the other hand, tripartite social dialogue at national level may be organised within an institutional dimension – in the framework of Economic and Social Councils (ESC) or equivalent bodies – or more informally through specific negotiation of different issues, or may be practically non-existent from an institutional perspective, as in the case of voluntary systems. The ESCs, as institutional social and labour agreement bodies, are usually of a tripartite nature, but other bipartite forms may also exist (**The Netherlands**, **Belgium**). Finally, collective bargaining is the most clear two-party expression of social dialogue – although State intervention may occur to a greater or lesser extent, guaranteeing minimum wages or the extension of agreements – between employers' organisations and trade union organisations or workers' representatives.

Obviously, the structure, articulation and scope of collective bargaining are factors that determine in each country the influence of the contents of social dialogue. Also, the type of representation at the level of confederations – single, several – of both employers and trade unions – which may, on occasions, give rise to concurrence (competition) -. In some MS, the relationship between social dialogue and collective bargaining is closer than in others since the former plays a *macro* role at national level, establishing guidelines for the treatment of different topics in collective bargaining (wage recommendations, formal aspects of contracts, etc.) at sector or undertaking level.

Taking all of these conditioning factors into consideration, we consider social dialogue in its widest formulation in our perspective, involving all of its organisational forms and at all levels.

VI.1 Social dialogue at European level

There is no doubt about the active role played by European social partners (BUSINESSEUROPE- formerly UNICE-, UEAPME, CEEP and ETUC) to face the changes brought about by the new forms of labour, at least in the last decade. Since adopting the Protocol on Social Policy, annex to the Maastricht Treaty, and its integration in Articles 138 and 239 of the Amsterdam Treaty, the production of agreements between the European social partners to favour the implementation of certain issues at national level with regard to changes in labour, is well known.

The **agreements on part-time** work in 1997 and **on fixed-term contracts** in 1999 are especially relevant and became Community directives. The sectoral social dialogue agreements on work time organisation in professional sectors such as the mobile workers of civil aviation or seafarers, and which also became directives, may also be mentioned, as their implementation – typical example of issues subject to the internal flexibility of the undertaking – has almost exclusively been the object of collective bargaining at national, sectoral or undertaking level.

In 2002, within the framework of the *reinforced autonomy* of European social dialogue which social partners had acquired, the **agreement on Telework** was adopted, another emerging modality of atypical employment. This agreement has been the object of sectoral treatment at the level of European social dialogue councils (council of Electricity and of Local and regional government) by means of adopting joint statements.

The **novelty of the Telework agreement** resides in the obligation to monitor implementation at national level which was self-imposed by the signing parties with the support of the Commission. As a result of this task we have the "Joint EU social partners' final implementation report" (2006). The preliminary assessment of this experience is the difficulty to achieve homogenisation of national implementation, basically due to the differences in the national traditions with regard to receiving Community *inputs* – although also due to the importance given by national social partners to the phenomenon of telework in the reality of each national labour market. Thus, several MS have chosen legal transposition by means of amending their Labour Codes (Hungary, Portugal), others by way of collective bargaining (Belgium, France, Luxembourg, etc), and others by way of signing agreements or protocols between national confederations to be recommended in collective bargaining (Spain).

Similarly, on a different level of importance, European social partners have produced several documents, with different approaches and scopes, with regard to other aspects that are directly or indirectly related with flexicurity. One of them is the "Framework of actions for the lifelong development of competences and qualifications" signed in 2002 and which is an instrument that is largely based on the open method of coordination which, therefore, tends to inspire coordination processes rather than to harmonise national legislations.

Finally, the European social partners (BUSINESSEUROPE, UEAPME, CEEP and ETUC) have adopted the commendable **"Joint analysis of the key challenges facing European labour markets"** in autumn 2007 and which contains an objective study on the essential figures of the European reality and which is directly linked to the flexicurity debate, although it exceeds it inasmuch as it tackles other, larger aspects (macro-economic policies, quality of employment, etc.)

Indeed, all these agreements and joint positions carried out at different levels, as well as the new age of "autonomous agreements", show the effort undertaken by European social partners to provide precision to European social dialogue.

Of course, we should also consider those topics related to the challenges raised by new forms of labour and which have not been dealt with or not been the object of agreement in the last few years, which would also provide a benchmark on the capacity of European social dialogue to *govern* changes in labour and employment.

However, we cannot demand from European social dialogue what is in itself difficult in national social dialogue. It is true to say that the positions of European social partners are very different in essential aspects related to flexicurity; for instance, with regard to work time organisation, which would have an obvious repercussion on the internal flexibility of undertakings. Also, on central issues regarding the functioning of labour markets, as may be observed in the discussion on whether interests lie in "more employment" or in "quality of employment". Nevertheless, despite these essential differences, which represent differences in professional interests, social dialogue is acknowledged as a shared structural value and, moreover, as a useful tool to adapt to necessary change.

The performance of the national implementation of the agreements reached in the European space is a related topic. The quality of its application, its enforcement and the specific results at national level, measured with objective benchmarks, compared to the objectives sought, should be the object of a deeper study since the monitoring of some agreements has already started[28].

VI.2 Social dialogue at national level

As pointed out above, the different national traditions and instruments have a considerable influence in the assessment of the role played by social dialogue as a modulator of changes with regard to labour and employment. However, we may clearly verify that, in most MS, the different ways in which social dialogue is organised at different levels have dealt with, discussed, negotiated and, given the case, agreed solutions to introduce new forms of labour and the creation or amendment of contractual forms to adapt to their existence in the national labour markets.

These agreements, when they have taken place, have generally resulted in legislative reforms incorporated into labour law, either through the autonomy of the parties (bilateral agreements) or through State intervention.

Collective bargaining, particularly at sectoral level, has acted either as a *disseminator* of these agreements, or as the protagonist in first instance, directly regulating the adaptation and use of contractual modalities and other forms of internal flexibility by means of particular arrangements, especially at the level of the undertaking.

The interest of national social partners on the subject and also their motivation towards negotiation has been diverse. However, despite the differences, we may find axes for common action. Some of them have already been mentioned in the chapter regarding the influence of labour changes in labour law since some of the legal reforms (and in some MS, practically all of them) have been undertaken through social dialogue processes and agreements with national social partners. We point out some examples and practices on negotiations and bilateral and tripartite agreements addressed to the management of changes in labour markets and main flexibility issues.

[28] Agreement on work-related stress (2004); Framework agreement on violence and harassment (2007)

Debates

Debates and discussions, institutional or otherwise, on changes in the labour market have been reported in most MS. At times, these discussions have been held in the framework of the preparation of National Reform Plans, where social partners have been consulted. Also, more recently, the issue has been debated in view of publishing the **EU Green Paper on '<u>Modernising labour law to meet the challenges of the 21st century</u>'**.

Concerning the method of discussion and negotiation of the labour market, the French government adopted a new law in January 2007, aimed at modernising social dialogue which obliges the government to consult with the social partners before proposing any reforms of the Labour Law. This procedure however will not apply in "emergency situations". When drawing up its draft law following the consultation procedure, the government is not obliged to adopt the content of the collective agreements eventually concluded.

In **Bulgaria**, at the end of September 2006, the Government and all representative trade union and employers' associations, following more than a year of preparatory work, concluded a Pact for Economic and Social Development, valid until 2009. This pact includes, among other ambitious goals, the commitment to conduct effective social dialogue. Also, social partners and the government have been involved in the modernisation of the Employment Policy within the context of preparation of the National Strategic Reference Framework (NSRF) and the National Development Plan[29].

All social partners engaged in the tripartite system of the **Czech Republic** are parties to the process of legislating labour laws and take part in discussions concerning the impact of new forms of work and labour market regulation towards more flexibility and protection. A broad public debate on the EU Green Paper on 'Modernising labour law to meet the challenges of the 21st century' and the discussions centered on the issue of agency employment and its regulation by Czech labour laws, on the widespread practice of illegal employment of one employer by another, and shortened as well as fixed-term workloads, the use of which depends on the nature of the field. Also, measures defining the participation of social partners in applying mechanisms of non-standard working schemes were agreed at tripartite level.

In **Estonia**, new rounds of tripartite consultations were initiated in 2007 by the Ministry of Social Affairs in order to develop the new draft act regulating employment relationships. The new forms of work have been under discussion; for instance, the implementation of fixed-term contracts. Other atypical employment relationships should also be discussed (e.g. temporary agency work). The social partners concluded in the meeting that the different forms of work can not reduce the protection of employees and that the dominant form of employment relationship should remain open-ended employment contract.

In **Latvia**, tripartite dialogue is held within the framework of the National Tripartite Cooperation Council (NTCC). The NTCC was established with an aim to promote co-operation between the government, employers' organisations and trade unions at national level in order to reach a consensus in solving socio-economic issues in the country. On April 2006 the Ministry of Welfare organised public discussions to address the issue of ensuring flexible employment opportunities. The conclusions drawn and proposals made were included in an overview report to the Cabinet of Ministers and they have been reviewed repeatedly in the Tripartite Cooperation Sub-council on Labour Issues of the NTCC.

[29] The Confederation of Independent Trade Unions in Bulgaria (CITUB) took a specifically active position on the problems related to flexibility and security combination. Its leaders demanded regulated flexibility combined with law and based on dialogue and collective arrangements (statement of Dr. Zhelyazko Hristov, chairperson of the CITUB, at the 7th European regional tripartite conference of the ILO, February 2005, Budapest, entitled "Employment Flexibility and Security").

However, in **Lithuania**, the most relevant issue in this sphere is almost complete apathy of social partners in terms of development of flexibility of labour law. Essentially it seems that social partners do not see how an increase of flexibility would improve their situation; they do not find changes in this topic relevant or essential. Due to the lack of interest, there are no newly established organizations to respond to the needs of atypical workers, or no plans of improving the existing legal base concerning this sphere.

In **Luxembourg**, the government has enlarged the autonomy of the social partners by giving them the possibility to conclude national cross-sectoral agreements in order to transpose, on the one hand, collective agreements concluded by the European social partners and, on the other hand, European directives, which provide the possibility of a transposition at national level by social partners, especially directives based on an agreement concluded by the social partners at European level. These agreements have to be declared as a *general obligation* by the Ministry of Employment in order to apply to all undertakings set up in Luxembourg and to their workers. Recent law[30] has authorised the social partners to deviate from national legislation regarding flexible working hours by negotiating agreements as far the cross-sectoral social dialogue is concerned. As to the debates and reforming process[31], a controversial reform will be the extension of fixed-term contracts in the research sector, a sector where fixed-term contracts tend to become common-law.

In **Portugal**, social dialogue has an institutional framework – the *Comissão Permanente de Concertação Social* (Standing Committee for Social Dialogue) – since 1986 and every Labour Law project must be passed through a negotiation round between government and the social partners before its submission to the Parliament. Several relevant reforms in that field, since 1990, including the Labour Code of 2003, have been fiercely debated in the Standing Committee, thus anticipating strong political controversies. These reforms introduced some of the so-called "atypical" forms of labour – such as telework, agency work, part-time – and rules about flexibility for the management of working time.

In **Romania**, although the law expressly regulates in some cases the possibility of the social partners to negotiate and include in collective labour agreements certain details related to the new forms of labour, in practice, such details are very rarely dealt with by the collective agreements. Reference to the reforming process with regard to the debate on flexicurity is made within Romania's National Plan of Development for 2007 – 2013. The Plan provides for 6 national priorities of development. One of these priorities is the development of human resources, promoting employment and social inclusion, strengthening of the administrative capacity.

With the abolition of the Tripartite Act in **Slovakia**, social dialogue has gained a new voluntary form since 2005. The role of social partners is particularly visible in development of legislation. Employers' associations and Trade Unions participated actively in the preparation of the Labour Code in 2003; the former welcoming the changes towards more flexibility, while the latter protesting against diminished employee protection. Social dialogue in respect of the reform of the labour law was held in connection with the amendment of the Labour Code which was effective until September 2007.

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[30] Act of 19 may 2006 transposing the directive 2003/88/EC concerning different aspects of the organization of working time. Mémorial N°97 du 31 mai 2006, p. 1806; Doc. parl. 5386.

[31] As to the debates and reforming process, in the future, social partners will get more autonomy to decide upon the necessary adjustments of the labour law. This will change hierarchy between law and collective bargaining. A unique statute for workers in the private sector will bring together blue-collar workers and white-collar workers. It will be introduced in the next months and it will have an impact on labour legislation (individual and collective aspects) and on the social security system.

However, the debates (as well as their outcome) were less constructive and more political. The amendment brought in some new provisions that put the Labour Code in line with the EU law but did not include special news regarding new forms of labour.

In the recent years social dialogue in **Slovenia** experienced certain difficulties. Nevertheless, the reform of labour legislation in autumn 2007 is an example of good social dialogue. The law reform was first prepared without any real social dialogue and it failed during 2006; afterwards, during 2007, the law reform was prepared once again, with a new start, within the framework of a fruitful social dialogue. No solution was put into the proposal of the Act amending the Employment Relationships Act without the consent of the social partners – and the law was enacted very quickly.

Besides, the last tripartite Social agreement for the period 2007-2009[32] addresses all the most important issues of social policy, labour market regulation and, within it, also employment relationships. Under the title 'Employment and labour market' the flexicurity approach is mentioned, including the promotion of flexible employment forms (part-time work, job-sharing, flexible use of working time, home-work and telework), promotion of territorial and professional mobility in the labour market, mobility between different sectors and regions, promotion of employment for an indefinite period of time, regulation and control over temporary work agencies, adequate regulation of the work of students, etc.

In certain MS where social dialogue is not prominent in tradition, agreements have hardly been reached on these issues due to State influence and to legislation on industrial relations. **Greece** is an example where social partners have not held negotiations, although debates have existed. In the **United Kingdom**, it is more difficult to comment in relation to more formalised participation, as bargaining is not conducted at national level and in general the social partners each direct their attention to lobbying government on issues of relevance to them. The most common method of engagement in relation to the developing new forms of labour has been through responses to formal consultation calls from the government, in relation to employment law changes or measures. In **Germany**, the recent reforms of the labour market have led to continuous strife between the unions and the government.

Implementing the principle of equality and non discrimination

From some of the relevant agreements reached, we may infer the concern for **equality**, that is, for the regulation of atypical contractual forms to overcome possible aspects of discrimination with regard to stable contracts (and workers). Thus, for instance, in **Austria** there is a strong discussion on the so called *freier Dienstnehmer* (quasi-freelancer)[33]. The main difference from this contract to a typical labour law contract is that the parties are not personally engaged to each other and they have an ongoing service relationship. These contracts are often abused as an instrument to circumvent the legal protections for "classical" law benefits for regular employees. As a result, the hidden employment contract is valid and the collective labour law regulations are applicable, e.g. paid vacation and special payments. As a consequence of social dialogue, as of Jan 1st 2008 new social insurance-related regulations are coming into force, to make deviations less attractive.

[32] *Socialni sporazum za obdobje 2007-2009*, Uradni list RS – Official Journal of the Republic of Slovenia, No. 93/07.

[33] A quasi freelance contract is a somewhat mixed legal construction half-way between a 'standard' employment agreement on the one hand and actual self-employment on the other.

Apparently, where social dialogue has concentrated the most has been in the negotiation of employment conditions of **temporary agency workers**. This proves the qualitative relevance of this new labour relationship. Experiences have been varied. Perhaps in this case, the path of collective bargaining has played an essential role by reaching agreements for workers in this sector, levelling their employment conditions with those of the employees of the main undertaking. The concern for the gap existing with the latter is obvious. Also in **Austria**, a collective bargaining agreement for temporary work agencies was concluded in 2002 basically dealing with wages[34]. This agreement must be taken into account, when the collective bargaining agreement of the user company foresees a lower wage claim. Also in those periods when the temporary worker is not assigned to third parties, the collective bargaining agreement of the agency must apply.

In **Cyprus**, a rather recent, as well as quite important example of social dialogue on new forms of employment refers to the bipartite sectoral level and in particular the agreement reached between the Cyprus Union of Bank Employees ETYK and the Cyprus Bankers Employers' Association (KEST), on April 2007 with regard to the terms and conditions of employment of part-time bank employees (in KEST member banks). This agreement deals with both pay and non-pay issues, and essentially transposes the provisions of the Part-time Employment (Prohibition of Unfair Treatment) Law 76(I)/2002 to the banking environment, where every part-time banking employee is entitled to equal terms and conditions of employment and equal treatment, and enjoys the same protection as that offered to comparable full-time employees. Likewise, the agreement applies the principle of proportionality, both with regard to pay and with regard to the benefits provided. Also in **Denmark**, the changes regarding part-time employment have all been discussed between the social partners.

In **France**, from a perspective broader than equality, social partners at the demand of the government have started to negotiate on a modernisation of the labour market in September 2007. It includes a negotiation on the contract of employment. As a result, a collective agreement signed at national level on 18th January 2008 on "The modernisation of the labour market" has introduced new rules which may be analysed as flexicurity mechanisms. The collective agreement fixes the length for the probationary periods. It reduces the seniority condition to benefit from supplementary sickness benefits. But the main element of this flexicurity approach is with regard to the end of the open-ended contract. The collective agreement aims at securing the possibility for the parties to the employment contract to put an end to the contract by mutual consent. In particular, the collective agreement entitles workers in such a situation to unemployment benefits. The collective agreement also creates a new form of fixed-term contract so called project contract**.** This contract regards managers and engineers and a minimum duration of 18 months and a maximum of 36 months are set.

According to the information provided by the ETUC, in **Finland**[35] at the end of 1990s unions launched the debate on the "neutrality of expenses" i.e. the workforce costs. The objective was to remove all differences that made fixed-term work cheaper than work within open-ended contracts. For example, legislation concerning contributions to pension funds and annual holidays were changed. As a consequence, contracts made for a fixed-term at the employer's initiative needed to have a justified reason or they were considered to be valid indefinitely.

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[34] The law provides that the employee is entitled to a wage, which is adequate and customary for the respective place of work. The adequacy of the wage is determined for the duration of the temporary worker's assignment along the lines of the collective bargaining agreement of the user company.

[35] Information included in the report "Quality of jobs at risk! An overview from the ETUC on the incidence and rise of precarious work in Europe", provided by ETUC. March 2008.

Part-time workers were given the right to get additional working hours before the employer is allowed to hire a new employee. Rules concerning temporary work agencies demanded that if there is no collective agreement binding the agency, the payments to its employees have to follow the collective agreement of the user company. The employee is also entitled to have the same conditions of work as employees of the user company and some obligations of employers are divided between the TWA and the user enterprise. Assuring equal rights for annual holidays for all workers regardless of the amount of working hours was also among the main reasons to renew the Annual Holiday Act in 2005. Newest changes in legislation like Act on the Contractor's Obligations and Liability when Work is Contracted Out (2007) and the Act on Co-operation within Undertakings (2007) gave shop stewards and workers' representatives the right to obtain information regarding fixed-term and part-time contracts as well as the contracts made with temporary work agencies. Workers' representatives in the user enterprise are also entitled to represent the employees from a temporary work agency.

One area where social dialogue is being encouraged in **Ireland** is in relation to agency employment, following the ending of the Irish Ferries dispute where the twin issues of migration and agency work were central. Also social partners' negotiations on a code of practice on access to part-time work were reported.

Also in **Italy**, sectoral agreements were reached on various forms of work such as part-time, work-entry contracts and apprenticeship. In **Lithuania** is a draft law regarding temporary working agencies. Social partners showed little interest in participating in the legislation process or making any significant input to this draft except oppose the suggestions of another party.

Luxembourg's social model is based on a tripartite approach, institutionalised in a *Tripartite Coordination Committee*, which brings together representatives of the Government, of the employers and of the workers. A quick survey on collective bargaining in the main professional fields showed that there are very few measures linked to the new forms of labour. It seems that social partners are not interested in this subject, or perhaps, that they let the State define the rules applicable to new forms of labour. It is in line with the position of the Trade Unions, which expressed clear opposition to the development of new forms of labour. Only a reform of the part-time work contracts can be noticed as a bilateral initiative.

Two collective agreements, concluded between employers (ULEDI) and trade unions (OGB-L and LCGB), apply in the temporary work sector: the first one is applicable to the temporary workers of the temporary work agencies which applies to all temporary work agencies established in Luxembourg and to all temporary workers occupied by a user company exercising its activities on Luxembourg territory. It applies also to temporary workers posted outside the country. The second one applies to the workers of the temporary work agencies. Both date back to 1998 and have been renewed in 2007. It must also be noted that ULEDI has signed an agreement with the Public Employment Service (ADEM) that states that temporary work agencies will appoint jobseekers residing in this country first.

In **Malta**, it is estimated that the rate of coverage by collective agreement of Maltese employees is estimated at between 50% and 60%[36]. However, the vast majority of employees engaged in the non-standard forms of work is not covered by collective agreements and are not even trade union members[37].

Social dialogue in **Poland**[38] is strongest at undertaking level and at national level, within the framework of Tripartite Commission for Economic and Social Affairs, where representatives of the Government, employers and employees meet. Recently, some activities undertaken by social partners at national level are inspired by social dialogue at European level. The examples of such activities include telework and stress at work agreements. An agreement was concluded by national social partners in June 2005, and it contained the basic rules for organizing work in the form of telework. The amendment to the Polish Labour Code, in force since October 2007 was largely based on the European framework agreement as well as the national agreement. It was certainly a significant step to regulate this form of work, even though it was admissible also in the previous legal situation.

In **Spain**, the successive National Agreements for collective bargaining from 2002 onwards have paid special attention not only to the adequate balance between flexibility and security, but also to improve the employment and its quality. In order to fulfil all of these aims, these National Agreements have not only indexed the rise of wages to productivity and inflation, but have also promoted a correct use of fixed-term contracts, improving internal flexibility at the same time. As a result, the Government and the most representative national trade unions and employers' associations signed the Agreement for Improved Growth and Employment (2006). This agreement laid down a range of measures to promote and support not only job creation, permanent contracts and the conversion of temporary jobs into permanent jobs by subsidising and fostering new permanent contracts, but also to restrict repeated use of temporary contracts and enhance transparency in the subcontracting of work and services among businesses sharing one and the same workplace[39].

In the **United Kingdom,** new forms of employment have, in general, not been discussed within the sphere of social dialogue, other than in relation to migration and agency working, but in both cases dialogue has been mainly bipartite – between each social partner and the government with each of the social partners lobbying hard to represent their interests. An example given was in relation to agency workers where the trade union side was demanding new legal protection for agency workers, while the employers' side was opposed to any further regulation.

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[36] Figures based on calculations by the Department of Industrial and Employment Relations and the Centre for Labour Studies, University of Malta.

[37] Collective agreements extend to all employees in a particular category within an establishment. Part-time employees and fixed-term are also covered, unless they are specifically excluded from the agreement. In companies where the unions are well established, they are normally very careful to preserve their bargaining rights.

[38] In the recent years developments in the labour law were not concise. Three major amendments of the Labour Code took place in 1993, 2002, 2003. The first one leads to rising protection of standards for employees. The second one was supposed to facilitate cheaper, faster and less formal employment procedures and was supported only by employers' organisations. The third one was aimed at adjustment of the labour regulations to EU standards. Although there is a legal requirement to consult social partners in the framework of the legislation process and they are indeed consulted, their opinions are often not taken into account in the final bill of enacted regulations.

[39] Basically, the agreement contains the following measures: a) a limit to temporary work: After more than 24 months of fixed-term contracts in the same undertaking and for the same job over a reference period of 30 months, the contract is converted into an open-ended contract. b) Subsidies (employer bonuses) to be paid annually when target groups (women, youngsters, long-term unemployed,) are offered an open-ended contract. c) a trend to overcome the gap between the costs applied to the employer social security contributions for open-ended contracts and for fixed-term contracts.

Transitions in the labour market

Other negotiations and agreements have had the objective of treating transitions in the labour market. Thus, in **France**, the collective agreement of January 2008 on "The modernisation of the labour market" mentioned earlier has organized the transferability of some rights. For example, workers who lose their jobs will keep the benefit of the company sick pay scheme, for a maximum duration of 1/3 of the right of unemployment benefits. Previously, the cross-sectoral agreement signed in 2003 on the life-long access to learning established a guarantee for the employee in order to have an individual right to training.

In **Belgium**, a cross-sectoral agreement was signed foreseeing employers' specific contributions for financing the integration of job seekers. In **Austria** and **Denmark** (2007), sectoral agreements were signed addressed to the training of the unemployed. In Denmark, social dialogue is very much present in the regulation of the general social conditions and initiatives concerning the unemployed, and as an important element in the flexicurity-model and the basic conditions for the behaviour of the social partners and the entire labour force, unemployment policy is considered to be crucial for flexibility in the labour market. Thus, continuous vocational training and life long learning is a major issue at the central level of negotiations.

Also national measures aimed to the training of vulnerable groups were agreed in the **Czech Republic**. In **Poland**, liberalisation of labour law was accompanied by introducing measures to activate dismissed workers and the unemployed and also some forms of subsidised work, which may be perceived both as an element of security and flexibility. In **Portugal**, different agreements were signed in the Standing Committee for Social Dialogue during 2006 dealing with aspects related to facilitate transitions in the labour market such as lifelong learning, vocational training, initial qualification levels, training certification but also with regard to changes in unemployment protection and Social Security[40]. Furthermore, a tripartite agreement was signed in **Austria** concerning the conditions for subsidies for when unemployed persons replace employees on parental leave.

Nevertheless, we have to point out that in **Bulgaria**, trade unions are completely opposed to the introduction of Temporary Agency Work regulation, not only because of its effects on flexibility but because the subordinated employment category in their labour system does not contemplate this institution.

Internal flexibility arrangements

Another block of agreements is related to **internal flexibility** measures, basically related to work time, but also to functionality (internal training, professional career development, etc.) Within these, we may mention the bipartite agreements reached in **Cyprus**. In **Sweden**, national bilateral agreements have been signed on working time reduction. Also sectoral collective agreements on working time flexibility have been reached in **Austria**, **Germany** and **Portugal** as well as company-level collective agreements on overtime rules (**Czech Republic**), on duration and configuration of working time (**Denmark**), and on shorter working hours to secure jobs (**Germany**).

Even in **Greece**, where statutory labour law has traditionally been the main source of regulating industrial relations, whereas collective bargaining has played a secondary role in regulating labour relations, social partners have jointly requested the government to release private companies from certain administrative burdens concerning overtime rules.

[40] Agreements on the reforms of unemployment and Social Security were agreed between the Government and Social Partners. The former was with the exception of CIP and the latter was not signed by the union CGTP.

In **Ireland**, the government has established a National Framework Committee for Work Life Balance Policies, membership of which is chaired by the Department of Enterprise, Trade and Employment. It is made up of representatives from employer organisations, trade union and Government departments. These policies include work sharing schemes, flexitime and career breaks. Furthermore, the implementation of the social partnership agreement 'Towards 2016' – Ten Year framework Social Partnership Agreement 2006-2015 - at enterprise or industry level will deal with the need for flexibility and change in the framework of competitiveness and employment. This tripartite agreement is aimed, among others goals, to facilitating the improvement of job security, promoting equal opportunities, increasing training, productivity, flexibility and good working conditions and its spirit is fully coherent with the flexicurity approach.

In **Romania**, labour collective agreements in the past years also provided different forms of flexible organization of working time at national level (shifts, fractioned programme) or specific for certain branches of activity (maximum duration of working time of 48 hours per week calculated as an average of 12 months period). In The Netherlands[41], a substantial reduction of on-call workers has been achieved by installing minimum work sessions of three hours (up to 15 hours a week), by increasing contractual working hours to an average number of hours worked over the past three months. Many of these on-call workers have received a part-time work contract instead.

In **United Kingdom**, actions at company level to promote flexible working patterns were developed as bilateral initiatives.

Illegal working

Social dialogue has also paid attention to **undeclared labour** although its treatment in agreements has frequently been as a mere statement. We may find the exception in **The Netherlands** with a specific programme to fight this form of fraud which seems to be increasingly present in some MS in the family and domestic sphere.

In **Cyprus**, more activity in the form of specific initiatives has been seen at sectoral level, particularly with reference to the building/construction industry. In particular, according to the sector's collective agreement that was signed in 2004, both sides of industry agreed to prepare a joint memorandum to be submitted to the competent bodies, containing recommendations on tackling two practices conducive to undeclared work - the non-implementation of the agreement by a large proportion of employers, and its violation by a number of employers who are members of the Federation of the Building Contractors Associations of Cyprus (OSEOK).

Other actions at bilateral or tripartite level can be found in **Latvia** (bilateral collective agreement but specific measures to combat underground economy and undeclared work in a national tripartite agreement), in **Belgium** (sectoral agreements) and **Italy** (bilateral agreements and protocols of legality signed by social partners and public institutions)[42]. In **Slovenia**, the fight against undeclared work is mentioned in the Social agreement for the period 2007-2009 and some preventive actions have been developed.

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[41] Information included in the report "Quality of jobs at risk! An overview from the ETUC on the incidence and rise of precarious work in Europe", provided by ETUC. March 2008.

[42] According to the information provided by the ETUC, the 'underground economy' has also been tackled by introducing the obligation to inform of a new hiring at least one day before the start of the work contract. This, together with more assertive supervisory activity from the Ministry of Employment, has led to the regularisation of some 420,000 irregular and/or undeclared workers.

Self-employment

In **Italy**, the 2008 Budget Law introduced measures to curb the use of economically dependent freelancers in the public administration and to favour their stabilization by reserving for them a quota of permanent jobs accessible by public competitive examination. In **Belgium**, a legal initiative to fight false independent workers was established in 2006.

Also in **Spain**, a recent new legal statute for autonomous workers has been recently established as a result of social dialogue, including the definition and *recognition* of economically dependant workers (see the section above).

In **The Netherlands**[43], the law on 'autonomous workers' has given social and collective protection to nearly three million autonomous workers depending on a single employer. The law has also installed a new information right for enterprise councils and worker representatives to have a copy of all contracts involving dependent workers at their disposal. Another measure is tackling the false self-employed workers by transforming each regular working relationship with a single employer of 20 weekly hours over at least three months into a regular working contract. Some trade unions (media, construction, services) have organised the self-employed and are seeking to include fixed minimum rates of compensation for the self-employed in collective bargaining agreements.

The issue of subcontracting has hardly been dealt with in the MS, possibly due to the legal difficulty, amongst other aspects, of marking the boundaries of responsibility. We must mention **Spain** as the pioneer in the sectoral treatment of this issue (construction sector).

Other recent processes

In **Italy**, on December 2007, the government approved a draft bill to convert the agreement on welfare signed with the social partners on 23 July 2007 (the 'Welfare protocol') into law. In order to prevent irregular use of fixed-term employment contracts, their maximum duration was fixed at a maximum 36 months. Thereafter only one renewal was allowed. Moreover, the maximum duration of contracts must be established by collective bargaining.

Although some protections have been introduced for atypical workers, they are still limited. 'On-call' contracts have been abolished with the exception of the tourist, entertainment and show-biz sectors. Staff-leasing has been abolished as well. Furthermore, the 2007 Budget Law offered an opportunity to employers making irregular use of freelancers to convert their employment relationships into standard forms of subordinate employment. The stabilization concerned approximately 20,000 workers, 90% of which worked in call centres.

In **Greece**, as a result of social dialogue on a labour market reform, the Greek government introduced incentives for part-time work. Also local, prefecture and regional authorities were permitted to recruit part-time employees in the public sector (Law 3250/2004) in order to provide certain social services. Temporary employment agencies were also allowed to operate under strict conditions.

In the **Scandinavian MS**, the flexicurity model is based on collective bargaining and collective solutions. This is the specific Scandinavian feature of collective bargaining; however, *flexicurity* in the Scandinavian labour market is completely dependent on well-functioning collective bargaining.

[43] Information included in the report "Quality of jobs at risk! An overview from the ETUC on the incidence and rise of precarious work in Europe", provided by ETUC. March 2008.

Also in **The Netherlands**, issues regarding flexible work have been high on the agenda of the social partners at national level. The Social Economic Council (SER, in the Dutch abbreviation) has been closely involved in the development of policy and legislation in this field, e.g. the Flexibility and Security Act of 1999. Recently, the issue of labour law has been put high on the SER-agenda again, with new proposals coming from the government to reform dismissal protection rights. The general requirements of greater flexibility and less detailed regulations in labour law have lead to a shift of focus to decentralise actors involved in social dialogue: sectoral agencies and companies[44].

The **landscape of collective agreements** (CA) has been **increasingly diversified** during the past years. In several sectors collective labour agreements now have the character of a CA á la carte, with all kinds of options for companies and workers. Or they have the character of a 'framework', a kind of 'window' that can be filled with different arrangements in different subsectors (Korevaar, 2000). Works councils are playing an increasingly important role as partners of trade unions and managers in the drawing up and implementation of these agreements at company level.

As a partial conclusion, we should point out that those MS that are **strongly unionised** and where the presence of employers' organisations is cohesive (at national or sectoral level), **agreements have served to successfully adapt and modulate the dangerous effects** of the new forms of labour. The Scandinavian countries are a clear example of this with their integrated collective bargaining system which also provides a tool for internal flexibility especially. Such flexibility can function well especially when it is based on trust relations between management and labour. Examples of things that can be achieved in **Scandinavian** companies through social dialogue on company level are flexible working times, work organisation, education and training, parental leave, study leave, alteration leave and functional combinations of family and work.

In other, less unionised countries, significant agreements have also been managed with regard to issues in the sphere of flexicurity. In this case, apart from the long tradition in social dialogue, we must mention the representativity of the partners and the high degree of articulation and scope of collective bargaining in the country as positive factors. That is, the strength of the system of industrial relations itself. These conditioning factors are not homogenously found in some of the enlargement countries.

[44] It is observed that this trend takes three forms (Tros, 2001): a) decentralization: jurisdictions about decisions regarding labour issues are transferred from central actors to a lower level in the hierarchy; b) empowerment: central actors keep their jurisdictions, but decide to give new jurisdictions and/or facilities to actors at lower levels, e.g. as regards new issues in social dialogue; c) deconcentration: jurisdictions and decisions about labour issues at decentral level increase, apart from jurisdiction and decision-making at central level.

VII - FLEXICURITY AND THE EVOLUTION OF LABOUR LAW: WHAT UNDERSTANDING AND WHAT APPROACHES?

VII.1 Historical aspects

In most of post-war Europe, employment relations were regulated by rather constraining employment protection legislation and collective agreements. The contradiction between the flexibilisation pursued by employers and labour market regulation defended by trade unions caused a discussion on flexibilisation and employment protection legislation with regard to economical performance and unemployment as early as the 1980s.

The advantages and disadvantages of labour market regulation/flexibility versus employment were investigated in the two-volume *Jobs Study* by the OECD (1994), containing, as indicated in its subtitle, 'evidence and explanation' for relaxing employment protection. It evoked numerous responses from scholars[45]. As concluded by Esping-Andersen (2000b, p. 99), 'the link between labour market regulation and employment is hard to pin down'. Under certain model assumptions, the same empirical evidence, that unemployment is practically independent of the strictness of employment protection legislation was also reported by the OECD (1999, pp. 47–132). There are even cases when the same legislative changes caused different effects. For instance, the impact of almost equal deregulation measures on the use of fixed-term contracts 'was sharply different' in Germany and Spain (OECD 1999, p. 71).

At the same time, a good labour market performance under little regulation was inherent in the Anglo-Saxon model, that is, USA, Canada, United Kingdom, and Australia (OECD 1994, Esping-Andrsen 2000a). The deregulation of labour market in The Netherlands, which had a different kind of economy, coincided with the 'Dutch miracle' of the 1990s (Visser and Hemerijck 1997 and Gorter 2000). A similar Danish practice in the background of 'Eurosclerosis' (Esping-Andersen 2000a, p. 67) was successful as well (Björklund 2000, Madsen 2003). All of these convinced some European politicians in the harmlessness and even usefulness of labour market deregulation. It was believed that employment flexibility could improve the productivity of undertakings and cause an economic growth with a good labour market performance.

The claims for flexibilisation met hard resistance, especially in MS with a tradition of struggle for labour rights. Wilthagen and Tros (2004, p. 179) reported with reference to Korver (2001) that the *Green Paper: Partnership for a New Organisation of Work* of the European Commission (1997) 'which promoted the idea of social partnership and balancing flexibility and security' got a very negative response from French and German trade unions because 'the idea of partnership represents a threat to the independence of unions and a denial of the importance of workers' rights and positions, notably at the enterprise level'. The ILO published a report, concluding that 'the flexibilisation of the labour market has led to a significant erosion of workers' rights in fundamentally important areas which concern their employment and income security and (relative) stability of their working and living conditions' (Ozaki 1999, p. 116).

[45] For a review focusing on European welfare states see Esping-Andersen (2000a)

To handle a growing flexibility of employment relations with lower job security and decreasing eligibility to social benefits, the notion of *flexicurity* has been introduced. Wilthagen and Tros (2004, p. 173) ascribe the conception of flexicurity to a member of the Dutch Scientific Council of Government Policy, Professor Hans Adriaansens, and the Dutch Minister for Social Affairs, Ad Melkert (Labour Party). In the autumn of 1995 Adriaansens launched this catchy word in speeches and interviews, having defined it as a shift from job security towards employment security. He suggested compensating decreasing job security (fewer permanent jobs and easier dismissals) by improving employment opportunities and social security.

For instance, a relaxation of the employment protection legislation was supposed to be counterbalanced by providing improvements to fixed-term and part-time workers, supporting lifelong professional training which facilitates changing jobs, a more favourable regulation of working time and additional social benefits. In December 1995, Ad Melkert presented a memorandum *Flexibility and Security*, on the relaxation of the employment protection legislation of workers with temporary contracts, in particular prolonged fixed-term duration contracts, provided that fixed-term and agency workers get regular employment status, without however adopting the concept of flexicurity as such. By the end of 1997 the Dutch parliament accepted flexibility/security proposals and shaped them into the *Dutch Flexibility and Security Act* which came in force in 1999.

The OECD (2004b, pp. 97–98) ascribes flexicurity to Denmark with its traditionally weak employment protection, highly developed social security, and easiness to find a job (the *Golden Triangle* mentioned); see also Madsen (2003) and Breedgaard et al. (2005). Regardless of the non-Danish origin of the word flexicurity, both MS were recognized as 'good-practice examples' (Kok et al. 2004) and inspired the international flexicurity debate. Although some authors considered flexicurity a specific Dutch/Danish phenomenon (Gorter 2000), the idea spread all over Europe in a few years[46].

At the Lisbon summit of 2000 the EU had already referred to this concept (Vielle and Walthery 2003, p. 2; Keller and Seifert 2004, p. 227), and after the meeting in Villach in January 2006, flexicurity became a top theme in the European agenda.

VII.2 Political initiatives at European level

Following the request from the European Council, the Commission explored the development of a set of common principles on flexicurity as a reference in achieving more open and responsive labour markets and more productive workplaces. These works led to a communication aiming at drawing up **Common Principles of Flexicurity**[47], published in June 2007. This communication thus tried to highlight common references to be used by MS in order to design and implement their flexicurity strategies, while taking into account the wide diversity in national situations.

[46] For a selection of recent international contributions see Jepsen and Klammer (2004), Kronauer and Linne (2005), Jørgensen and Madsen (2007).

[47] Communication from the Commission to the Council, the European Parliament, The European Economic and Social Committee and the Committee of the Regions, "Towards Common Principles of Flexicurity : More and better jobs through flexibility and security", June 2007

The communication set out a number of possible Common Principles:

- Flexicurity involves: flexible and reliable contractual arrangements (for both the employer and the employee, the insiders and the outsiders in the labour market); comprehensive lifelong learning strategies, effective labour market policies and modern social security systems. To that extent, it implies a balance between rights and responsibilities for employers, workers, job seekers and public authorities.
- Flexicurity does not refer to a "one size fits all" approach, both in terms of labour market models and policy strategies.
- Flexicurity should address segmentation of labour markets by providing changes for both "so-called" insiders and outsiders.
- Flexicurity should be promoted within and outside companies. Flexicurity is thus twofold: internal as well as external.
- Flexicurity should address issues of gender equality and equal opportunities for all.
- Flexicurity requires dialogue between public authorities and social partners.
- Flexicurity strategies should also contribute to "sustainable budgetary policies".

On the basis of those principles, the Commission highlighted four different possible combinations, called **"flexicurity pathways",** to address different typical challenges faced by MS. These pathways are considered as tools for MS to design their own combinations with regard to the specific issues they face.

These pathways are related to 4 general issues:

- tackling contractual segmentation
- developing flexicurity within the enterprise and offering transition security
- tackling skills and opportunity gaps among the workforce
- improving opportunities for benefit recipients and informally employed workers.

At last, during its meeting held on 5th and 6th December 2007, the Council of the European Union adopted the "Common Principles of Flexicurity"[48]

How to achieve "flexible and reliable contractual arrangements"? Some remaining uncertainties

Flexicurity refers to an integrated approach, for companies and workers, aiming at better balancing flexibility and security in the labour market.

One of the four policy components of this approach as set out by the European Commission consists in "*Flexible and reliable contractual arrangements"* (from the perspective of the employer and the employee, of "insiders" and "outsiders") through modern labour laws, collective agreements and work organisation.

However, how contractual arrangements can be 'flexible and reliable' simultaneously (the expression repeated several times in Common Principles) and which contractual arrangements could be relevant to "outsiders" are not explained.

[48] See draft Council resolutions adopted at : http://register.consilium.europa.eu/pdf/en/07/st15/st15497.en07.pdf

This issue seems to be especially significant if flexicurity approaches aiming at coping with labour market segmentation are not to be considered simply as a way to release flexibilisation of labour law.

Both European social partners and European Parliament are aware of these uncertainties. They both published positions allowing to better clarify aims to be achieved to guarantee real and effective implementation of flexicurity measures in our field.

In line with their work programme 2006-2008, ETUC, BUSINESS EUROPE, UEAPME and CEEP recently released a joint position entitled **"Key challenges facing European Labour Markets: a joint analysis of European Social Partners"** (October 2007). As for challenges to be addressed so as to ensure a well-functioning labour market, European Social Partners especially stressed:

- The reviewing and, possibly, adjustments of employment protection measures resulting from labour laws to promote transitions
- The need to address availability of various contractual arrangements and the emergence of new forms of contracts to answer both employers' and workers' needs.

Considering these challenges, Social Partners especially called upon MS to "provide adequate employment security for workers under all forms of contracts to tackle segmented labour markets".

In response to the Commission, and considering, among other things, the European Social Partners' joint position, the European Parliament adopted a resolution on 29th November 2007 (P6_TA(2007)0574, M. Ole Christensen) about Common Principles of Flexicurity. **European Parliament** especially proposed that the European Council adopt a **"more balanced set of common principles of flexicurity"**, including especially:

- "promotion of stable employment relationships and sustainable labour market practices".
- "action for adaptable and reliable contractual arrangements and action against abusive labour practices especially in certain non-standard contracts".
- "breaking down labour market segmentation by promoting employment security and improving job security; all workers shall have a core of rights regardless of their employment status".

In addition to this, the Resolution also stressed European Parliament specific concerns such as:

- the necessity "to pay particular attention to the legal situation of the self-employed, small businesses and SMEs, which is characterised by a high level of economic dependence on their customers, and to consider the most appropriate legislative means to raise their level of social protection".
- the responsibilities of the Commission and the MS "in guaranteeing certain rights at EU level; recalls that European legislation complements national labour market rules and is an important element when it comes to securing the rights of workers".

In this context, there is no doubt that descriptions of different national approaches regarding the flexicurity concept, as well as presentation of national examples showing specific implementation of the latter in our field, are crucial.

The diversified European picture

What are the ongoing concepts, debates and reforms linked to flexicurity in the EU Member States? As flexicurity has just recently been debated in most European MS, common trends are difficult to find. Our report has been limited to compare neighbouring MS with some common background and to draw some provisional lessons.

Poland and the Baltic countries

Among these four MS, **Estonia** is the only country to have explicitly adopted Flexicurity principles. The Estonian Action Plan for Growth and Jobs 2005-2007 turned attention to the need to increase flexibility and transparency of the labour market. It defined flexicurity as an approach combining the well-being of workers and flexible labour relations through balancing relatively liberal labour market legislation with sufficient guarantees during the period of unemployment, and referred to it as the goal of the planned reforms and changes in the labour market. The Action Plan recognised that important progress had been made in improving the security of workers (e.g. implementation of unemployment insurance benefits in 2002), however increasing the flexibility of labour legislation had been left aside (even though it was the rigidity of the existing regulations that was found to be the main hindrance for greater flexibility of the employment market). It also highlighted shortcomings in regulations of rental work and a fairly small usage of flexible forms of work by both employers and workers (partially due to a lack of awareness).

It must be said, however, that the Plan's realisation has been postponed with regards to many aspects due to a change in government (the new government took office in April 2007).

In **Latvia, Lithuania** and **Poland,** a discussion on flexicurity has started only recently**.** In **Lithuania,** the national debate on flexicurity has basically started with the adoption of the Green Book of the European Commission. However, the positions of social partners have been very "classical". The employers insist on the need to make labour law more flexible and to take into account the changing situation which has rendered original legislative provisions out of date. The trade unions basically agree on the necessity to modernize labour regulations, but remain relatively conservative; they fear that excessive deregulation and reduction of general protection will hit most vulnerable categories of employees and create additional burden for the state. The Ministry of Social Security and Labour also takes a moderate position – it acknowledges "flexicurity" as a possible vehicle for softening rigid "Soviet-type" regulations, but strongly stresses the need for special protection for certain groups of persons with additional guarantees in the labour market: the disabled, youth, long-term unemployed, soon-to-be-retired persons, pregnant women, mothers, etc.

In **Latvia** and **Poland**, social partners have not yet defined their understanding of the concept. In the former country it is the Ministry of Welfare which is the driving force promoting discussions that take place mainly within the Tripartite Co-operation Council. In Poland, social security and flexibility of the labour market are perceived as opposite phenomena (not only by the trade unions, but also by the government); thus – as there is no public debate on the topic – development of a coherent flexicurity model has been hindered until now.

Central European MS

In **Hungary**, the flexicurity debate is not run as such. Directions of the reform measures are a) introduction of flexible forms of employment (agency work, occasional employee's book), b) improved enforcement of labour provisions (inspection, prohibition of disguised contracts, sanctions, restricted health services), and c) reduction of labour costs regarding vulnerable groups (reduced social contributions). However, the adjustment of the Labour Code to the changing needs of the economy is impeded by the lack of political will due to the fear of conflicts.

In the **Czech Republic**, a very intensive public policy debate on lending even more flexibility to the labour market is under way. It has been inspired also by the EC Green Paper on modernizing labour law within the framework of flexicurity policies. The attitudes of the government and other social partners towards the content and challenges of this document are different in this country. The employers' representatives welcome the Green Paper and express support for the further legislative steps in this field. In contrast, trade unions perceive it as a unilateral pressure for reducing the protection of standard employees and ignoring the importance of collective bargaining to determine corporate flexibility. The Czech government formally accepts the principles of flexicurity and in addition to social system reforms it is also planning conceptual changes in labour legislation, aimed at the further liberalization of industrial regulations.

In **Slovakia**, the model of flexicurity, until now, is not widely recognised and discussed. The discussion about flexicurity and its specific models is limited to a restricted and narrow circle of experts, who usually discuss the Danish model of flexicurity, but do not think that it is applicable to Slovakia and its social conditions at this moment in time. It seems that security of job/employment to be ensured by the employer is preferred to flexibility of employment/labour relationships.

Austria and Slovenia

In **Austria**, experts often speak of an escape out of the scope of labour law concerning atypical work or new forms of labour. Legislature tends to counteract this trend by extending social protection and specific, originally employment-referred, regulations also to non-employees, and to make an escape out of labour law therewith less attractive. In 2008, a new social security-related legal situation is coming into force, including stricter regulations concerning the declaration of new employees and additional protection for self-employed persons and quasi-freelancers. Current debates focus on illegal employment and already led to a reformation referring to nurse stuff providing 24-hour support for people in need of care.

In **Slovenia** the flexicurity debate has only just started aiming to design and implement integrated flexicurity strategies, taking into account the particular characteristics of its labour market, its specific challenges, opportunities and circumstances, with the active involvement of social partners. Common principles of flexicurity determined at the European Union level have to be taken into account.

A well-developed system of collective bargaining, high coverage (80-90%) and the possibility of open-clauses are the characteristics of the Slovenian collective bargaining system, which should be used in the context of developing the flexicurity approach in the regulation of employment relationships, also taking into account the special features of new different forms of labour.

Regulation of labour market and labour relations according to the flexicurity principles has to be based on a fruitful social dialogue, which is well developed in Slovenia.

Cyprus, Greece and Malta

In **Greece,** the term "flexicurity" became the subject of discussions between social partners, mainly because "Greek industrial relations lack a tradition of collective bargaining and a 'culture' of social consensus […] more specifically, the climate of tension between social partners is reflected in their diametrically opposed views on modernizing labour law around the concept of flexicurity".

In **Cyprus,** not much interest exists on the issue: "new forms of work organisation as a whole are still at the first stages of development and study, and have not been a particular subject of discussion between the social partners. In the same line, neither the employer organisations nor the trade unions have formed a framework of positions and proposals to directly address the question of flexicurity. As a result and despite the weaknesses of the present system, the reform of labour legislation to better protect all workers or to better conciliate flexibility and security for all, is not part of the public discussion."

In **Malta**, there is some degree of concern regarding flexicurity both for employers and trade unions, although flexicurity is also acknowledged as a way of accommodating family-friendly measures. In July 2007, the Deputy Prime Minister stressed that it was necessary 'to be flexible about flexicurity' as it touched upon national traditions and ways of working.

Romania and Bulgaria

In **Romania** during this legislative process, striking a balance between flexibility of labour relations and protection of workers has been a very important and intense subject of discussions for employers, employees and Government's representatives. Nevertheless the debate on flexicurity in Romania has been determined mainly by the social and political (European) context. There seems to be some interest, though more theoretical, regarding flexicurity in Bulgaria as the main discussion focuses more on important preconditions such as sound macro-economic policies, favourable business environment, developing and supporting the full growth potential and ensuring the necessary financial basis for public services and labour market policies.

The public debate on flexicurity was strengthened in the last few years prior to the accession of **Bulgaria** to the EU. At the end of September 2006, the Government and all representative trade union and employers' associations concluded a Pact for Economic and Social Development valid until 2009, including important objectives such as: developing social security relations and raising social security payments in compliance with the EU targets for adequacy, financial sustainability and modernization; improving working conditions and the protection of labour and social rights of employees; conducting effective social dialogue – to be carried out until the end of 2009. But sustainable and successful labour market policies including coordinated approaches between social partners and government remain a challenge.

Italy, Spain and Portugal

In **Italy, Spain and Portugal**, there was a tradition, explained mostly by historical reasons, of State protection of the individual worker, which produced rigidity in the regulation of the use of manpower. This rigidity caused many problems after the impact of the successive economic crises in the 1970s and 1980s, becoming a factor that explains the erosion of employment and the difficulties of undertakings to adapt to changing and more competitive environments.

Under these circumstances it is not surprising that national governments and Parliaments opted for allowing an easier and extensive use of this kind of contracts, as a fast and simple way to introduce elements of flexible human resources management. More specifically, during the 1980s and the 1990s fixed-term contracts were strongly used to fight the very high unemployment rate that the labour markets suffered during those decades. In this way, fixed-term contracts were specially used by young people and women who tried to access employment for the first time or to reincorporate to labour activity.

More than "flexible labour law" we have found "flexible forms of labour" as the core of employment policies during this period. In all three cases, new forms of labour are among the most relevant issues in all discussions about labour relations and economy. The introduction by the European Union of the concept of flexicurity has somehow affected the debates about labour market regulation, breaking the traditional dilemma of flexibility versus workers' protection. It is interesting to note that a change of trend can be found in some MS, where legislative changes have followed the direction of limiting the use of atypical contracts of employment, and improving their working and economic conditions. Quality of employment is now a priority for governments and social partners, as labour market segmentation is a problem at least as serious as unemployment.

United Kingdom and Ireland

There is no common position on flexicurity in **Ireland** and in the **United Kingdom,** with a strong measure of support for the principle in Ireland, and scepticism in the United Kingdom. In Ireland, the Irish Congress of Trade Unions has recently begun to take up the issue of flexicurity, arguing for an approach along Danish and Dutch Lines. The latest national pact, signed by the social partners and the government used a flexicurity model in defining new protection rights for workers in relation to job loss and a strengthening of the labour inspectorate. In the United Kingdom, in contrast, the debate on flexicurity is not dominant, as the main discussion, at trade union level, has been around the demands for protection of agency and other 'vulnerable' workers. The employer side is similarly cautious, with the Confederation of British Industry issuing a statement that it 'has been active in flagging up concerns over the 'creep' of the flexicurity agenda at European level' and that its position is that, 'while the system may work for Denmark *et al*, it would be inappropriate to impose it as a rigid template for other MS, particularly those such as the United Kingdom which have achieved consistent success through a flexible labour market which has produced high employment rates'.

Scandinavian countries

In **Denmark** the labour market is considered to be generally flexible and there is little concern about the emergence of special forms of flexible employment patterns such as temporary employment contracts, part-timers, self-employed and other forms of non-standard employment patterns.

The Danish model clearly in this respect differs from the Swedish and Finnish models that are based on a stronger employment protection for employees. On the other hand, in these MS we find more employees employed on atypical, mainly fixed-term contracts. Both in **Finland** and **Sweden** much effort has been put in solving the matching problems in redundancy situations. In Finland this problem has been tackled by special rules concerning individual employment plans, re-education and training etc., after the notice on redundancy.

In Sweden the policy of the new government is to put people into work and to reduce the length of the unemployment period. It has introduced special general rules concerning a well-functioning labour market where the level of benefits have been cut to some extent, but the costs for labour market insurance (membership fees in the trade union and its unemployment funds) have increased. A clear problem in Finland and Sweden is that in remote areas in the northern part of these MS there are clearly higher percentages of unemployment than in the southern parts. Therefore, the efficiency of the labour market agencies are certainly tested in such circumstances.

Belgium and Luxembourg

In **Belgium**, flexicurity is not considered mainly because the law is already flexible. The main reason why this does not lead to a broad social debate is that, in Belgium, the policy is mainly carried out by the social partners. Every two years they negotiate upon cross-industry agreements with the government. This is a gentlemen's agreement in which principles of the policy are drawn up which can afterwards be implemented in collective agreements. Eventually the government implements these principles in legislation.

In the cross-industry agreement 2007-2008, two issues in relation to flexicurity were written down. On the one hand, an insistence on relaxing rigid legislation concerning part-time employment, which is currently so complicated that it deters employers. On the other hand, a petition to take into account the length in years of service of employees with a fixed-term or temporary contract whenever a standard employment contract should be agreed.

In **Luxembourg**, even if some important changes have occurred during the last years in the debate on flexicurity, this country still defends a rigid labour law and the open-ended contract as a model.

France, Germany and The Netherlands

What seems to differentiate MS is that some have decided to limit flexibility to atypical contracts of employment, refusing to adopt more flexible conditions for dismissals. As an example, the **German** way of flexicurity favours internal flexibility and rejects the support for a move to the *hire and fire model.* Instead of liberalising the German dismissal protection law, external flexicurity has been enabled by admitting the limitation without justifying cause until the maximum period of two years. Since May 1st 2007, no justifying cause is required for fixing terms up to five years, if the employee has completed the age of 52 and was unemployed immediately before the beginning of the fixed term *for at least four months.* The German legislature also favours internal flexibility by providing employees the right to reduce the agreed working time. External flexibility was also achieved by extending the possibilities to use agencies. Restrictions no longer exist on the loan of temporary agency workers.

In **France**, different ways of flexicurity have been experienced through the years. The traditional way has been to admit atypical forms of employment with fixed-term contracts and agency work. More recently, the French legislator has introduced in August 2005 more flexibility with the "Contrat nouvelle embauche" (CNE, New recruitment contract) as a new type of open-ended contract intended to improve the employment situation. It has been explicitly presented as an implementation of a flexicurity approach. While the CNE allows the employer to fire at will during the first two years of employment without any specific procedure, some rights are granted to the workers: a compensatory allowance at the end of the contract, plus a daily specific unemployment benefit during one month.

Submitted to huge criticism, criticised by courts and by the ILO, the CNE has been de facto abolished by a recent (January 2008) cross-sectoral collective agreement signed at national level to modernise the labour market. Among others, this agreement reduces the seniority condition to benefit from supplementary sickness benefits and introduces a possibility to terminate an employment contract by mutual consent. The collective agreement also creates a new form of fixed-term contract, specific to projects involving managers and engineers and having a minimum duration of 18 months and a maximum of 36 months. Last but not least, the collective agreement organizes the transferability of some rights such as the company sick pay scheme which an employee made redundant is entitled to for a maximum duration of 1/3 of the right of unemployment benefits.

In **The Netherlands**, flexicurity has also taken this form in particular in the *Wet Flexibiliteit en Zekerheid* (*Act on Flexibility and Security*), the so-called Flexwet (Flex Act) adopted in 1999. This act achieved flexicurity through atypical (mainly temporary employment) forms of contracts. The law allows greater flexibility in temporary labour contracts on the one hand, while at the other it gives more rights to temporary workers.

Recently, the Dutch government has introduced new proposals which give a new orientation to the flexicurity debate. The basic intention of the proposal is to increase flexibility on the labour market by making it easier for employers to dismiss workers. When it is easier to fire workers, it is easier to hire workers, so runs the argument. This will open up job opportunities for groups who are now excluded from work. It will reduce the gap between those in preferential and those in precarious positions. It will also make transitions easier between work and education, work and care, work and inactivity, and vice versa. The most important changes the government proposes are:

- abolishment of the system of dismissal permits by courts or public employment offices;
- adaptation of the system of financial redundancy schemes
- better facilities for training of employees to strengthen their employability and increase their chances on the (external) labour market, especially in case they are threatened with dismissal; redundancy payments after a dismissal should be transferred to training measures before the dismissal;
- extra training facilities also for temporary workers, including agency workers.

The proposals of the government have aroused a lot of debate; within the coalition, within the parliament, in the media and among the social partners. The social partners hold opposing views as regards these proposals. Actually, the debate is still ongoing. Parties are searching for a compromise. As this report was written, the latest news was that the proposals have been withdrawn by the government, which has then set up a committee to further investigate alternative options to get more unemployed persons back to work.

VIII - CORE LABOUR RIGHTS AND NEW FORMS OF LABOUR

In this section of the report a number of issues are dealt with, focusing on so-called core labour rights and their relationship with new forms of labour. Specifically, two basic issues will be analysed:

a) Whether or not core labour rights may be concluded to exist in national legislations, applicable to all workers regardless of their employment relationship.

b) Whether or not a European level action would be feasible in order to grant a common floor of rights for all European workers, by means of harmonising minimum protection levels, and what the content thereof would be.

The development of these ideas has been based on the analysis undertaken on national legislations in the 27 MS, the evolution of labour law and the legal effects of regulating new forms of labour. That is, the regulations governing employment contracts and other forms of contractual arrangements to provide services under private law, identifying common features and pointing out differences, using the traditional instruments of comparative law.

As the purpose is to identify all diverging and converging solutions, the analysis will be transversal, affecting the different aspects of these regulations. A double comparison will be made: first of all, between MS, analysing the way they deal with these forms of employment and which answers they have found to the problems they give rise to; and secondly, within MS, between the legal and contractual regulation of standard and non-standard forms of labour.

1. The existence of core labour rights for all European workers

The concept of "core rights" is in itself far from clear and it can have many different meanings depending on the context and the user's priorities. The concept has been used mainly in debates about globalisation and labour rights, and it refers to a system of universal rights to be granted to workers worldwide and to be used as a reference for the definition of fair labour standards in trade agreements; in this meaning, "core rights" means a very basic floor of rights, enforceable even in non-developed countries.

Core labour rights appear from the need to extract a more selective list of labour rights from the generally long lists of rights contained in different international Declarations, Charters and Agreements. The size and general nature of these lists leads to a difficulty to implement them in practice and even to their loss of legitimisation.

The discussion regarding the existence of core labour rights belongs to the sphere of doctrinal construction: it is an intellectual development, however intense in the last few years. Several authors have championed them for some decades.

Besides this theoretical debate and the proposals for criteria to determine what these core rights would be, regulation instruments exist in international practice that contain a list of minimum, basic or core rights, depending on semantics. Thus, ILO agreements establish some of them[49]. These legal instruments, widely ratified by the world States – though not by all – would establish ILO core rights, obliging the States that have ratified them – most, though not all.

[49] Especially, ILO Agreements 29, 87, 98, 100, 105, 111, 138 and 182.

In the **1998 Declaration**, **ILO** states **four core rights**: non-discrimination; freedom to work and prohibition of forced labour; prohibition of child labour; freedom of association for workers and collective bargaining. This perspective is of little use in the context of this report, as we are dealing with the European region, where these rights have been in force, and with high standards of content and protection, for decades.

The concept of "core rights" has also been used by **International Private Law** as a way to identify the bulk of national law to be applied to contracts of employment when there is a situation of conflicting laws; under this perspective, core rights mean a kind of public order in labour relations that in practice involves most if not all compulsory rules set up by state legislation and collective agreements. This is the perspective which is used, for instance, in the case of posting of workers in the framework of the provision of services. The content and performance of the labour rights contained in International Treaties are different from ILO recommendations, although they are both inspired by the same sources.

Clearly, the debate is large and the approaches are very different, depending on the foundations, nature and criteria used to define what these core rights are. Hence, the lists of core labour rights are far from converging.

From the perspective of this study, the question is whether or not comparative analysis shows that **all workers, regardless of the kind of contract or employment relationship they hold, do share some common rights, which are legally recognized and enforced**.

This analysis is complicated when dealing with standard forms of employment, due to the profound differences to be found among the MS' labour laws as a consequence of their different legal traditions and cultures, and diverse experiences with labour relations; differences which have grown much larger in an enlarged European Union. With non-standard contracts of employment, the situation gets even more complicated as each legal scheme has faced them in their own way. But if we want to identify common standards for both contracts of employment (typical and atypical) and other private-law contracts to provide services, the task appears to be almost impossible. Nonetheless, an attempt will be tried to answer this question, using the information and analysis collected at national level.

2. Common labour rights for all European workers

Member States have found the construction of a universally valid system of rights which could apply to all citizens active in the labour market particularly difficult, regardless of whether they are employed by standard and non-standard contracts of employment, and even for those performing their services through contracts under civil law. In the MS, the treatment of contracts of services excluded from labour law but close to the status of dependent work has followed three paths which are not necessarily alternative:

a) to fight against false self-employment, analysing the real conditions of work and identifying the underlying contract of employment;

b) to create new intermediate categories between dependent and self-employed work, usually known as "semi-dependent work" or the like; this solution, which has been known in some MS for decades, is gaining impetus in the last few years, and the number of labour laws recognizing it is growing;

c) to improve the status of those on self-employment, by recognizing for them a set of rights enforceable both on the State and on their clients;

In academic circles, the debate has already existed for some years regarding the reconstruction of labour law in order to include within its scope these other contractual schemes allowing the provision of professional services by individuals. According to this idea, a new organisation is needed, following a model of concentric circles according to which the number and extent of rights recognised by labour legislation will increase progressively from the outside to the inside circles. The centre of the system will be occupied by workers under a contract of employment, to whom the whole labour legislation and collective agreements will apply. There is also a second circle formed by semi-dependent workers, to whom labour legislation will be partially applied; and a third and external one, formed by the self-employed, to whom only some rules in social protection and safety and health will apply. A common ground of fundamental rights will exist to be applied to all workers, regardless of the circle they are positioned in.

This would imply **the transition from a model of labour law based on the regulation of the contract of employment to a model in which the objective is to regulate a wider array of situations** having in common the existence of a contract whose objective is the provision of services by an individual. The contract of employment would still be a central element, and its regulations would be applied to other contracts or at least inspire their own regulation; some rules would apply to all people working on a personal basis, as a common law for all workers; and others will be tailor-made for each group in the labour market.

Following the same idea, it would be useful to define a system of rights for citizens who are active in the labour market, regardless of the kind of employment relationship they have: standard, non-standard, self-employment or semi-dependent workers.

According to national labour laws, active persons enjoy a number of rights of various natures, sources of regulation and persons obliged to fulfil them. These **rights affect both dependent workers and other groups of working people**, and can be **classified** in the following way:

a) Contractual rights

b) Labour market rights

c) Social protection rights

d) Enforcement rights

e) Collective rights

2.1. Contractual rights

The first group of rights is formed by those that we have called “contractual rights” because they make sense only in the framework of a contractual relation, and demands the presence of a counterpart to be effective. The term being used here, “contractual”, does not mean that these rights are set or regulated by individual contracts, either of employment or for the provision of services. On the contrary, **these rights are set mostly by state legislation**. These rights include, of course, the payment of wages, the guarantee of safe and healthy working conditions, a usage of time by employees that is compatible with their private life and the fulfilment of civil and family duties. Income security, good working conditions and perspectives of a professional career are ensured by attributing the employer the correspondent obligations. For dependent workers, this technique is massively used, and labour law’s performance is based on the distribution of duties and burdens among employers in the labour market.

Contractual rights are enforced through a number of different instruments such as labour courts or arbitration systems, pressure from trade unions and control and sanction by labour authorities. All of them involve forcing the employer and the employee to fulfil their mutual obligations.

Contractual rights make sense when there is a counterpart to be held responsible for the fulfilment of their respective duties. This is the case in all kinds of contracts of employment, where the employer is the primary and exclusive entity responsible of them.

The problems for non-standard workers start when there is no clear counterpart to put these contractual rights in practice. This happens, to some extent, with **temporary agency workers**, whose trilateral employment relation can hinder the attribution of contractual obligations to each of the employers involved; special legislation on this peculiar form of employment has adapted common labour law to this situation, granting the effectiveness of contractual rights for workers by clearly dividing the employers' position among both.

The same problem exists in cases of trilateral employment relationships other than agency work, such as forbidden employee leasing or merchandise, which in most cases are deemed illegal due to the risk or fraud they entail by hiding the real responsibility for these rights. This also explains why there is a general tendency in labour law to identify the real employer in all situations of provision of services under a contract of employment.

When no contract of employment exists at all, the undertaking using the services of the **self-employed** does not qualify as an employer and, consequently, no one is responsible for the execution of contractual rights. Common law of contracts does impose some duties upon the user of the self-employed person but they tend to be too weak in juridical terms, trying to find a balance in protecting the interests of both parties based on the freedom of contract and on the equality of both. Moreover, the legal instruments used to put them into practice –usually through common law or civil courts- are by and large inadequate. Besides, the kind of link between both of them, self-employed and user, does not justify in most cases the presence of a strong bond that assigns them with a large number of rights and obligations.

A different situation is that of semi-dependent or **economically dependent workers**. The fact that their contractual link is outside labour law does not impede the presence of a strong, consistent and durable relation with their client. In material terms, the economic dependence from the user is similar to the dependence that exists between a worker and their employer. Therefore, a number of duties can be imposed upon the client or user, improving the legal status of these workers and making them come closer to the situation of traditional workers under a contract of employment: some measures to ensure the balance of the economic results for both parties; some contractual stability; some responsibility for the physical conditions in which the services are performed; more formality in the contract among self-dependent workers and the undertakings using their services, etc.

This has been the technique used in those MS where this peculiar category has been granted a legal status. Anywhere else in the Union, the traditional situation is still enforced, with implementation of the labour system and its regulations to those qualifying as dependent workers, and non-implementation as a whole to all others.

Real self-employed persons working for the market, with no clear economic dependence, gives rise to different problems since the application of labour law, directly or adapted to its specificities, is not an option. This does not mean that **pieces or even sectors of labour legislation could not be applied in their relation with their clients**. In fact, this application has already taken place in some aspects of their economic and professional situation, such and social protection and safety and health measures.

This solution could be extended to other aspects such as grievance procedures, protection or loans in case of insolvency, information about contractual conditions and the like. But in other cases, **an adaptation of the common law of contracts should be considered as a better option.** Such an adaptation should not be regarded as a too radical or difficult option. In fact, this is what labour law intended during its first stages in history and is something that is still happening today in fields such as consumers' contracts and contracts to provide communications services.

The fact that the real self-employed persons do not have someone being identified as employer and, hence, someone responsible for their rights, does not mean that in some cases such responsibility cannot be found. This occurs typically in the case of triangular relationships such as subcontracting. For instance, in the field of **safety and health protection** the responsibility can be transferred to the employer or person controlling the workplace; this person will usually be the employer for employees working there, but for those who are self-employed the employer is just a client. Nonetheless, the fact that the level of risk at the workplace is controlled by employers places this responsibility on employers, even if they are not the employers of these workers.

The dual situation of employees hired through a contract of employment and that of civil servants is a **good example of this first level of rights**: being in a similar situation from an economic point of view, their legal statutes vary substantially because of the type of link they hold with public employers. However, both groups of workers share a common element, the existence of an employer, and therefore there is the possibility of ensuring and enforcing contractual rights. In practice, their economic and working conditions are very similar, after a process of mutual influences by both labour and public law; from a legal point of view, however, their situation is completely different.

It is important to underline the **situation of civil servants** in this context: although they tend to be ignored in the debates about atypical work under the assumption that they are excluded from labour law and, besides, their employment is usually for life, the situation in practice does not always follow this scheme. In fact, in many MS the performance of the public sector acting as employer profoundly affects the situation in the labour market, increasing the presence of non-standard contracts of employment. This mainly happens when it resorts to private-law hiring as a way to avoid the rigidities of personnel management of civil servants; in many cases, private law contracts of employment are a way to hire employees on a fixed-term basis in the public sector. Moreover, in many MS public law envisages some types of non-permanent status for some civil servants who hold their position temporarily although under an administrative law status. The use of other forms of non-standard contracts in this sector of the economy, such as agency or on-call work, is not that common.

2.2. Labour market rights

These rights are exercised not in within a contract of employment but during the workers' stay in this market, either during the transition from education to work or during the different transitions from one job to the next. These rights appear in diverse areas, starting from the right to enter the labour market and to seek employment, either dependent or self organised, which is a fundamental economic right in all European constitutional traditions, and which the European Union has included among those granted by its own legal order: **Article 15 of the European Charter of Fundamental Rights** confirms that "*everyone has the right to engage in work and to pursue a freely chosen or accepted occupation*", whereas under article 16 "*the freedom to conduct a business in accordance with Union law and national laws and practices is recognised*".

These rights related to **accessing the market** in search of occupation are granted in all MS, normally by the Constitutions, but a European involvement in its recognition could be useful in order to foster the eradication of those limitations still existing in some sectors and activities.

Secondly, there are those related to **mobility** in the market, either internal or external, including the right to emigrate and immigrate, the right to information and support from employment services from other MS, the freedom of movement within each Member State and in the whole territory of the Union; the right to equal treatment in all this territory; the right to a coordination of national systems of social security. Article 15.2 of the European Charter states, "*every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State*". The prominent role of European law in this aspect of the legal status of workers is out of discussion and, hence, does not deserve more attention.

Another third group of labour market rights include those related to the **transitions** workers may experience in the market during their working life. In the new economy, labour markets should be regarded as the scenario were a number of successive transitions –from one work to another, from one profession to another, from dependent work to self-employment-, will be taking place. For these transitions, workers need support from agents and operators, who will provide the information, counselling and competences they will need to culminate these transitions. Placement, the first services provided by the State in the labour market historically is no longer that important, as new technologies are making it possible for labour supply and demand to come in contact and match without the need of a third person. Instead, counselling, detection of needs and strengths and planning are becoming more important. The access to self-employment which, among other aspects, means the creation of new enterprises, involves special forms of support, including financial aid, special taxation and financial treatment during the first stages of operation, and technical advice. Nowadays, this support is considered as a real right for citizens, and not just as an element of employment policies: to give an example, article 29 of the Charter of Fundamental Rights expressly recognises the right of access to placement services, stating that "*everyone has the right of access to a free placement service*". A particular aspect of these services supporting citizens in transit in this market is the vocational training of persons active in the labour market, both for updating their knowledge and skills or providing some completely new training to allow their recycling into new activities, including the creation of micro-businesses.

The importance of labour market rights is rising, in absolute and relative terms, as a consequence of the new roles this market performs in contemporary economies. Thus, the paradigm of flexicurity operates on the assumption that labour market will be efficient and will allow unemployed people to find new occupation in a short time, making the transition from job security to security in the market possible. The reduction of contractual rights, this being in practical terms the effect of most labour law reforms in Europe in the last two decades, **is counterbalanced by the growing importance of market rights,** defining a market citizenship for the active population in the whole region.

The main feature of these rights is that **the counterpart is in most cases the State**, setting the rules that govern the labour market and providing most services offered to both job-seekers and potential employers. This allows the State to provide to an ample group of persons, the trend being to all citizens. The regulation of both the freedom to provide services and the freedom of movement of workers entitles European citizens to enjoy some of these throughout the Union territory.

And the powers attributed to the European Union to intervene in this mobility of working people are rather important, making it possible for the Union to set common rules which would enable workers to effectively enjoy these rights. In this sense, labour market rights would be implemented with special intensity to those workers in non-standard employment who, in general, are characterised by a high rate of job rotation, alternating periods inside and outside the labour market.

2.3 Social protection rights

Another category of rights for workers are social protection rights, those affecting the possibility to get financial and material aid from the social security system and from private providers, including health care, unemployment benefits, pensions and the like. Despite national differences with regard to the systems and varied types of financial contributions, this is probably the field in which self-employed workers started to enjoy a status similar to dependent workers earlier. Currently, if they have not joined the same system as all other workers, at least they are included in a specific system for them, the protection of which follows the same path. Two models of social security dominant in Europe, the universal-Beveridge type and the professional-Bismarck type include the self-employed within their scope of application. And the counterpart in this case is the State, which has a wide array of instruments and techniques to improve and to adapt the protection each group of workers receives. In general terms, all workers tend to enjoy a similar standard of protection against social risks, and the enormous differences found in working and economic conditions between those employed under labour law and those employed under private law schemes tend to be smaller in this field.

In the case of semi-dependent workers, the protection granted by social security is usually similar to that of the self-employed, legally qualifying as such from the point of view of the public system.

From a formal point of view, standard and non standard forms of labour enjoy a similar level of protection from the social security system, except in those cases with rather peculiar contractual schemes –like short-hours, mini-jobs, training or insertion contracts- where less coverage is granted against social risks due to their special features or functions.

In practice, however, **some differences in the level and degree of protection occur,** once again as a consequence of the specific features they show: part-timers have smaller contributions to the system, and therefore get less protection; temporary workers need more time to qualify for those benefits that demand a certain time of contribution; most non-standard workers are excluded from private-pension schemes. Hence, some space still exists for some **intervention to improve the situation of these workers**, and the European Union could design some measures specifically devoted to this purpose.

The need to adapt Social Security systems to the new European labour markets, with a high presence of non-standard contracts and discontinuous professional careers has been accepted by most national authorities. Unfortunately, this reform has to be coordinated with the other adaptations imposed by financial problems: an elderly population, higher costs in health care and migration, which sets a heavy financial burden on these systems, demanding some measures in an opposite direction.

2.4. Enforcement rights

These rights are related to the legal instruments available to workers in order to have their rights and legitimate interests honoured. Labour laws have been traditionally characterised precisely by the ample availability of these instruments, both public and private, to put the rights recognized by statutory law and collective bargaining into practice. These include both administrative and judiciary bodies, as well as other practices of self-protection such as strikes and other forms of collective action.

The first of these rights is **the right to proper qualification** of the contract of services according to its real nature and content. Practice shows that in many cases the tendency exists to derivate ordinary employment relationships to non-standard contracts offering more flexibility and lower costs: false self-employment, abusive use of fixed-term contracts, false working time for part-timers, etc. As these contracts offer different levels of quality in employment and economic security to the worker, they have a legitimate interest in having their contracts adapted to their real content and nature. The legal system that distributes the roles and functions of each of these contracts also shares this interest in ensuring an adequate use of them, as an inadequate use of these causes serious imbalances in the labour market. In general terms, as national legal systems still operate in most cases under a system of rule (standard employment) and exemption (non-standard), the restriction of atypical work to those cases in which it is legally permitted is crucial to the working the system as a whole and for the fulfilment of the objectives of law.

The usual instruments to verify this nature have traditionally been the labour courts and the labour inspectorate, but these operate *a posteriori*, once the contract has been held and is under execution, which reduces their usefulness for those persons facing irregular employment. From this point of view, the availability of instruments to control and certify the real nature of contracts for the provision of services is crucial, such as those currently available to workers in Belgium and in Italy. This solution, with all the practical problems that these MS are suffering, seems in any case to be a good solution, and its extension to other legal systems by means of European legislation could be adequate.

There are other instruments to make the right to the proper qualification of the contract of services effective, such as the exercise of the supervisory powers of trade union organizations; a stronger involvement of labour inspectorates, which would mean proper staffing and better technical equipment for them; the cooperation between all public administrative bodies involved, including labour inspectors, employment offices and social security administration; and the like. But the complex situation existing today would probably demand an improvement generalized to all MS, in which process the European Union could hold a leading role.

A proper enforcement of rules governing employment and services contracts should include **stricter sanctions** in the case of ill-use of the different models of employment, including fines, loss of financial aids and payments to those workers affected as indemnity, and a better performance of administrative bodies in charge of control.

Enforcement rights include the availability of means to have an adequate judiciary response in the case of contractual infringements. For dependent workers this means the access to labour courts (Germany, Spain) or to the special procedures within ordinary civil courts (Italy), with a better performance in comparison to those available for other citizens. The access of the **self-employed** to these judiciary instruments is also a good way to ensure them a proper exercise of enforcement rights, but is still rather unusual.

This is the case for semi-dependent workers in most MS where such category exists (**Germany, Italy, Portugal, Spain, The Netherlands**). Juridical conflicts with their client-employer can be solved by labour courts instead of the civil courts which self-employed workers are forced to use. In fact, it was in labour procedure legislation where this category was initially conceived, as the Italian experience with the so-called *paralavoro (*literally "parawork"*)* shows.

The recognition of these rights related to the enforcement of other legal and contractual rights is a decision of the state, and therefore its reinforcement, extension to other groups of workers and adaptation to the special needs of non-standard forms of labour is relatively easy to put into practice. There are of course a number of problems for such a solution, but from a technical point of view action in this field is probably easier than in the other ones analysed so far. A better funding for both the labour administration and the judiciary would be necessary, of course, as well as a profound transformation of the rules governing the organisation of the courts and the procedures used by these.

More complicated is this extension in the field of **mediation and arbitration processes** set up as an alternative way to the labour courts. For self-employed and semi-dependent workers, access to these systems is a good idea, especially for those who are still banned from accessing the labour courts. The problem is that these systems have usually been put into practice by collective agreements or other legal instruments signed up by trade unions and employers' associations, which do not represent these groups of workers and, therefore, these systems are not applied to them. Hence, a new generation of agreements establishing similar systems is needed, bargained and signed up by organisations representing these particular groups of workers. Public authorities, which in many cases have promoted the establishment of these systems for dependent workers, should have the same activism in the promotion of the same solutions for those non-standard workers excluded from labour law.

2.5. Collective rights

A last category of rights enjoyed, to a different extent, by workers is that formed by collective rights. These are a distinctive feature of labour relations from their origin in history, and the recognition of collective rights to workers and of the role of trade unions and employers' associations in economy and society is a central element of the European social model.

In this field, **profound differences exist between dependent and non-dependent workers**, the former being the only ones entitled –together with civil servants- to specific freedom of trade union. This being a fundamental right, **no differences are allowed to be made between the different groups of employees, standard and non-standard,** although in practice the latter show lower levels of involvement in union membership and activism.

The role of collective agreements in adapting European labour law to the changing labour market, workforce and forms of employment is essential, and measures should be taken in order to improve their performance in a number of issues: degree of coverage, treatment of non-standard workers, mechanism to ensure the fulfilment of legal obligations, etc. The guiding role of European-level agreements is a major asset in order to reach this goal.

Non-dependent and semi-dependent workers enjoy, on the contrary, the ordinary freedom of association, subject in most MS to a different regulation than the freedom of trade union. In some MS, however, this different regulation is not recognised, with all kinds of workers entitled to the same freedom of association. In any case, the content of both these fundamental rights does not show profound enough differences so as to produce a completely separated legal protection.

The differences between dependent and non-dependent workers exist overall in the field of **collective action**, where the former enjoy some highly protected rights that are unknown to the latter. The rights to strike and to bargain collectively are typical and exclusive of those working under contracts of employment and civil servants, and find no equivalent in private law contracts. An interesting path to explore is the adaptation of those rights linked to organised collective action to those non-standard workers excluded from labour law. This option has been followed in **Spain** in its recent regulation of semi-dependent work – "trabajadores autónomos dependientes" (dependent self-employed workers) - in the framework of a general regulation of self-employment. The new 2007 Act establishes the application of so-called "professional agreements", signed up by their associations in each sector of economic activity.

Nonetheless, in this task we face a serious legal obstacle, which must be carefully considered. This obstacle is, paradoxically, European law. As commented earlier in another chapter of this report, the European Court of Justice has at this moment placed the traditional trade unions' instruments of collective action and regulation under close scrutiny –in cases such as **Laval, Viking or Albany**-, considering them in some cases incompatible with European legislation on economy. Although collective agreements have been recognized as exempted –for social reasons- from the application of competition law, recent case law has questioned the lawfulness of collective action when an undertaking's economic fundamental rights were affected. In this context, the mere possibility of having professionals who do not legally qualify as workers acting together to impose working or economic conditions to their potential clients simply seems to be out of question. The opportunity of European intervention to face this problem is clear, and this should take place both in the fields of fundamental economic freedoms, competition law and labour law.

Once more the major responsibility in recognizing and improving these collective rights lies in the State, which may adjust the legislative framework in force in order to improve the performance of collective bargaining and to allow collective action to the semi-dependent and self-employed. Here, nonetheless, the interests of other people should be considered, as they would be affected by such measures: employers and their associations, but also potential user and clients.

3. Applying a core labour law at EU and national levels

The question of a core labour law in Europe is a central one in all debates regarding the role of European authorities in the development of labour relations and social protection in MS. The idea of a European Social Model, now generally accepted and included in European law, is based mostly on the existence of some similar measures and regulations, sharing the same objective of protecting the worker from employers and from the market,

The literature on this topic is enormous, and this debate has been ongoing for decades. Firstly, in order to find out whether this common model of labour law existed and to define it. More recently, the existence of the European social model and the need to take appropriate measures to protect it is no longer discussed, due to competitive pressures in the context of the EU enlargement and the impact of economic globalisation. The role of the European authorities in the development of labour law has always been discussed in the framework of the existence of a core labour law in Europe, and this has been considered a central element in the so-called "European social model". The terms of this debate have been changed after the last Union enlargement process, in which a large number of States joined the organisation, some of them coming from a different political and legal tradition.

Focussing on those forms of work which technically qualify as contracts of employment, and which do not include all possible forms of non-standard employment as we have seen throughout this report, the first conclusion is that **legal systems in Europe tend to guarantee equal treatment for atypical employees regarding most legal and collective-bargained rights**. The tendency is thus towards uniformity of the legal status of all workers, the difference between them focused on a given aspect of their employment relation: the duration of the contract and, as a consequence, the regulation of dismissal; the amount of work being agreed upon; the availability of the worker to be sent to different workplaces; and the like. From the point of view of labour law, these contracts are different from the standard type in, and only in, those features that precisely identify them as non-standard.

In this particular case, a positive effect of European legislation can clearly be identified, the implementation by MS has generalised the application of the principle of **equal treatment**, at least where **fixed-term contracts** (Poland, Austria, Germany, Italy, Malta, Spain, United Kingdom, among others), **part-timers** (Germany, Italy, Portugal, Spain…) and **telework** (Greece, Hungary, Poland, Portugal, Romania, Slovakia, Slovenia) are concerned.

There is also a general tendency to restrict, or at least to control, the use of these forms of employment, the standard contract operating not only as a model but as the prototype, subject to a legal preference and promotion.

The exemption, from this perspective, is **part-time work** which is no longer subject to a legal framework stating the cases in which it can be used by undertakings (as used to be the case in many MS); in a clear majority of the MS under analysis (Austria, Bulgaria, Germany, Hungary, Latvia, Malta, Romania, Poland, Slovakia, Slovenia, Spain, The Netherlands, United Kingdom), there is no time limit to minimum daily or weekly hours concerning part-time work; so the decision lies in the hands of the parties of the employment contract. Only in a small number of MS (Belgium, Cyprus, Lithuania) various time limits exist (minimum daily or weekly hours) in order to employ a worker on part-time basis.

Telework is another peculiar case since legislation of this employment form is more concerned about the guarantee of the freedom of the parties to accept it rather than limiting the cases in which it can be used (Greece, Hungary, Poland, Portugal, Romania, Slovakia, Slovenia).

As a rule, the comparison to be made is not on non-standard forms of labour across different MS, but between standard and non-standard contracts within each one of them. The economic and legal rights of these workers are determined by referring to standard workers; or, and this is probably a more accurate perspective, the bulk of labour legislation applies equally to all workers, and only some differences are tolerated as a consequence of the special features of the contract.

The existence of non-standard forms of labour excluded from legal rights is only an exemption. This applies to some peculiar contracts such as the “small hours contracts” (i.e. part-timers with notably small working hours); these contracts usually get a special treatment under social security legislation, implying a weaker protection from the public system. Such types of contract, also known as “mini-jobs”, are recognized and enjoy specific regulation in MS such as Austria, Czech Republic, Germany, Slovenia and United Kingdom.

In other cases, no protection against dismissal is granted either as a consequence of the temporary nature of the contract. And in other cases, the differences are a consequence not as much of the contract’s features, but of another element linked to it, such as **seniority**: many temporary workers do not have access private pension schemes or protection against unfair dismissal because they lack the seniority needed to qualify for these rights.

Younger workers – and newly arrived immigrants - will suffer these consequences because they lack seniority, which is very important to some purposes in certain MS.

In the case of **migrant workers**, the situation everywhere in Europe is roughly the same: equal rights under the law for those enjoying a legal status in the Member State where they live and work, and a reduction or lack of rights if they qualify as illegal aliens. Illegal employment sends these workers to the field of irregular economy, where legal and contractual rights are not enforceable. Irregular immigrants qualify for some social services, including a partial protection by the social security system, but not for contractual and labour market rights, whereas legal foreign workers have all rights granted in equal terms as national workers. This general rule is based on the compromises assumed by MS from international law, mostly treaties on human rights and international labour law –such as ILO convention n.97-, but also as a consequence of public authorities' strategies regarding the labour market logic. A discriminatory treatment for migrant work would produce a distortion of competition in this market, with some workers –those of a foreign origin- being more economic and flexible for employers than others –national and EU workers-. This effect is nonetheless taking place in many MS where migrant workers accept lower wages and worse working conditions; however, this is causing segmentation in the labour market rather than a real distortion, as they concentrate in those layers of the labour market from which national workers exclude themselves.

Problems still exist with regard to the impact of migration on European labour markets and difficulties to manage a multicultural workforce, with different cultural backgrounds, religious beliefs and personal experiences. These problems are forcing labour law to adapt itself in issues such as the recognition of religious diversity, in which a general prohibition of discrimination is not enough and further measures are needed in fields such as working hours and holidays, working uniforms, etc. The situation varies substantially from one country to another, depending mostly on the experience with this phenomenon, the composition of the labour force and the degree of pluralism in society. In most cases, the recognition of fundamental rights for all workers is sufficient, although in practical terms a closer involvement of state legislation and collective bargaining would be needed in order to guarantee a full inclusion of these groups of workers and their families.

In short, although equal rights are the rule and differences are the exception, the situation of non-standard workers is clearly worse than that of standard workers across Europe, as shown by this study. However, this is not a consequence of a partial or weakened application of labour legislation to them. What must be considered is that it is precisely the fact of being non-standard that affects these workers negatively: discontinuity of employment, in the case of fixed-term employees; insecurity regarding working and private life times, in the case of on-call workers; continuous change of working location and environment, in the case of agency workers, etc. Also, the ill-application of existing labour laws, particularly when an inadequate use of these forms of employment is made: "bogus self-employment", fake grounds for temporary hiring, worse conditions for part-timers and the like.

This second factor of precariousness can be tackled by public authorities and trade unions that can control and avoid abuses in the use of the different contractual arrangements available to European employers.

4. Exclusion of certain categories of workers from existing labour law

Although social legislation in the EU establishes, as a rule, the implementation of the (same) labour law to all dependant (or subordinated) workers alike, some examples can be found that may be considered exceptions. For instance, short-hour contracts, mini-jobs and others, where a reduced or partial implementation of the corresponding labour law and social protection may take place in comparison to standard contracts.

Another possible situation demonstrate contract schemes for **social integration, or integration through employment, in the framework of employment policies**. In order to promote the hiring of workers belonging to social groups with particular difficulties for employment, state legislation allows employers to employ them under different conditions, including lower wages and weaker stability in employment. But then again, non-application of general legislation is exceptional and reduced to certain limited aspects of the employment relation, the bulk of it being regulated by common law on employment contracts.

A recent phenomenon is the so-called "**occasional", or "casual work",** a new form of employment, which has been regulated in some MS (Cyprus, Hungary, Italy, Slovakia, Slovenia). These contracts, under different names and regulations, share the goal of protecting and promoting labour market entrance of undeclared and disadvantaged workers by increasing work opportunities; this effect is obtained thanks to a special legal status, far less protected than the general status enjoyed by ordinary workers.

There are some cases in which dependent work is excluded completely from labour legislation, if the cause for its provision is other than the typical one in employment contracts, the earning of a wage: this occurs with some kinds of trainees, work- experience contracts and voluntary work for NGOs.

A special legal status for work-experience trainees different from the contract of employment exists in some MS (Austria, Belgium, Czech Republic, Germany, Hungary, Ireland, Italy and Luxembourg). In these cases the status is technically outside the scope of labour law, and probably outside contract law altogether, and therefore the conclusion is different, as we are not dealing with workers excluded from parts of labour law, but with persons who are completely excluded from its scope of application. In some particular cases special arrangements were found to provide services in exchange for training and work experience, with no remuneration involved (Austria, Germany).

Another field in which non-application of general labour law can be found is that of services oriented to training or professional experience of **young workers inside companies**. In these cases, however, the trend seems to be the substitution of these traditional systems of employment contracts adapted to this goal, such as the different models of contracts for learning and training that are well known in most MS. These contracts are usually non-standard, generally for a fixed period of time, but for the rest they enjoy the application of labour laws (France, Germany, Italy, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, The Netherlands, United Kingdom).

Finally, a growing phenomenon in Europe is that of **voluntary work**, linked to the expansion of NGOs' and the impact of the values of solidarity. Persons working for these organisations on the basis of voluntary cooperation to help them reach their goals are excluded from labour law because they do not qualify as workers, their services not being the consequence of a contract of services or of employment. The legal situation of voluntary workers can be used as an example of the usefulness of the approach we have followed in this section.

Although they do not work under an employment contract, and therefore the NGO cannot be considered their employer, their importance in numbers and social impact has forced MS to progressively improve their conditions, granting them some status in special regulations for these activities. Spain is a recent example. This status includes **some social protection and labour market rights**, but also some **enforcement rights** and, in some cases, **contractual rights** which can be opposed to the NGO using their services. The organisation, though not part of an employment contract, is nonetheless responsible for the safety of the working environment, the appropriate training, etc. In these cases, these rights are inspired by the example of labour law; its techniques and institutions are extended to these people **even though they do not qualify as workers**. Clearly, this trend does not hinder the general tendency to professionalize these organisations, to have them operating close to the model of the enterprise or the public administration, with a workforce of employees under contract of employment and enjoying a professional status.

5. Towards a potential harmonisation of core labour rights including non-standard contracts

The possibility to extend the action and performance of labour law to all cases of professional activity is difficult in the European legislative tradition. The social, economic and productive reality has rapidly advanced in the last few decades, making social and commercial phenomena more complex. Trying to regulate these activities through labour law with principles and instruments it does not possess, is an arduous and probably useless task.

Nevertheless, the expansive strength (*vis atractiva*) of labour law has proved that it can cope with new realities where dependency on the employer is unclear and uncertain, such as in some of the non-standard forms of labour.

The extension of labour law to non-standard forms of work outside its natural scope is limited. However, this extension can be an option in some aspects of their legal status, which is in most cases currently rather weak and inadequate for the new economic and social context. Labour market, social protection and enforcement rights seem to be more feasible to match the status of the different categories of the working population, whereas contractual and collective rights face stronger obstacles. An intervention of the European Union authorities to harmonize and extend these rights could be helpful to improve the current situation in MS, by exchange of best practices among the Member States.

1. The first approach must be **prior experience** of European harmonisation[50] of non-standard forms of work: an experience that deserves to be considered as **positive**, as in many cases the existence of some common and legally enforceable rights throughout all MS is a direct consequence of the European Union's action in the social field. In fact, the presence of some basic rules regulating some kinds of contracts throughout the labour laws of the MS, and being common to all MS, can be explained solely as a consequence of European activism in this field, which goes back to the 1980s. Case-law of the European Court of Justice on the implementation of atypical work directives, although still scarce, also shows the ample possibilities of these regulations having a real effect on the legal status of these workers.

Even in MS with no tradition of strong legal protection for these workers or no tradition of legal intervention in labour relations at all, some direct measures to defend the status of some of these workers can be found, when implementing European directives.

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[50] Any potential harmonisation will be achieved, needless to say, with the traditional instruments of this legal technique, mainly European directives and agreements. With the European Parliament as an actor in the legislative process of the EU, the question surely deserves serious attention.

It is noteworthy that, as this study has clearly shown, those non-standard contracts which have been subject to European harmonisation (i.e., fixed-term and part-time contracts, telework) are precisely the ones to have a more extended regulation and higher levels of legal protection in general terms.

The case of **Temporary Agency Work** is paradigmatic in this sense: no general harmonisation has been attained in the past for these workers, and so the situation varies strongly from one country to another, affecting key elements of their legal status. The principle of equal pay, for instance, is a fundamental aspect in the well-being of these workers; due to the absence of a directive this right is not granted in many MS. There are, nonetheless, a couple of directives on this form of employment: i) on safety and health issues - Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship; and ii) another related to the transnational aspects of workers put at the disposal of user firms – Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. It is precisely in these two aspects of agencies' operations where a more complete and developed regulation can be found, improving the working and economic conditions of their employees, as a consequence of the requirement to implement both European directives.

2. Some **principles** stated in European directives are now basic rules in national regulations of these forms of employment: equal treatment between standard and (some) non-standard workers, except those aspects directly deriving from the special features of each non-standard type; proportionality in the treatment of standard and (some) non-standard workers; freedom to choose among alternative models of employment; restriction of some kinds of contracts to cases where their use is justified. These principles, which MS are impelled to implement in just some of these non-standard models of employment –those affected by the EU directives passed-, are in many cases applied to other contract types, having acted in practice as general principles on atypical work.

This is an important issue to be taken into account, because prior experience with European directives in the field of atypical work can provide us with some hints about how to face the task of providing a common ground to MS on which to build a more acceptable regulation of non-standard forms of work.

The visibility and efficiency of European directives and agreements is high, and further harmonisation therefore seems to be a possiblity if better conditions for non-standard forms of labour are sought. This does not mean European intervention is the only, or even the best solution among others to improve this situation. If a general conclusion of the present report is that non-standard forms of labour are a growing phenomenon affecting the performance of labour relations and the ability of labour law to effectively regulate them throughout Europe, there is a case for European institutions to get involved in framing a number of common solutions to these challenges.

3. The **problems** for such harmonisation are numerous, and have to be considered when proposing European intervention in the field of non-standard forms of labour. First of all, the resistance of some MS against any directive being approved in the field of labour law, due to their tradition to legally abstain from the labour market or as a consequence of their fear of losing their competitive advantage based on lower labour costs. This resistance, still effective despite successive reforms of the Treaty of Rome to facilitate the passing of regulations, will certainly rise against intentions to regulate these forms of employment at European level.

Secondly, regulation of non-standard forms of labour itself is particularly difficult and complex from the point of view of harmonising national legislation. This comparative report clearly proves this statement: the number of contract modalities, the ways they are regulated, the use made by labour and employment policies differ so much across Europe that it would be complicated indeed to find a common set of rules and principles to be implemented by MS. Even harder challenges arise from those extremely peculiar forms of employment which are not present in all MS and for which harmonisation is hardly a solution.

European authorities are aware of this difficulty, and have always faced the regulation of non-standard forms of labour on an individual basis, producing harmonised regulations for each type of atypical contract. This strategy has so far been successful with fixed-term contracts, telework and part-time employment, and a partial success–failure with agency work. Therefore, **partial and adapted intervention seems to be more appropriate and feasible, instead of a single far-reaching directive including all the different expressions of the phenomenon**. This implies specific and isolated regulations for each of the remaining forms of non-standard contracts that still lack European regulation; or, as an alternative strategy, a number of directives applying to all of these forms but only to a particular aspect of their regulation, such as equal treatment, economic conditions, access to training, safety and health or the like.

These potential problems must lead us to consider the possibility of other alternative ways of action. European law currently offers a wider array of legal instruments and techniques to achieve the same goal of inducing MS to apply the same solutions to the common problems, the open method of coordination being a good example hitherto. This means that there are other alternative means to have national labour laws converging in some common measures, which are less costly in political terms and probably more feasible in the short run.

The availability of soft-law instruments is also an alternative way to reach this goal, and should therefore be taken into account. The same applies for the leadership of the European Parliament in the promotion of certain legal changes in MS, by passing declarations and motions, as was the case in the fight against mobbing at the workplace, to give an example.

4. Another issue is the **scope** of such an intervention. So far, all European legislation on non-standard forms of labour has focused exclusively on the so-called atypical contracts of employment, without paying attention to other situations that are analysed in this report, such as self-employment, semi-dependent workers, migrant workers and illegal work. This does not mean that self-employment lies outside the scope of European law: on the contrary, a number of rules applied to these situations can be found in both original and derived law, such as the regulation of the freedom to provide services and in the system of coordination of public social security systems for migrant workers. Even at the level of debates promoted by the European Union (e.g. ongoing debate about the modernization of labour laws) or in the products of the open method of coordination in the field of employment policies, self-employment plays a major role as an instrument both to increase employment levels and to enhance the productivity and competitiveness of the European economy. However, no harmonisation exists in this field so far.

5. Regarding the **content** of harmonisation, a fact to record is that most of the solutions adopted by European law were not invented by European institutions, but rather extracted from pre-existing national practices which were identified as good solutions and extended to the rest of the Union by ways of harmonisation. In this report, some **practices and innovative solutions** have been identified and extracted from the practice of MS, and these could be used as the basis for action, as the content of a harmonisation seems to be rather clear.

As a result of the comparative analysis, Community intervention should at least cover the following decalogue general objectives to establish core labour rights at European level, with the aim of harmonising both either standard or non-standard forms of labour:

1. To guarantee **equal treatment** for the workers in their legal statues, compared to standard or typical workers; this means the same regulations, or different regulations with the same contents, with no other exceptions than those strictly deriving from the special features of each kind of contract; this includes protection against unlawful, premature or unexpected breach of the contract, whether it is an employment contract or another kind of contract to provide services
2. To eliminate factors that affect non-standard workers negatively in their **working and private lives** compared to workers under standard contracts;
3. To ensure an adequate level of **protection against safety and health risks at work** in all workplaces where any worker performs services, even when these services are contracted out to self-employed people;
4. To ensure the principle of **adequacy**: non-standard forms of labour are used only in as much as labour legislation allows to do so;
5. To effectively exclude **all kinds of fraud** in the use of non-standard forms of labour, particularly for those excluded from labour law; this means the effective control of the labour market by public authorities, controlling the use of the different kinds of contracts of employment and of services and their adequacy to their respective legal status (e.g. the obligation to give some kind of formality to the contract of services);
6. To ensure some minimum level of economic **security and sufficiency**, which includes wage protection and coverage of the social protection system adapted to the special features of the employment career of non-standard workers;
7. To **combat the discriminatory use of these non-standard contracts**, where the female workforce and workers belonging to other vulnerable groups in the labour market are highly present;
8. To offer all kind of workers, regardless of the nature of the contractual relationship they are in, an array of mechanisms to **enforce their rights,** set up in collective bargaining and statutory law;
9. To offer support to all kinds of workers during their **transitions** in the labour market, something which most non-standard workers will undergo continuously; that is, the right to support, counselling and access to training – within the context of protecting the expectation to arrive at standard employment - and hence, a number of different services provided by public and private suppliers;
10. To facilitate the organisation of these workers to defend their common interest through **collective representation and action.**

This course through the elements that could be used to prepare and agree core labour rights is based on the criterion of extending and specifying so-called standard employment rights – that is, for a subordinated and permanent employment relationship – to cases of atypical employment. An analysis of core labour rights reviewing the minimum rights established by standard contracts in national legislations across the EU has not been entered. The debate would require another dimension with regard to its legal foundations and would take up more space than available.

Moreover, it would entail a debate on the consolidation or availability of complex aspects of some of these rights (general working conditions, minimum or guaranteed wages, working time and distribution of working hours, amongst others) or the existence of new-generation rights, both individual and collective (access to lifelong training; real conciliation of working and personal life; personal data protection, etc.).

Finally, it must be stated that the possibilities of social legislation are not infinite: labour law cannot be requested to solve labour market segmentation problems on its own. On the one hand, European national legislations tend to guarantee an equal treatment for atypical employees regarding most legal and collective-bargained rights. The regulations implemented are practically the same with a few exceptions. However, living and working conditions are worse for workers under atypical employment contracts. Hence, the problem does not seem to be a reduced or weaker application of labour laws to these workers. On the other hand, the real cause of worse economic and working conditions lies precisely in the attractivity of these contracts meeting the needs of employers. Atypical forms of labour reveal new and legitimate requirements from undertakings with regard to the availability, organisation and relations with the workforce, whilst in other cases it hides the desire to decrease the cost of the labour factor.

A new effort must be carried out to find connecting points between the needs of production and work organisation and the rights that workers need, including new rights derived from the evolution of society. The lack of a meeting point between these two ambitions generates grey areas, legal loopholes, real inequality and defencelessness and, in many cases, an artificial business efficacy based on low wage costs that are unsustainable in the long term. Unfair competition between undertakings from Member States with diverging labour legislations and social dumping cannot be the way for the European Union and the domestic market to progress. A common and agreed system of core labour rights may contribute to lessen this trend, respecting the social progress made some time ago by most MS. The competitiveness and productivity of the European economy and its undertakings may require it.

IX - MAIN CONCLUSIONS

I. Impact of new forms of labour on the evolution of labour law and the consequences of the recent developments of labour on contractual arrangements

The first issue of the conclusions concerns the consequences of new forms of labour on contractual arrangements in the context of the traditional definition of workers and employees. The following consequences may be identified in this respect:

1. Increasing complexity of the legal framework: legal developments may be characterized by an increasingly complex, elaborated and polarized legislative framework in national labour laws. Besides, a notable difference still exists between open-ended, full time employment contracts and all other types of contracts, which are legal sources of flexibility. However, the border between these forms is less and less clear, due to the complex and rapidly changing labour regulations.
2. The boundary between employment relationships and non-employment labour relationships is slowly but steadily fading away. Occasional work, home working, training and apprenticeship contracts are suggestive examples of this process.
3. Uneven labour law protection: the labour law protection of individuals depends on the regulation of the given legal forms, which are rather different from each other.
4. Diminishing labour law protection: the essence of these new forms is that they bring relaxed labour law regulations in order to provide more flexible working conditions with the employer. Evidently, the labour law protection of workers in these new forms is weaker than it is in a standard employment relationship. This trend is experienced generally, rather than being a sudden change in most of the MS.
5. National labour legislations have created a long list of different legal relationships aimed at employment. As a consequence of the proliferation and detailed regulation of these new forms, labour law has to deal with rather different legal relationships and workers' protection. Thus, the main issue at national level is no longer the regulation of standard employment relationships, but rather the differences between the various atypical employment and non-employment relationships.
6. Consequently, the European level regulation of employment relationships is far from effective, since European Directives on employment relationships can reach only a smaller and smaller proportion of the working population. Conceptual changes of EU level legislation are necessary to improve the labour protection of the working population who do not have the legal status of an employee and to maintain the coherence within labour law regulation in terms of the various legal forms.

The evolution of the traditional notion of contractual subordination

The transformation of the traditional subordination bond clearly emerges in two fields. The main sources of changing subordination between employees and employers are organizational changes in the work structure (three way legal relationships) and greater independence/responsibility of the employee. Beyond these changes, the traditional subordination bond remained intact and mostly unchanged in employment and special non-employment relationships as well. Therefore, the real difference between employment relationships and special legal relationships is not the existence or lack of subordination but rather the labour provisions on the protection of workers.

In the case of three way legal relationships a "dual employer" situation degrades or transforms the subordination bond between employer and employee apparent in traditional employment relationships. In the case of temporary agency work, subcontracting and posting of workers the complexity of employment derives from the shared employers' responsibility, whose rights and obligations are divided between two (agency work, posting), or even more employers (subcontracting).

Weakening of the employer's direct control is a general trend in various employment and non-employment relationships. The worker is less subject or dependent on the employer as a consequence of a restricted right to order (home working and telework), flexible working time arrangements (e.g. flexitime) and stronger personal liability and relaxed relationship between the parties (civil law contracts, occasional work, etc.)

These workers are less firmly subordinated in legal terms; however, economically, they are still strongly dependent on their employers. The real issue here is the adequate level of their labour law protection.

Regarding employment and economically dependent relationships

Apparently, labour legislations have been more active in elaborating new and increasingly complicated legal forms of labour, than in clarifying the basic concepts. Therefore, the understanding of the difference between employment, economically dependent work and self-employment has been rather low in legislations and legal practice until recently. Thus, these definitions are mostly missing from labour laws. The gap is usually filled by social security laws which ensure the payment of social contributions and insurance of dependent, self-employed persons, but do not solve the problem of their labour law protection.

There is a growing number of people working for another person whose employment status is unclear, and who are consequently outside the scope of the labour legislation protection, although their situation is similar to the situation of dependent employees. Economically dependent workers may be defined as persons who have an independent legal status for a contractual work relationship with a certain client or company. Self-employed persons usually conclude civil law contracts for work. Except in the **Scandinavian countries,** in **Cyprus, France, Luxembourg or Spain**, their number increased constantly and remarkably during the last decade in most European MS. These contracts can be of very different natures, reflecting the contractual freedom applicable to these contracts, provided by the Civil Code, as a general solution. The typical types of contract are services and mandate contracts. These persons can be seen as 'hybrids', somewhere between entrepreneurs and employees, as they are legally independent but economically dependent. Consequently, the insufficient definitions of concepts lead to legal debates on the legal status and **incomplete protection** of dependent workers.

This increase was slowed down or even brought to a standstill by intensified restrictions on false employment and creation of even more flexible forms of employment. However, the misuse of civil law contracts is still one of the most problematic issues in respect of new forms of labour in many MS (e.g. **Bulgaria Hungary, Greece, Poland, Romania, Slovakia**). Many employers still force their employees to become self-employed, to avoid labour law provisions (e.g. termination rules) and payment of social contributions. Evidently, this procedure has led to the creation of a mass of dependent self-employment due to an inappropriate legal and enforcement framework. Therefore, it might be necessary to reconsider the concept of the employment relationship.

Regarding Temporary Agency Work

For temporary agency work, MS use quite the same definition, described as a triangular employment relationship, where the employee is hired out by a temporary agency to a user enterprise for work. Thus, the work is performed for the benefit and under the supervision of the user employer, even if the employment relationship is established between the worker and the agency. Besides, a civil law agreement is concluded between the temporary agency and the user company. Even though no legal relationship exists between the worker and the user company, legislation generally places some obligations on the latter. The fact itself that agency workers perform their work within the user undertaking creates some legal obligations for the company.

Even though agency work gained detailed regulation and increased in the majority of MS it is still not a widespread form of employment (approximately 1-2% across the EU). Although in rather exceptional cases agency workers enjoy more favourable conditions (nurses and doctors, highly skilled professionals, workers assigned to mid-level management), in most MS the nature of work performed through agencies is described as precarious: temporary agency workers have worse working conditions compared to regular employees as regards job security, protection against dismissal, wage levels, training, or vacations. In spite of detailed regulation, in many MS problems arise from abusive practice and non-compliance with the rules. As for collective rights, equality with other employees could be insufficient for temporary agency workers. Even if they are granted the same rights, these can be of difficult application for them.

Only one aspect of equal treatment is harmonized at Community level: Directive 1991/383/EEC guarantees equal rights for agency workers as regards safety and health at work, and was transposed by all MS but implemented at various degrees. Other aspects of the employer's responsibility have not been harmonized yet. And the EU has not adopted any provisions concerning the collective rights of agency workers; furthermore, only soft rules are included in the draft directive.

Subcontracting and groups of undertakings

Subcontracting, although commonly used and spread across Europe as a way to perform economic activities, is not generally regulated by special provisions, which makes this a rather masked sector with abusive practices. If specific rules are given, they mostly concern the responsibilities of the main contractor towards the workers employed by the subcontractor. The main contractor remains responsible only for occupational safety and health issues. In a couple of MS subcontracting is misused to mask a working relationship (e.g. **Czech Republic**) or a fictitious business, or to avoid social contributions. In **The Netherlands** specific regulations have been introduced to make main contractors responsible and liable for malpractices of their subcontractors to this regard.Workers' representative have some basic informational rights in a few MS (**Germany, Spain)** regarding the use of subcontracted workers.

Beyond subcontracting, companies are increasingly part of groups of networks with shared capital and employees remain employed by a single company through their contract. Therefore, the structure of companies or groups is hardly taken into account while deciding who bears the responsibility or who employs the worker. In addition to the European works councils for European-wide companies, the notion of group of companies has been given a legal reality in some MS such as Germany and France, with legislations introducing workers' representation for employees at group level. However, labour law has still to tackle the problem of outsourced production.

Regarding posting of workers

Implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services harmonized the regulations of the MS, with some doubts in the **United Kingdom** about its proper transposition. In addition, recent rulings of the European Court of Justice in the Viking (C-438/05) and Laval (C-341/05) cases gave new aspects of Community law, in which two basic principles established in the EU treaties were in conflict with each other. This ruling challenged **Denmark** and **Sweden** at least, which would have to introduce some form of transparent minimum wages to be applied on workers. In both MS there is a tripartite commission preparing for some legislative changes.

Fixed-term and other temporary employment contracts

Fixed-term employment contracts have gained detailed regulations in all MS. These contracts are not new forms of employment, since their regulation has a long tradition in almost all EU MS.

The implementation of Council Directive 1999/70/EC had an uneven effect on regulation of fixed-term contracts, especially in the new MS. Despite the law approximation deriving from legal harmonization, the legal limitations on fixed-term contracts, their incidence and practical problems are rather diverse in the MS. If temporary work is one of the most popular atypical forms of employment, incidences and practical problems are also rather different in certain groups of countries. In MS like **Bulgaria, Cyprus, Czech Republic, Denmark, Greece, Latvia, Malta, Poland, Romania, Slovakia, Slovenia**, fixed-term contracts are the single legal forms of temporary employment relationships. However, there are various forms of temporary employment in some MS (**Belgium, France, Germany, Lithuania, Portugal, The Netherlands, United Kingdom**), where it could be used for particular employees and situations.

Slovenia, Portugal and **Spain** are among the EU MS which experience the highest rates of fixed-term employment, becoming increasingly problematic in recent years despite many attempts to restrict the repeated use of temporary contracts. As a result of Directive 1999/70/EC, all MS prohibit discrimination against fixed-term employees and this issue was generally not mentioned as a major problem, except in some MS like **Greece** or **United Kingdom.**

Regarding part-time forms of employment

Part-time employment contracts, just like fixed-term contracts, are not new forms of employment since they have existed for some time in all MS. Part-time employment is the most fully-regulated non-traditional form of employment relationship beside fixed-term contracts. In **Denmark**, **Sweden** and **The Netherlands**, part-time work can no longer be considered as a non-standard form of employment. In former socialist legal systems, part-time employment, which already existed, gained more detailed provisions as the result of legal harmonization.

In all MS, part-time employment has always been and still is the most popular legal form of employment to integrate women in the labour market. It is more popular in the most advanced economies (**Austria, France, Germany, Italy, Ireland, United Kingdom, The Netherlands**).

In less developed economies such as **Bulgaria, Czech Republic, Cyprus, Estonia, Greece, Hungary, Portugal, Romania, Slovakia and Slovenia**, there is a very low incidence of part-time work (below 10% or even 3%): part-time workers choose this form due to lack of work and/or full-time jobs. Multiple-job holding is another form of flexible work arrangement where workers hold a second, usually part-time, activity besides their main job.

The remarkable improvement of non-discrimination laws was a positive effect of Directive 97/81/EC. The labour and non-discrimination laws of all MS contain similar clauses and mechanisms to guarantee equal treatment of part-time and full-time employees and the principle of proportionality. However, discrimination against part-time employees is not an extensive problem, the most problematic situation being related to part-time work as an involuntary form of labour, especially among women, thus establishing de facto gender discrimination. According to another aspect of harmonization, all MS have introduced some measures to promote the change from part-time to full-time employments. However, these national measures are rather diverse in terms of strength and practical effect.

Beside traditional part-time, many MS experience different types of mini-jobs (**Greece, Hungary, Italy, Portugal, Slovakia, The Netherlands, Austria, Czech Republic, Germany, Slovenia, United Kingdom**), the common contents thereof being:

a) low and very limited number of working hours and/or income,

b) employment relationships with more or less limited labour law protection,

c) insured status with limited social protection.

On-call or intermittent work belong to other forms of part-time jobs and in most MS no special provisions exist in the employment relationship - on-call work is not a special kind of contract but rather a special kind of working time (on-call/stand-by duty). The other meaning of on-call work is an employment contract with the specification that the worker only works and is paid when work is actually available. This form of employment is used in a few MS (**Germany, Italy, The Netherlands**).

Home working and telework

Working outside a company workplace is a source of functional flexibility and it has two basic forms: home working, with a final product usually of a material nature and telework, necessarily involving the use of information technologies. Home working is not a new phenomenon, and its regulation has a long tradition in many MS (**Czech Republic, Germany, Greece, Hungary, Latvia, Malta, Poland, Portugal, Slovakia, The Netherlands** and **United Kingdom**). By contrast, in most MS, regulation of telework has been largely generated by the Framework Agreement since 2002.

Telework as a special form of home working does not constitute a remarkable share of the labour force and has a low incidence in most MS. At the same time, there are a few MS, where the emergence of telework and home working is an important trend. In **Poland** or in the **Czech Republic** the popularity of telework has increased considerably over the last few years and exceeded 17% and 11% respectively in 2007. In **The Netherlands,** in **Ireland** or in the **United Kingdom** telework is becoming increasingly common.

Regarding flexible forms of working time

Flexibility might also be ensured by adaptations in other rules governing the employment relationship, such as working time. In many MS (**Czech Republic, Denmark, Ireland, Germany, Greece, Hungary, Poland, Romania, Slovakia, The Netherlands, United Kingdom**) working time is an outstandingly important source of internal flexibility. Working time flexibility is equally present in indefinite and fixed-term employment relationships.

Apparently, this trend is not completely new since flexible forms of working time have been spreading since the 90s in various MS, or even earlier. However, there is a trend on both sides of industry to move towards flexible working time arrangements. In **Bulgaria, Czech Republic, Greece**, **Hungary**, **Ireland, Poland, Portugal, Slovakia** and **Slovenia**, although labour laws regulate several forms of flexible working time arrangements, overtime remains a major source of flexibility that is largely used, systematically overcoming legal and conventional limits.

Training and apprenticeship contracts

In several MS **(Austria, Bulgaria, Czech Republic, Belgium, Estonia, Finland, France, Germany, Hungary, Italy, Lithuania, Portugal, Romania, Slovakia, Slovenia, The Netherlands, United Kingdom)** training and apprenticeship contracts are not new and are common. They are often used as an option to enter the labour market as a sideline, or subsequent to secondary or high level education. New forms were experienced in the last few years in order to activate labour market policies, promoting training, work experience of young workers and students, as well as entry or re-entry of persons with disadvantages to access the labour-market. They are mostly paid with low remuneration or even unpaid.

II. Involvement of the social partners and social dialogue

Except in some MS where a strong trade union opposition exists towards the negotiation of non-standard employment relationships, national social partners have undertaken the task of mediating with responsibility, negotiating at the pace allowed by their own national labour markets.

While some exceptions exist of legal amendments introduced without social dialogue, social partners have done as they have always done and were committed with the agenda of change. Wherever an agreement has been possible the result has been very satisfactory, reaching objectives and, on several occasions, amending national labour law. The forms of this management have been several (bipartite, tripartite, sectoral), with the legal characteristics of contractual forms having generally been defined in tripartite negotiations. Due to its nature, collective bargaining at undertaking or sectoral level has served the purpose of adapting changes related to internal flexibility.

In general, strongly unionised countries and where the presence of employers' organisations is cohesive (at national or sectoral level) like in **Belgium** and **Scandinavian** countries, agreements have served to successfully adapt and modulate the dangerous effects of the new forms of labour. Social dialogue in this case has a civic and democratic value and also a social and economic benefit due to its capacity to modulate conflicts and secure agreements.

In other, less unionised countries, but with representative partners and a high degree of articulation and scope of collective bargaining, significant agreements have also been managed with regard to issues in the sphere of flexicurity.

These conditioning factors are not homogenously found in some of the enlargement countries. Despite having developed capacity-building projects for social dialogue, in some of these MS, bipartite dialogue does not exist in practice, whilst in others, this dialogue is closer to parallel monologues.

Experience shows that MS with strong, reliable and intertwined social dialogue and collective bargaining systems are in a better position to successfully adapt to the management of change in labour relations and, hence, to agree labour law amendments and reforms. *A contrario*, in those MS that do not yet have fluent and efficient social dialogue systems and where collective bargaining is hardly articulated and with little scope, social dialogue may become a distortion element or may simply not affect wide layers of workers with no real coverage (and without representation).

III. New forms of labour and roles played by the soft law

The role played by soft law is very different among the MS and there is no common trend at EU level concerning this issue. In **Austria, Belgium, France, Germany, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia or Spain,** the regulatory role of soft law is negligible and soft law does not play any significant role while in **United Kingdom** the role of soft law is important and increasing and the United Kingdom government has increasingly moved towards the use of soft law measures in the competence of employment law in general. One of the reasons of this important difference could be the role played by law or collective agreements in regulating employment relations.

The notion of soft law itself remains a major question. In some MS (**Luxembourg, Belgium**), some forms of regulation, in particular collective agreements, are related to soft law. In others, collective agreements are analysed as being fully binding upon the parties. In **Ireland**, the system of national agreements could be seen as representing a major soft law initiative of social partners setting standards in employment. With the increasing space for social partners to make tailor-made agreements at the level of sectors and companies, collective agreements may become less detailed in the future, leaving more space to actors in companies to apply soft law recommendations.

In **Germany** and **France**, codes of conduct can occur in the context of Corporate Social Responsibility (CSR), but they must adjust to German or French “hard law”. In other MS, codes of conduct also play a role. Most of the instruments in these codes include some references to non-standard forms of employment, including the undertaking’s commitment to grant fair labour conditions and equal treatment to these workers and the preferential use of higher quality contracts of employment. The real impact of these declarations is still to be seen: legal effects of these soft-law instruments, the relationship between the instruments of CSR and collective bargaining, a tool for change or a purpose of image-building. This new culture of management has attracted the interest of undertakings, institutions and public opinion throughout Europe. However, it is difficult to identify a common trend in the EU even if this development has often started in relation to European debates.

As regards labour law, the instrument of ‘Code of Practice’ is especially relevant in **The Netherlands**. Codes of Practice are widely applied in fields like working conditions and work health and safety, though they still play a minor role in the field of labour contract law. In the **United Kingdom**, codes of practice are well-established mechanisms to encourage best practices in the field of employment. A breach of code does not render the employer liable to legal proceedings, but they are admissible in the courts and tribunals as evidence and can be used to establish whether or not the parties acted “reasonably”. **Ireland** also reports the role of Code of Practice issued by the Equality Authority.

There is a tendency to use soft law measures in the competence of employment law. It is clear in the **United Kingdom** where the establishment of a Better Regulation Task Force is a government mechanism for the encouragement of self regulatory methods. In **Estonia**, some EU soft law principles were included in the Estonian Action Plan for Growth and Jobs for the implementation of the Lisbon Strategy.

The combination of soft law methods and tools, promotion on the one hand and implemention of new forms of labour on the other, is rarely found. There are many doubts about the perspective for such regulations to be developed in a near future, at least in the fields of labour law or even of employment policies.

IV. Some impacts on labour markets

Regarding labour relationships based on employment law, a process of diversification of employment contracts took place in all MS. The trend towards an increasingly flexible labour market has led to multiply the legal offer in terms of employment contracts. However, this phenomenon has not changed the fact that the open-ended contract remains the standard for employment relationships. These forms of employment – fixed-term, agency work, part-time- are still considered as atypical forms of employment in relation with the open ended contract. Therefore, employers have been given more flexibility through a larger offer of employment contracts.

From the analysis of national legal environments, a link is to be observed between the use of atypical work (mainly fixed-term contracts and agency work) and the regulation of the open-ended contract. The more rigid the regulation of the open-ended contract, in particular regarding the termination of the contract, the more companies will use atypical fixed-term contracts and agency work. While flexibility has been achieved during the last thirty years through atypical contracts, new developments appear in some MS (**France, The Netherlands,** and to some extent, **Italy and Spain)**) where legislators try to increase flexibility by lessening the rules regarding open-ended contracts.

National legal systems are still promoting a dualistic labour market with “insiders” and “outsiders”. It is quite easy to determine the different categories of the scale between “insiders” and “outsiders”. Working under a fixed-term contract or being an agency worker is still an unfavoured position for workers. The precarious nature of these forms of work remains. It might be precarious due to the low level of the wage (part-time work) or due to the short-term of the employment relationship (fixed-term contract and agency work). In this respect, the European labour law, and especially the equal treatment rule, appears insufficient to reduce the vulnerable situation in which these workers are placed. It is also worth mentioning that more workers accumulate these factors of precariousness.

V. Recent forms of labour and flexicurity issues: approaches and trade-offs

In many MS, debates and reforms linked with flexicurity have started recently so an in- depth assessment of the directions taken is quite difficult. However, it is obvious that across Europe flexicurity embraces flexible forms of employment. What are the approaches? What the trade-offs are?

Approaches

In **Denmark**, the debate is considered as almost over - the key issue being to maintain the balance between the elements of the flexicurity-model - while in MS like **United Kingdom,** the concept doesn’t seem very relevant.

In Belgium, Luxembourg, Cyprus, Malta, the debate is not intense. Quite different appears to be the situation in **Estonia** and **Ireland** where flexicurity has been regarded as a positive way to launch national action plans or national pacts.

In MS like **Germany, France, The Netherlands**, and to a certain extent in **Sweden** and **Finland**, flexicurity has framed much of the recent labour market reforms. In many Central and Eastern European MS (**Czech Republic, Poland, Romania, Latvia, Lithuania, Slovenia)** consultations between governments and social partners have just begun and have been the cause of quite classical controversies between employers' organisations and trade unions. In some MS, the debates are still restricted to narrow circles and it seems that flexicurity has quite a top-down approach: it comes or it is required by the "EU". In **Romania, Hungary** but also in **Greece**, controversies seem to be very hot and sensitive and are taking place in a much wider debate on reforms.

Trade-offs

Across the EU, the understanding of flexicurity and the trade-offs behind it are also quite different. In most MS, the balance is explicitly more in favour of flexibility than security while it seems to be the opposite in only a few (**Austria**, **Ireland**).

Greater flexibility is aimed mostly through the promotion or the extension of temporary forms of employment (**Czech Republic, Germany, France, Italy, Spain, Portugal, Estonia, Latvia, Lithuania, Poland, Romania, Hungary**) and sometimes through easier terminations of open-ended contracts (**France, The Netherlands** and to some extent **Finland, Italy and Spain**). A search for reducing labour costs is also visible in **Hungary, Poland** while unemployment benefits are made stricter in **Sweden**.

The security aspect is quite diverse. A lot of Central and European MS try to strengthen labour law enforcement and labour law inspectorates. **Estonia** has improved unemployment benefits. **Spain,** following Italy but in a different way, has introduced a third category of worker through a parasubordinated status and tried to reduce the use of fixed-term contracts, while **Austria** has extended social security protection to non-employees such as quasi-freelancers. **Germany** has put an emphasis on internal flexibility while **France, Finland** and **The Netherlands** try to improve employability and training measures for unemployed people and for people threatened by dismissals.

What remains unclear in most EU MS at this stage is a real balanced approach of flexicurity. Liberalisations of labour markets have not been really compensated by improvements and extension of the social security systems. Employability measures linked to lifelong learning seem to be still at an embryonic stage in many MS which experience an acute shortage of learning options. Flexibility and precariousness of work often correlate and have a rather negative effect on employability. Therefore, flexicurity is still a very challenging concept for the EU. Room may be left for the discussion on other alternative implementations of flexicurity like flexinsurance - which assumes that the employer's contribution to social security should be proportional to the flexibility (precariousness) of the employment contract.

VI. Common body of labour law - Core labour rights

There are important limits to the extension of labour law to non-standard forms of work outside its natural scope. But this extension can be an option in some aspects of their legal status, which is at this moment rather weak and inadequate for the new economic and social context in most cases. Labour market, social protection and enforcement rights seem to be more feasible in order to recognize the status of the different categories of the working population, whereas contractual and collective rights face stronger obstacles.

The comparative analysis being performed on the regulation of non-standard forms of employment shows that, notwithstanding all the differences in the legal situation of these workers, all these share some common elements that can be found, if not in all, at least in a clear majority of cases. If substantial differences appear in specific aspects - length of the contract, particular form requirements, content of information duties - a common "philosophy" or "culture" can be identified. The main features are principles such as equal treatment, preference for standard employment, control by the public authorities, adequacy to the model of contract, availability of instruments to enforce legal and contractual rights, and the like. These principles are embodied in national labour laws, which show, again with some flagrant exemptions, a converging trend. The same forms of non-standard employment are increasingly present in all or in most MS, and the newer and more original ones are progressively being used in other MS; their regulations tend to show a high degree of uniformity of their legal status, at least in the general guidelines.

Although it would be impossible to give a valid definition of these rights, at least at the present moment in the evolution of labour laws, it could be reasonable to conclude that national labour laws have tried to grant non-standard employees a fair level of working conditions, including secure working environments, adequate instruments for the enforcement of legal and contractual rights and the highest possible degree of economic security compatible with the special features of these forms of employment (all these with the final objective of granting them enough rights as to guarantee dignity and integration in society).

A main and common challenge is to define and construct a regulation of the labour market and of contract law in which some levels of rights can be recognized for all categories of workers, employed by standard and non-standard contracts of employment, and even those performing their services through contracts under civil law. Moreover, there is a clear tendency, at least in some of the MS analysed, to apply parts of labour – starting with safety and health measures - and social security legislation to workers legally excluded from their scope of application.

X - FORMS OF LABOUR AND MAIN ISSUES TO BE TACKLED

The prior conclusions of our study reflect the current situation with regard to changes in labour and their impact on national labour legislations and social dialogue. As we have seen, the topics studied here are complex, multi-dimensional and have aspects which are transversal between them. Below, we suggest a number of elements for reflection that may serve as directing axes for future recommendations to be debated by the European Parliament.

The issue of global competitiveness

Since 1980, atypical employment contracts and new forms of labour have spread across the EU making the European landscape highly diversified. Social and political concerns were brought together in the 90s to ease flexibilisation of labour contracts – part time and fixed term contracts - but also to give common rules of the game in order to avoid social dumping within the Community. Present trends do not occur in the same context and are managed mostly at national levels – cross-sectoral, or sectoral or company level - with very diversified answers, and seem satisfactory for most of the MS in the short run. The already wide diversification could move further on, without limits.

Do such scenarios, which are favoured in most of the MS, really cope with globalisation and economic changes? With an increase of EU mobility, with increasingly more companies experiencing globalised markets, international teams and networks, present trends could represent a sum of barriers to more integrated and competitive strategies, including human resources management. Shortages of labour forces are developing across the EU and need to be addressed properly and quickly. Influenced to a large extent by the unemployment context, the diversification and complexity of systems based upon new forms of labour might be counterproductive in the context of future economic activities and foreseeable demographic trends.

What undertakings in what labour markets

Industrial relations are materialised in productive organisations. Employment relationships are normally thought as forms of contracts or employment conditions (work time organisation, safety and health, etc.). However, beyond the corporate aspects, the reflection on the type of undertakings carrying out their activity in Europe is usually absent from debates and proposals. The type of production and work organisation in the undertaking conditions industrial relations. Since we don't manufacture or trade as we did 20 years ago, similarly the functioning of the labour markets is also different.

New elements have appeared making business management more complex: Social Responsibility, the management of diversity in personnel with a greater weight of immigration, environmental needs and costs, the challenge of ICT, treatment of personal information, the balance between investment in internal training and the requirement of loyalty/employees staying, etc. This takes place in a landscape where the majority of undertakings and employments are concentrated in micro and small productive units. How to combine this typology of European undertaking, submitted to global competitiveness, even when it is in local markets, with labour markets that work efficiently?

Will the salary cost continue to be a core element in the strategy of undertakings to manage personnel or should productivity criteria also be taken into account? We have witnessed a moderate economic growth cycle in the EU with relative employment creation, a large proportion thereof, atypical. What can the behaviour of undertakings be and what effects may this have on employment in a situation of growth stagnation or even technical recession?

Will atypical employment (temporary, part-time, etc.) be the one to suffer the consequences, in terms of job destruction, due to less business costs (social protection)? Is non-standard employment a flexible adjustment form of sizing personnel or is it really a strategic need of undertakings towards production? We can not speak of new forms of labour exhaustively if we do not consider the forms of production and work organisation in the European undertaking also.

Self-employment and triangular relationships

With at least 22 million self-employed and millions of employees working as agency workers or in subcontracting companies, self-employment and triangular relationships have, among new forms of labour, experienced the biggest increases. However, except maybe for agency workers, no EU common framework has been worked out. When it comes to self-employment, national answers are not only different, they are contradictory and vary from traditional laissez-faire to stricter regulations aiming at reducing disguised employment or to an approximation of social security regimes. They may also include the creation of a "third category" in some MS.

Subcontracting, has often been considered until now only through traditional business laws but not in its operational interactions: mixing employees from several companies at the same workplace or in the same team, competition of rules and social provisions, integrated performance combined with disseminated risks, management and procedures etc. The Community's de facto laissez faire will probably continue, leading some MS to take inefficient or disproportionate measures, hence involuntarily setting up obstacles to freedom of enterprises and services. The challenge for social partners is also to know which frameworks, based on more standard forms of employment and outdated definitions of companies and activities, do not enable these new patterns to combine competitiveness with workers' participation and social justice.

The issue of equality

Although equality has been promoted by the EU through a set of compulsory provisions – equal treatment, anti discrimination – persistent inequalities appear as the main feature regarding "new forms of labour" in terms of earnings, social protection, occupational health and safety, vocational training, information and consultation, housing, access to credits.

In real terms, equal opportunities are not available. Our study shows that it is not only a question of equal rights – with an important exception for the self-employed who are often excluded form basic or core labour rights - but rather an issue of specific schemes enabling equal treatment, economic security and equal opportunities: appropriate social benefits and approximation of social security schemes and appropriate access to them, adequate level of protection against risks at work, reasonable use of forms of labour that are potentially discriminatory against women or vulnerable groups, involvement in participation mechanisms, priorities for law enforcement bodies.

Economic growth, already present in many MS, will offer opportunities to reduce gaps, to develop innovations and to strengthen the main aspects of the European social model, weakened in the previous decades.

The issue of employability

Most of non-standard employment relationships, including self-employment, do not cope with better employability. Often, experiencing continuously precarious forms of employment doe not make a person more employable. A proportion of temporary employees do not access vocational training, within or out of the workplace. Recognition of skills remains focused on more standard employees. Investment in human resources is rather poor and seen, by difference with more permanent employees, as an unnecessary burden. Training schemes, when they exist, are not designed for those groups. Employability is an issue for individuals as well as for companies and European societies that has not been, until now, fully addressed and implemented to people working in standard forms of employment. For those working in non-standard forms, the situation is even more serious and could be an impediment for further economic and social developments.

The issue of social inclusion and professional transitions

Fighting unemployment has been one of the main drivers to introduce new forms of employment. It has partly succeeded, offering real opportunities to start – or re-start- a professional life, particularly to women, youngsters, unskilled and migrant workers. But the side effects are not negligible. Fragmentations in the labour markets make the transition from precarious forms of labour and living to more stable and satisfactory ones difficult for part of these groups. Parts of these groups are trapped in a kind of vicious circle of new forms of employment. Lifelong development is not ensured. Benefits and rights are, if not unavailable, of complex and difficult access. Transitions between forms of employment are rarely addressed successfully across the EU. They are costly for individuals, companies and societies. They represent, therefore, more risks than better opportunities. Our study shows that fragmented answers to these challenges have failed and that there is a need for integrated strategies, systems and schemes including social security, employment services, training opportunities, and making transitions fluent and painless.

The issue of health

Statistics available at EU level show differences in terms of occupational safety and health between temporary forms of employment and more stable forms of labour. Current frameworks, including specific directives, have not enabled significant and sufficient improvements. Not only because the self-employed, for the most part, are not covered and are not granted a right to equal protection in this field, except, at least theoretically, on construction sites. Being healthy is not only an increasing need for European citizens, but it also has positive economic and social effects.

There is a long-standing occupational safety and health tradition in Europe since the creation of the European Community for Steel and Coal, and occupational safety and health may be one of the issues of social Europe that has been most successfully achieved. New forms of labour are among the drivers challenging these achievements. Healthy new forms of labour require adequate frameworks, attitudes and focus to be addressed successfully.

The issue of flexicurity

Combining flexibility-security is not an easy equation when we are dealing with implementing specific measures in national social and labour frameworks. The variables entailed by this couple are several, some of which have an enormous strategic potential in Europe: education and training and, hence, competitiveness, productivity, integration of diversity, etc. Actively intervening on any of these factors – like altering working time organisation for example - implies preventing the effects on the general balance of the system.

The general principles on which the flexicurity concept is framed are sufficiently ample as to allow for national developments which are well focused and directed, together with unwelcome adverse effects. European societies and their labour markets are highly sensitive to structural modifications, generally with no turning back. Some MS are clearly aware that the employment policy of introducing flexibility in contracting to access the labour market has entailed the worsening of employment quality, and the several measures adopted later have not served to significantly reduce temporary employment rates, as it has an (artificially) structural nature.

The balance between security and flexibility, their compatibility, depends on acting globally on the set of components that influence both dimensions and, especially, the complementary nature between internal flexicurity measures within undertakings and active measures to favour efficient transitions in the labour market; that is, flexicurity provided by labour market management. Amongst these factors, the ways to introduce flexicurity as the nature of public expenditure are of high relevance. Dissemination by means of an efficient social dialogue that favours the implementation of internal flexibility in undertakings by means of collective bargaining constitutes a core element which is highly convenient to favour the effective implementation of flexicurity measures. By contrast, a top-down approach has already shown its limits. Last but not least, flexicurity is mainly based on national public expenditure used efficiently and intelligently, the nature of which is a long-term investment (and not considering it as expenditure).

The issue of citizenship

Most non-standard employees and workers are not de facto, and sometimes *de jure* like for self employed, involved in participation mechanisms which have been designed for the permanent and subordinated work force. Information and consultation, affiliation to trade unions, hardly involve this part of the work force which has significantly increased. The impact is not only social but it is also economic, as far as modern working life, based on making team work and networks, requires an active participation of everyone. This de facto exclusion might have a serious impact on social dialogue – without a voice for new forms of labour, how can issues be properly framed and answers implemented?– and beyond. Participation rates in political elections are declining in many MS. The global issue of citizenship might be therefore at stake and requires innovations within industrial relations frameworks and out of them.

The issue of policy integration

The European social model includes a vocation towards progress, the convergence between MS, at its heart. In some MS with weak collective bargaining structures and inefficient social dialogue, the application of labour law reforms could contribute to enlarge the economic and social gap. In general, non-standard forms of labour could also disguise wage differences downwardly. The temptation to *downwardly* reform some national labour markets to adjust them to the misunderstood requirement of modernisation could further deepen social divergences and lack of cohesion between MS and developing European regions.

The lack of more intense European regulation frameworks for industrial relations and the objective and real difficulty to speak of a European labour market contrast with existing European policies and current coordination processes.

Integration, the integral nature of some European policies such as social and economic cohesion should be considered in the objectives to modernise the labour markets, which are delicate cultural, economic and social ecosystems. The necessary agenda for improvement and change should not result in a gap through which the content of the European social model could disappear. In this context, labour law can not be considered as part of the problem but as a component in the search for solutions and for the balance between the real needs of undertakings and the guarantees to protect workers.

ANNEX I: NATIONAL DEVELOPMENTS ON CONTRACTUAL ARRANGEMENTS

	Type of flexibility								
	External						Internal		
	Fixed-term	Agency work	Telework (TW) and home working (HW)	Training and apprenticeship contracts	Occasional work contracts	Civil law contracts	Part-time	Special part-time arrangements	Flexible working time arrangements
Equivalent social protection	Yes	Mainly yes	Yes	No	No	No	Pro rata temporis	Pro rata temporis	Yes
Austria	Allowed without any special justifying reason; for successive contracts the test of objective justification is applied by court practice	limitations are generally forbidden, unless there are objective justifications	not particularly used and regulated	Traditional apprenticeships are fix-termed and regulated in a special labour act. Atypical trainings are considered as non-employment special legal relationship; unlimited length; mostly unpaid		increasing employment by civil law contracts	No minimum time limit; overtime is limited	Mini jobs (Monthly income limited, limited coverage in social security)	not an important source of flexibility
Belgium	Allowed without any special justifying Successive contracts: Up to four employment contracts can be agreed provided they last at least three months and do not exceed the total duration of two years.	Contract to replace an employee can not exceed 2 years; objective reasons needed for the use of agency workers	regulated by collective agreement	Industrial training and apprenticeship: settlement similar to an employment contract. Training contract: maximum 12 months.			No special arrangements Flexible working time arrangements Regulated by law and/or in collective agreements.	In the event of decrease of the work volume, the employer may set unilaterally, for a period of three months within one year a part-time work. The duration of the working hours may not be less than half of that set forth by law for the period of calculation of the working hours.	For reasons relevant to the production process the employer may, by order in writing, extend the working hours in some work days.

	Type of flexibility								
	External						Internal		
	Fixed-term	Agency work	Telework (TW) and home working (HW)	Training and apprenticeship contracts	Occasional work contracts	Civil law contracts	Part-time	Special part-time arrangements	Flexible working time arrangements
	Provided prior permission given by a civil servant designed by the Crown, fixed-term contracts can be agreed with a minimum six months term without exceeding three years in totality.								For some categories of employees, due to the special nature of their work, an obligation may be established to be on duty or to stand by at the disposal of the employer during specified hours in a 24-hour period. Where the nature of the production process necessitates it, the work in the enterprise shall be organized in two or more shifts. A work shift shall be mixed where it includes day and night.
Bulgaria	Allowed without any special justifying reason; maximum duration: 3 years	not regulated	Exists on basis of standard employment contracts	not really relevant and regulated	no information	increasing employment by civil law contracts	No minimum time limit	no information	not an important source of flexibility

	Type of flexibility								
	External						Internal		
	Fixed-term	Agency work	Telework (TW) and home working (HW)	Training and apprenticeship contracts	Occasional work contracts	Civil law contracts	Part-time	Special part-time arrangements	Flexible working time arrangements
Cyprus	Maximum duration 30 months, irrespective of the number of successive renewals Law 98(I)/2003	not regulated	not particularly used and regulated	The terms and conditions of employment for apprentices are regulated through collective agreements in specific sectors of economic activity (i.e. construction industry), while the general framework is regulated by Law 13/1996	Law 55(I)/2007 provides only the definition of a part-time employee working on a casual basis and not the definition of the casual worker in general: any employee under the same employer for min. 8 weeks per year, with a max. continuous employment of 3 weeks, or not employed continuously for a total of more than 5 hours per week.	not a wide spread phenomenon	At sectoral level, a recent agreement on the terms and conditions of employment of part-time bank employees provides for a minimum working week: 20 hours, equally distributed from Monday to Friday	no information	not an important source of flexibility
Czech Republic	Allowed without any special justifying reason; the maximum duration is two years.	fixed-term employment contracts are common	Telework as a form of homeworking: only certain provisions of the Labour Code shall be applied	considered both as employment relationship and non-employment special legal relationship; unlimited length; with low remuneration	So called Agreements on work performed outside an employment relationship.	increasing employment by civil law contracts; Labour Code explicitly states that dependant work is performed only in an employment or similar labour, not in a commercial-law relationship	No minimum time limit; overtime is limited.	Mini jobs (Very short workloads can be contracted supported with provisions on partial unemployment); On-call work (considered as a special kind of working time)	outstandingly important source of internal flexibility; flexible working hours (flexible working day, working week and four-day working cycle); overtime; on-call and stand-by work; shift work (including night work)

	Type of flexibility								
	External						Internal		
	Fixed-term	**Agency work**	**Telework (TW) and home working (HW)**	**Training and apprenticeship contracts**	**Occasional work contracts**	**Civil law contracts**	**Part-time**	**Special part-time arrangements**	**Flexible working time arrangements**
Denmark	If restrictions are not agreed upon in collective agreements the law (act) is applicable:. Renewal of fixed term contract requires objective reason. The sanction available is economic compensation	Not regulated in law, but in several sectoral collective agreements	Not particularly used and regulated	Not really relevant and regulated	Can be made as a form of fixed-term contracts	not a wide spread phenomenon	If certain conditions on part time work are not agreed upon in collective agreements the law (act) is applicable. The Act mainly repeats the EC Directive 97/81/EC	Job sharing	outstandingly important source of internal flexibility; overtime
Estonia		Not regulated	Exists on basis of standard employment contracts, with special rules in collective agreements and individual employment contracts	Common and often used		Increasing employment by civil law contracts	In case of reduction in work load or bookings, part-time work may be applied for maximum 3 months during one year, with the consent of the employee and the labour inspector	On-call work (considered as a special kind of working time)	flexible working hours (sliding time, individual agreements and freedom of decision over working time arrangements); overtime; on-call and stand-by work; shift work (including night work)

	Type of flexibility								
	External						Internal		
	Fixed-term	Agency work	Telework (TW) and home working (HW)	Training and apprenticeship contracts	Occasional work contracts	Civil law contracts	Part-time	Special part-time arrangements	Flexible working time arrangements
Finland	A fixed-term contract can only be made for a valid reason due to the Employment Contracts Act Sec 3. Several consequential contracts are to be regarded as an open ended contract. The sanction is economic compensation.	Regulated in law. The terms and conditions for a temporary agency worker must at least be the same as the minimum level in the sector.	Telework: Agreement between labour market parties Home working: Regulated as a form of normal employment contracts	Special legislation	Regarded as a form of fixed-term contracts	Not widespread, are regarded to be outside labour law	No time limits	Job sharing, priority to full time jobs and right to vocational training for this purpose	Common in sectoral collective agreements
France	Restricted to cases defined by law; maximum duration: 3 years; number of maximal renewals: 1 (with strict conditions)	Only fixed-term contracts, in principle for max. 18 months; objective reasons needed for the use of agency workers	Regulated by collective agreement	Considered as employment relationship; unlimited length; with low remuneration; special forms of fixed-term contracts		not a wide spread phenomenon	Overtime is limited		

	Type of flexibility								
	External						Internal		
	Fixed-term	Agency work	Telework (TW) and home working (HW)	Training and apprenticeship contracts	Occasional work contracts	Civil law contracts	Part-time	Special part-time arrangements	Flexible working time arrangements
Germany	Allowed without any special justifying reason; maximum duration: 2 years; number of maximal renewals of contracts for less than 2 years: 3; exceptions can be determined by collective agreements.	Sectoral limitations (main construction business); fixed-term employment contracts are common	Telework regulated by collective agreement on basis of standard employment contracts. Home working: Special regulation since 1951; generates an important group of economically dependent workers.	Considered both as employment relationship and non-employment special legal relationship; unlimited length; mostly with low remuneration or unpaid.	Considered as a special form of mini-jobs.	Increasing employment by civil law contracts	No minimum time limit	Mini-jobs (max. 400 euros per month, or max. 2 months or 50 working days per year; insurance free for the employee) Midi-jobs (between 400,01 and 800 euros per month) On-call work (min. duration: 10 hours/week, min working time: 3 hours in one go; min. notice period: 4 days before each activity)	outstandingly important source of internal flexibility; flexible working hours (work time accounts); overtime
Greece	Allowed without any special justifying reason	One assignment can not exceed 8 months	Special regulation since 1998	not really relevant and regulated		Increasing employment by civil law contracts; presumption of dependent employment regarding working at home, teleworking and piece work		Mini jobs not regulated	outstandingly important source of internal flexibility; overtime

	Type of flexibility								
	External						Internal		
	Fixed-term	**Agency work**	**Telework (TW) and home working (HW)**	**Training and apprenticeship contracts**	**Occasional work contracts**	**Civil law contracts**	**Part-time**	**Special part-time arrangements**	**Flexible working time arrangements**
Hungary	Allowed without any special justifying reason; for successive contracts the test of objective justification is applied; maximum duration: 5 years	Sectoral limitations (public sector)	TW exists on basis of standard employment contracts, with special provisions. Home working: only certain provisions of the Labour Code shall be applied	considered as non-employment special legal relationship; limited length; with low remuneration	Occasional employee's book: the casual worker is registered with a book and pays contribution with the purchase of a stamp; max. 200 days in a year in case of three or more employers	Increasing employment by civil law contracts; Labour Code explicitly states that dependant work is performed only in an employment or similar labour, not in a commercial-law relationship	No minimum time limit	Mini jobs not regulated; On-call work (considered as a special kind of working time)	outstandingly important source of internal flexibility; overtime; on-call and stand-by work; shift work (including night work)
Ireland	Allowed without any special justifying reason	Fixed-term employment contracts are common	Exists on basis of standard employment contracts, generally considered as employees	Considered as non-employment special legal relationship		Increasing employment by civil law contracts			outstandingly important source of internal flexibility; various forms of flexible working arrangements (e.g. annualised hours contracts); overtime; shift work (including night work)

	Type of flexibility								
	External						Internal		
	Fixed-term	**Agency work**	**Telework (TW) and home working (HW)**	**Training and apprenticeship contracts**	**Occasional work contracts**	**Civil law contracts**	**Part-time**	**Special part-time arrangements**	**Flexible working time arrangements**
Italy	Can be used for reasons of a technical, productive or organizational nature.	The agency work has been included in the labour leasing contract. There are no more sectoral limitations (only at the beginning it was not allowed for low skills jobs).	Not particularly used and regulated	The training contract is a fixed-term contract for workers aged 16-32. Since the end of 2004, it can only be stipulated by the public administration; More and more, the work-entry contract has replaced the training contract.	May not exceed 30 days in a year for the same commissioner; max. 5,000 euros overall annual remuneration	no information	Working time could be reduced on a daily basis; or for a limited number of days in the week/month/year; or in both ways	Mini jobs not regulated; On-call work (availability allowance may be paid; not avaible in the public administration; workers must be aged under 25 or over 45, also retired) Job-sharing (2 workers perform 1 job. Workers manage the division of work and substitute for each other. Both are directly and personally responsible for fulfilment of the contract.)	overtime
Latvia	Restricted to cases defined by law; maximum duration: 3 years	Not particularly used	Regulated by collective agreement, on the basis of standard employment contracts	Not really relevant and regulated		Increasing employment by civil law contracts	No minimum time limit		

	Type of flexibility								
	External						Internal		
	Fixed-term	**Agency work**	**Telework (TW) and home working (HW)**	**Training and apprenticeship contracts**	**Occasional work contracts**	**Civil law contracts**	**Part-time**	**Special part-time arrangements**	**Flexible working time arrangements**
Lithuania	Restricted to cases defined by law or collective agreement; maximum duration: 5 years	not regulated	TW exists on basis of standard employment contracts. Home working is considered as an employment relationship	Considered as employment relationship; with low remuneration	Considered as an employment relationship	Increasing employment by civil law contracts	No minimum time limit.	On-call work is considered as normal working time if it is embraced by agreed function of work. There is on-call duty for other employees (considered as a special kind of working time)	not an important source of flexibility
Luxembourg	Restricted to cases defined by law; maximum duration: 2 years; number of maximal renewals: 2	The contract can not exceed in principle 12 months; objective reasons needed for the use of agency workers	Regulated by collective agreement	Considered as non-employment special legal relationship		Not a wide spread phenomenon	Overtime is limited		
Malta	Allowed without any special justifying reason. After 4 years, may only be terminated by employer for 'objective reasons'.	Not regulated. Fixed term contracts are common.	Exists on basis of standard employment contracts	Considered as a particular employment relationship, for a limited period and stipend.	Mostly used by irregular migrants in construction and tourism. Labour law applies but difficult to enforce in informal sector.	Not yet widespread – but are of increasing concern to the social partners.	No minimum time limit. In case of reduction in work load, part-time work may be applied for a limited period, with the consent of the Director of Labour.	'Mini jobs' not regulated. If more than 6 hours per week, *pro rata* conditions apply.	Not a widespread source of flexibility

	Type of flexibility								
	External						Internal		
	Fixed-term	Agency work	Telework (TW) and home working (HW)	Training and apprenticeship contracts	Occasional work contracts	Civil law contracts	Part-time	Special part-time arrangements	Flexible working time arrangements
Poland	Maximum number of f renewed and successive fixed-term contracts is 2. The third one has equal effects as an open-ended contract. no time limitations.	One assignment can not exceed 12 months within 36 months for one user employer, or 36 months in case of replacing an absent worker; Only fixed-term contracts; objective reasons needed for the use of agency workers	Exists on basis of standard employment contracts, with special provisions. Only certain provisions of the Labour Code shall be applied	considered as employment relationship applied to juvenile workers mainly	Not regulated	Increasing employment by civil law contracts	No minimum time limit	Mini jobs not regulated; On-call work (considered as a special kind of working time)	outstandingly important source of internal flexibility; flexible working hours; Weekend work, shorter working week, shift work; overtime; on-call and stand-by work; on-call and stand-by work
Portugal	Restricted to cases defined by law. Maximum duration 3 years. Maximal renewals: 2.	The contract can not exceed in principle 12 months; objective reasons needed for the use of agency workers	TW: Special provisions in Labour Code, on the basis of standard employment contracts. Home working: Regulated by law; extension of some Labour Code provisions on the basis of economical dependence	Special contract, exchange between some work and learning, normally with some payment by employer	Occasional work is often based on temporary agency arrangements	Use of civil contracts mainly (but not only) to disguise subordinate employment relationships.	Overtime is limited to 80 hours per year. No minimum time limit.	Mini jobs not regulated	Flexible working hours, overtime (mainly),stand-by work (in some sectors)

	Type of flexibility								
	External						Internal		
	Fixed-term	**Agency work**	**Telework (TW) and home working (HW)**	**Training and apprenticeship contracts**	**Occasional work contracts**	**Civil law contracts**	**Part-time**	**Special part-time arrangements**	**Flexible working time arrangements**
Romania	Restricted to cases defined by law; maximum duration: 2 years; number of maximal renewals: 2; renewal restricted to cases defined by law; number of maximum consecutive contracts: 3	One assignment can not exceed 12 months; objective reasons needed for the use of agency workers	TW represents a category of home working. Home working: Employment contract must be concluded in writing and must comprise the elements listed by the law; the employer is entitled to check the activity of such workers, under the terms set by their employment contracts	considered as employment relationship; limited length; with low remuneration	not used	Increasing employment by civil law contracts; Labour Code explicitly states that dependant work is performed only in an employment or similar labour, not in a commercial-law relationship	No minimum time limit; overtime is limited	not used	outstandingly important source of internal flexibility; flexible working hours
Slovakia	Maximum duration: 3 years; number of maximal renewals within three years: 1; other renewals within three years or above three years limit only in special cases recognised by law or collective agreement	The agency can chain the fixed-term contracts without any restrictions	TW exists on basis of standard employment contracts with special provisions (mainly in respect to the working time distribution). Home working: considered as an employment relationship with special provisions (mainly in respect to the working time distribution	considered as employment relationship; limited length; often with low remuneration in practice or as a special contract only for students for maximally 20 hours per week, exemption from payment of social contributions	350 hours per year, exemption from payment of social contributions	increasing employment by civil law contracts; Labour Code explicitly states that dependant work is performed only in an employment or similar labour, not in a commercial-law relationship	No minimum time limit; overtime only with consent of the worker	Job for less than 15 hours per week, with payment of social contributions by employer, no grounds for termination needed, shorter termination notice period (30 days) Job for maximally 10 hours per week, exemption from payment of social contributions, no grounds for termination needed, shorter termination notice period (15 days) On-call work (considered as a special kind of working time)	outstandingly important source of internal flexibility; flexible working hours (uneven distribution of working time); overtime; on-call and stand-by work; shift work (including night work)

	Type of flexibility								
	External						Internal		
	Fixed-term	**Agency work**	**Telework (TW) and home working (HW)**	**Training and apprenticeship contracts**	**Occasional work contracts**	**Civil law contracts**	**Part-time**	**Special part-time arrangements**	**Flexible working time arrangements**
Slovenia	Restricted to cases defined by law; maximum duration: 2 years	fixed-term employment contracts are common in practice	TW exists on basis of standard employment contracts. Home working considered as an employment relationship	considered as employment relationship; low remuneration	mostly used by students	increasing employment by civil law contracts	No time limit	Mini jobs (max. working time: 20 hours/week and 40 hours/month; pay may not exceed 50% of min. salary; the employee must not work full-time, pursue an independent activity or entitled to any pension; social protection is limited) Job-sharing (no special rules but rarely used in practice)	flexible working hours; overtime; shift work (including night work)
Spain	Restricted to cases defined by law; Workers become permanent employees, if employed for more than 24 months in a period of 30 months, whether continuously or not, in the same position and undertaking, under two or more temporary contracts	Sectoral limitations (construction and public sector –in public sector only can be used to do surveys)	TW exists on basis of standard employment contracts. HW is considered as an employment relationship	considered as employment relationship/ limited length; with low remuneration		18% of Spanish Employed are self-employed according to Economically Active Population Survey	No minimum time limit; overtime is limited	On-call work is unlawful	not the most important source of flexibility. arrangements in Collective bargaining
Sweden	Fixed-term contract can only be concluded for restricted cases defined by law.l	Not regulated by law, but by several collective agreements of which some give the employee status as a worker on an open-ended contract	TW is regulated by collective agreements HW exists on basis of standard employment contracts	Not really relevant and regulated	Can be made as a form of fixed-term contracts	not a wide spread phenomenon	no minimum time limit	Priority to full time jobs	Extensive arrangements in collective agreements

	Type of flexibility								
	External						Internal		
	Fixed-term	**Agency work**	**Telework (TW) and home working (HW)**	**Training and apprenticeship contracts**	**Occasional work contracts**	**Civil law contracts**	**Part-time**	**Special part-time arrangements**	**Flexible working time arrangements**
The Netherlands	Restricted to cases defined by collective agreement; maximum duration: 3 years; number of maximal renewals: 3 (periods in between: min. 3 months)	Regulated by separate national level collective agreements of user sectors and agency branche itself	TW exists on basis of standard employment contracts; in case of telehomework special regulations as regards work health and safety. Home working is regulated by employment contract or civil law contract; also in case of civil law contracts certain regulations of labour law applicable, e.g. minimum wages, work conditions.	Common and often used; usually combined employment and training contracts; determined by duration of training.	no special regulations; usually on-call or agency work	Increasing employment in civil law contracts (freelancers,solo self-employed|); rules of soft law against false self-employment (tax authorities)	Exists on basis of standard employment contract; no minimum time limit.	Mini jobs not regulated; On-call work (The periods and times of work are not specified exactly. The employer 'calls' the workers, when work is available and only these hours are paid. Min. 3 hours paid work per call. The min-max contract: a min. and max. number of working hours/days are defined within a certain period of time.)	Outstandingly important source of internal flexibility; growing popularity of flexible working time account schemes
United Kingdom		Agency workers are not employees of the agency	TW exists on basis of standard employment contracts. HW: Right to a minimum level of pay is guaranteed by law	Considered as employment relationship; unlimited length; with low remuneration		Increasing employment by civil law contracts	No minimum time limit	Mini jobs (separately regulated)	outstandingly important source of internal flexibility; flexible working hours; shift work (including night work)

ANNEX II: SUMMARY OF THE LABOUR MARKET ANALYSIS

Similar to the overall study, the part concerning labour market and employment analysis faces some challenges. Firstly, there is no common definition of "atypical" work available. This is true for almost all of the above mentioned categories and also for the majority of subcategories within each category, which complicates the situation considerably. In addition, definitions, terminology and categories used in practice vary enormously across MS, research disciplines, and actors. Moreover, the term atypical work is a normative and therefore also a subjective definition. The authors emphasize that in the course of this part of the report the word "atypical" does not contain any normative interpretation and will only be used for expositional reasons. Secondly, a considerable number of persons exhibit more than one of the characteristics under investigation, e.g. temporary agency workers holding a fixed-term contract. And thirdly, there are different opinions regarding the relevance and importance of the different phenomena in the context of "atypical" work. These opinions often reflect a lack of empirical evidence or misapprehensions of empirical results.

In order to carry out the aforementioned tasks, the consortium LABOUR ASOCIADOS-Association pour le Développement de l'Université Européenne du Travail committed the development of an analytical approach to ISG, consisting of three fields of work including two starting points and the transitions between them. The first point of departure for the analyses is the following **categories of employment and work,** respectively:[51]

1. Work organization and working time.
2. Part-time employment.
3. Fixed-term employment and temporary work including flexibility characteristics.
4. Temporary agency work.
5. Self employment.
6. Informal or undeclared work.
7. Other forms of employment (e.g. mini-jobs).

The second point of departure is the different **forms of unemployment**, in particular the unemployment experience of persons with severe obstacles for re-integration in the labour market (target groups). This tier of analysis also consists of seven categories. Hence, the development of the level and structure of "outsiders" will form one important part of the analysis. In addition, attention is paid to **transitions** within and between these two tiers. These transitions form the third field of work within the analytical approach. **Figure I-1** illustrates this approach. It is worth noting that each of the seven categories on both tiers consists of several subcategories, e.g. part-time working elderly holding a fixed-term contract. In particular, the segmentation into subdivisions will be considered at all working steps as well as combinations of two or more categories or subcategories, such as part-time workers holding temporary employment contracts.

Due to the complex and comprehensive research field the complete labour market and employment analysis is attached in Volume III of this report. This long version of the study contains the analyses of the subcategories in detail.

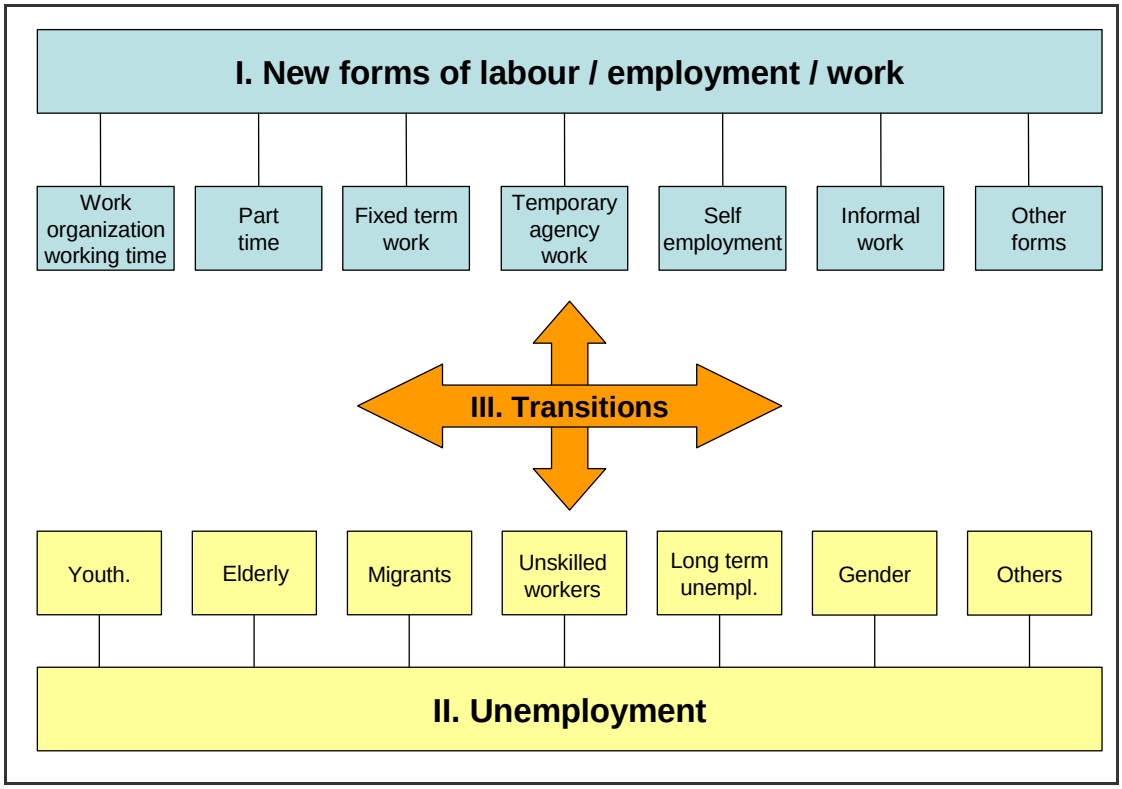
[51] These categories are for the purpose of labour market analysis. They are neither juridical definitions nor do they form a final classification.

In this Annex we focus on the most important results of labour market analysis against the background of the overall study. The selected results presented here serve as examples for the prevailing categories of the approach. More details can be found in the long version.

Briefly, the main tasks of the labour market and employment analysis developed are:

- Analysis and assessment of literature and documents.
- Collection of data from international organizations such as Eurostat, European Foundation for the Improvement of Living and Working Conditions, and International Labour Organization.
- Development of a tailor-made dataset for empirical investigations and statistical analyses.

Figure I-1: Illustration of the approach of labour market and employment analysis



I. New Forms of Labour, Work and Employment

I.1. Work-organization and working time

The Prevalence of Telework and Homework

Flexible work organization, in particular flexible working times, is considered to be a key element in the current debate on the future of the European economy and its labour markets. However, company premises are still the most important place of work in Europe.[52]

[52] For further details for the category "work organization and working time", in particular the different working time arrangements, see long version of report, section II, p. 5ff.

According to the latest European Survey on Working Conditions, almost 60% of employees in the EU work all or almost all of the time at company premises. It is interesting to note that a considerable proportion of people never or almost never work at company premises (almost 30%). Around 15% of respondents reported they always or almost always work outside the home or company premises.[53]

The proportion of employees working **all or almost all of the time** from home (with or without a personal computer) is extremely low and comprises less than 3% of the EU working population. On the other hand, around 12% of European workers report working **at least one quarter of the time** from home without a PC and 8% with a PC. This suggests that, although telework or working from home is not yet a real alternative to working on company premises, it is used by a substantial proportion of people as a **complement to their normal working arrangements**. Furthermore, we observe a large variation of work arrangements across different **sectors**. In hotels and restaurants, manufacturing, health, retail, financial intermediation and public administration, the proportion of people working only at company premises is much higher than on average.

The fourth wave of the European Working Conditions Survey (EWCS) asks respondents explicitly for working at home and with a PC. The overall proportion of people doing telework is very low. On average, it comprises slightly more than 5% of all workers in the EU. Less than 2% **regularly** work from home with a PC. The share of employees doing telework is the highest in the **Scandinavian countries** and **The Netherlands;** it is also high in **eastern European** MS. The **southern European MS** display the lowest shares.

In general, however, the prevalence of telework is rather low. In the year 2000 wave of the European Working Conditions Survey (EWCS) the overwhelming majority of workers (95.2%) reported that they never or almost never do telework from home with a PC.[54] The proportion of workers, doing telework at least one quarter of the time varies in the MS between 1.1% and 9.1%. Five years later we observe a moderate increase in this proportion. In the 2005 survey, on average 9.2% of employees reported doing telework at home with a PC for at least one quarter of the time, with a variation between 2.3 % to 20.2 % across MS. However, the proportion of employees doing telework from home with a PC **all the time or almost all of the time** is still very low. It varies from 0.7 % to 7.7 % across MS with a mean of 2.4 %. Hence, we observe a slightly increasing trend towards telework within the EU, which, nevertheless, remains at a rather low level.

Company-oriented versus worker-oriented working time arrangements

Flexible working time and teleworking from home in particular is considered to be both company-orientated and worker-oriented. According to results of the Establishment Survey on Working Time and Work-Life Balance (ESWT) the different types of flexible working time arrangements in establishments varies remarkably across MS. Four groups of MS can be distinguished:[55]

- The first group comprises the Scandinavian countries **Finland** and **Sweden** in which high flexibility is combined with worker oriented working time arrangements.

[53] See Parent-Thirion, A. et al.: Fourth European Working Conditions Survey, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 41ff.
[54] Own calculations with data from different waves of the European Working Conditions Surveys.
[55] See Chung, H.; Kerkhofs, M., Ester, P.: Working time flexibility in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 30ff, 38.

- The second group contains central European states in which high or intermediate flexibility is combined with worker oriented arrangements. This group includes **the United Kingdom** along with the MS displaying a large proportion of the life course intermediate-flexibility type of companies, i.e. the **Czech Republic**, **Denmark**, **Latvia**, **The Netherlands** and **Poland**. Interestingly, the new MS are too heterogeneous to form a separate cluster for this issue.
- The third group comprises three MS with the highest proportion of overtime company type (**Austria**, **Germany** and **Ireland**) together with MS with high shares of the company-oriented high-flexibility company type, i.e. **Belgium, France, Luxembourg** and **Slovenia**.
- In the final group the **southern European MS** and **Hungary** are found. This group is characterized by a relatively high amount of low-flexibility companies.

Finally, it must be noted that working time flexibility is a multidimensional concept and that it does not run from low levels to high levels. European MS and establishments differ remarkably in their flexibility strategies and the application of different elements of working time flexibility.[56]

I.2. Part-time Work

Overview on the Incidence of Part-time Work

Part-time work is probably the best-known flexible working time arrangement in Europe. The rate of part-time work varies across MS and considerable country differences exist in the development, the extent as well as in the duration and schedule of working hours.[57] In the past decade, the share of part-time workers among the total workforce has increased considerably in most European MS, on average from about 14 % in 1992 to about 18 % in 2002 in the EU15.[58]

From a cross-country perspective, the incidence of part-time employment at the establishment level differs considerably. While in **The Netherlands**, almost nine in 10 establishments have experience with part-time work, in **Greece** and **Portugal** only around two in 10 establishments employ part-time workers. Overall, in the 21 MS covered by the ESWT survey, three groups of MS can be distinguished according to the extent of part-time work at the establishment level. In the Scandinavian and Western European MS as well as the United Kingdom, part-time work is relatively common. In these MS almost three quarters of establishments with 10 or more employees practise this form of employment. Only two MS in this group, **Luxembourg** and **Finland**, exhibit a somewhat smaller incidence of part-time work (slightly more than 50 % of establishments). By contrast, part-time work at the establishment level remains less prevalent in most Mediterranean countries, where on average around 40 % of establishments employ part-time workers. In **Portugal**, **Greece** and **Cyprus**, in particular, a relatively small proportion of establishments currently employ part-time workers.

[56] Ibidem, p. 59f.
[57] See Anxo, D. et al.: Part-time work in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007.
[58] For further details see section II.2 of the long version of labour market analysis (p. 14ff).

Regarding the number of employees working part-time, **The Netherlands** exhibit the highest proportion of part-time workers with 46 %. Very low proportions of part-time working employees (below 10 %) can be found in five of the new MS, i.e. in **Hungary**, **Czech Republic**, **Latvia**, **Slovenia** and **Cyprus**, but also in **Greece**.

Part-time Working Elderly[59]

According to Eurostat,[60] the proportion of part-time working elderly amounts to 22.2 % on average for the EU-25 in 2005. Interestingly, part-time work is more common in the age group 55-64 than among the 30-49 years old (16.8 %). As expected, the share of part-time working older women is higher than that of older men (39.5 % compared to 10.3 %). Furthermore, the proportion of part-time working elderly differs considerably between MS. The lowest share is displayed by **Slovakia** (7.2 %), the highest is (again) found in The Netherlands (49 %). In the 15 old MS (EU-15) this share amounts to 23.3 % on average, which is remarkably higher than in the 10 new MS (NMS-10) with 14.0 %.

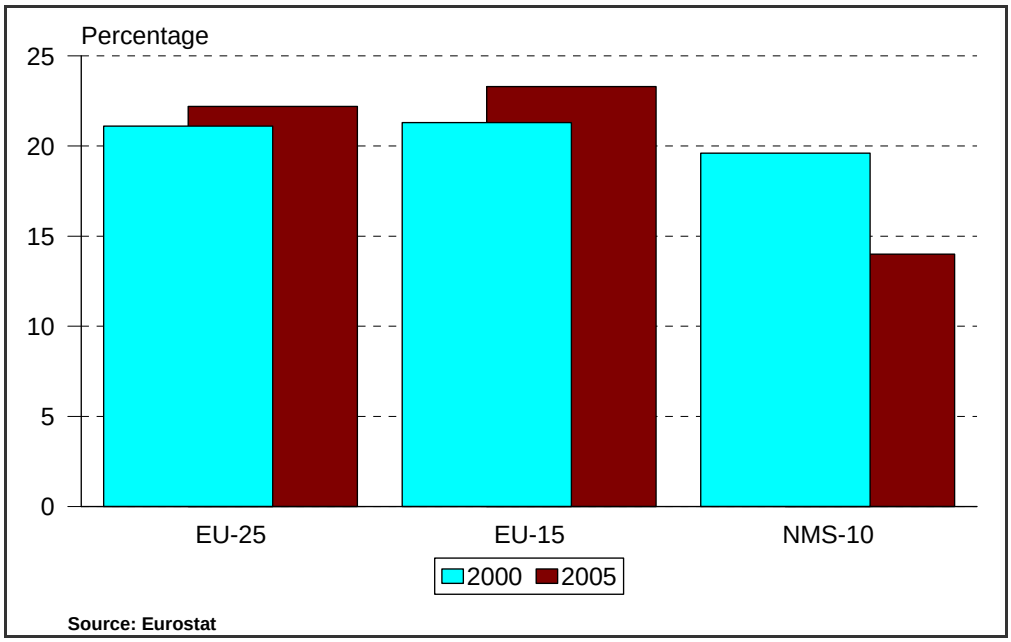
Comparison with the year 2000 reveals a **slight increase** in the European Union from 21.1 % to 22.2 %. However, the development between old and new MS is completely different. While in the old MS the share of part-time working elderly increased from 21.3 % to 23.3 % the new MS exhibit a remarkable decrease from 19.6 % to 14.0 % (see **Figure 2**).

The development from 2000 to 2005 also reveals considerable differences between MS. On the one hand, we observe high increases in **Luxembourg** (+ 9.5 percentage points) and **Austria** (+ 7.3 percentage points). On the other hand, there are considerable decreases in the same period in **Poland** (- 7.3 percentage points) and less pronounced decreases in other new MS such as in the **Czech Republic** and in the **Baltic countries**.

In 2005 the **Scandinavian countries** (including The Netherlands) exhibit the highest average share of older part-time workers (32.4 %).[61] In the **United Kingdom** the proportion of older part-time workers amounts to 31.7 %. **Continental countries** display a share of 24.7 %. In **southern Europe**[62] the average proportion is much lower (11.0 %) and lies below that of the **central and eastern countries** (13.1 %). Hence, there is a remarkable difference between Scandinavian and continental countries on the one hand and southern and central/eastern Europe on the other hand.

[59] For the person group of young individuals part-time working see long version of study, p. 16f.
[60] Source of data and information: Aliaga, C., Romans, F: The employment of seniors in the European Union. Statistics in focus 15/2006, Luxembourg. Data are not available for Bulgaria and Romania.
[61] National data are weighted with the number of employees in this age group by own calculations. Data on employment are provided by Eurostat.
[62] Including Cyprus and Malta.

Figure 2: Proportion of part-time working elderly in 2000 and 2005 EU-25, EU-15 and NMS-10



Involuntary Part-time Work

While the proportion of part-time workers has been increasing in most EU MS over the last 15 years, the proportion of **involuntary part-time workers** has also increased. The latter group refers to employees who report in surveys that they work part-time because they can not find a full-time job and that they would prefer to work longer hours. At EU level, the share of involuntary part-time employment has been rising since the 1990s, reflecting a strong increase especially in the **Czech Republic**, **France** and **Germany**.[63] Involuntary part-time employment has risen both among men and women. In general, the rate of involuntary part-time work is higher for male part-time workers. However, women still account for the majority of involuntary part-time workers.

It is interesting to note that in the two MS with the highest proportion of part-time employment among young workers, i.e. **Denmark** and **The Netherlands**, the incidence of involuntary part time working in relation to overall part-time work is relatively low.[64] **Sweden**, **France** and **Italy**, on the other hand, show a high incidence of involuntary part-time work among the young.

[63] According to Eurostat. See: Anxo, D. et al.: Part-time work in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 6.
[64] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 47.

I.3. Fixed-term Work

General Picture of Fixed-term Work in Europe

Working on a temporary basis holding a fixed-term contract is an increasing phenomenon in the European Union.[65] A remarkable share of these persons works involuntarily in a fixed-term employment relationship, i.e. they want to work on a permanent basis but can not find such a job.

Starting with the overall picture it must be noted that in the EU-25 15 % of all female and 14 % of all male employees hold fixed-term contracts in 2005.[66] The proportion of women and men employed in fixed-term jobs varies remarkably across the EU. In **Spain**, the proportion of women working on a temporary basis (voluntarily and involuntarily) amounts to more than 35 %. A similarly high share of workers with fixed-term contracts is also found in **Poland** with approximately 25% for both female and male employees. Regarding the female part of the labour force, **Portugal** and **Finland** display above-average proportions (over 20 %). On the other hand, a number of MS exhibits shares which are well below the EU-average, e.g. less than 6 % in **Malta, Slovakia** and the **United Kingdom** and even below 4 % in **Ireland** and **Romania**. In **Lithuania**, the share of men employed on a fixed-term basis was more than twice as high as that of women. This is one of four MS in the EU where the share of male fixed-term workers is larger than that of women. The others being **Latvia, Hungary** and **Poland**. Hence, this phenomenon is restricted to the new MS.

There are a number of reasons why persons work on the basis of fixed-term contracts. One important reason is that they cannot find a permanent job. Employees who in principle want to work on a permanent basis but are unable to find such a job are considered to work on fixed-term contracts **involuntarily**.[67] In the EU as a whole, men and women holding fixed-term contracts involuntarily amount to around one half of all workers with time-limited employment relationships. Women working involuntarily in fixed-term jobs represent 7.5 % of all female employees, while the proportion for men is 6.7 % (2005). The development between 2000 and 2005 exhibits a slight increase of involuntary fixed-term work. Over these five years the relative number of women in fixed-term jobs increased from 14.1 % of all female employees to 14.9 % and for male employees from 12.5 % to 13.9 %.

The proportion of workers employed in fixed-term contracts varies considerably across MS. For instance, in **Spain** 24 % of all female and 22 % of all male workers are employed in fixed-term jobs involuntarily in 2005. Corresponding numbers for women are also high in **Cyprus** (19 % of all female workers), in **Finland** (15 %), and **Portugal** (14 %). To the contrary, in **Cyprus** and **Finland** the share of men working in such jobs is substantially lower and in **Portugal** the proportion of male workers in fixed-term work involuntarily is slightly lower than for women. On the other hand, there are several MS with very low shares in 2005. The proportion of female employees working involuntarily on a fixed-term basis is only around 2 % or less in **Austria, Germany, Ireland, Latvia, Luxembourg, Romania** and the **United Kingdom.** The corresponding numbers for men are very similar in all these MS except in **Latvia**, where it is remarkably higher than for women.

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[65] See also the long version of the report, chapter II.3, p. 21ff.

[66] Source of data is Eurostat. See Hardarson, O.: Men and women employed on fixed-term contracts involuntarily. Statistics in focus 98/2007, Luxembourg.

[67] The EU Labour Force Survey includes information on the inability of finding a permanent job as one of the reasons for people holding a fixed-term contract.

A differentiated look at **age-groups** reveals that almost one third of all employees under 30 hold fixed-term contracts in 2005 (EU-25). This is significantly higher than the average of 14 %. In the age-group under 30 the proportion of persons working in a fixed-term job involuntarily amounts to around 40 %. This proportion is particularly high for both young women and men in **Spain, Poland**, and **Portugal**. The share is also high in **Cyprus, Finland** and **Sweden**. By contrast, very low shares (under 2 %) can be found in **Austria** and the **United Kingdom.**

A large number of persons working in fixed-term jobs involuntarily hold **very short employment contracts**. In 2005, 43 % of women and 48 % of men in such employment relationships hold contracts with duration of less than six months. In general, more than three quarters of all employees in such positions hold contracts of less than one year. In **Spain**, where the proportion of fixed-term contracts is larger than anywhere else in the European Union, 64 % of all women employed in such jobs involuntarily in 2005 have contracts of less than 6 months, while the proportion of men is only slightly smaller (62 %).

Finally, it is worth noting that **low skilled employees** exhibit higher rates of working on fixed-term basis involuntarily than well skilled employees.

I.4. Temporary Agency Work

Employment in temporary agency work (TAW) in the EU has increased rapidly during the last fifteen years, especially in the mid and late 1990s. Temporary agency work is often seen as the typical form of atypical work, in particular by trade unions and employee interest groups. Unfortunately, statistical records often exhibit data gaps[68]. According to a study commissioned by the European Foundation for the Improvement of Living and Working Conditions some 2.5 to 3 million (full-time equivalent) employees are employed by temporary work agencies (2004).[69] This accounts for 1-2 % of overall employment for most of the old MS.[70]

In the EU-15 an above-average proportion of the total workforce employed in TAW can be found in **the United Kingdom, The Netherlands**, **Belgium** and **France**. Interestingly, the United Kingdom is on top of the list irrespective of the data source. In the **new MS** relevant data are very limited, since TAW is in its infancy there and, in some cases, only recently became legal (e.g. Czech Republic in October 2004).[71]

One main **reason for workers to engage in TAW** is to find a permanent job outside this sector. Other aspects, such as diversity of work and achieving a work-life balance, are typically attributed a lower priority. More than half of the temporary agency workers reported that there is no alternative job for them (54.8 %) and that TAW provides an opportunity to maintain freedom and independence (53.3 %). For some employees TAW provides a possibility of temporarily gaining extra income (43.7 %), while approximately a quarter of the agency workers chose TAW because it facilitates the combination of family and work (27.2 %).

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[68] See e.g. Storrie, D.: Temporary agency work in the European Union, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2002. This author also discusses the problem of TAW to be a catch-all term as well as to illegal work (ibidim, p. 29).

[69] Arrowsmith, J.: Temporary agency work in an enlarged European Union, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2006, p. 5f.

[70] Own calculations with data of the fourth European Working Conditions Survey yield a share of around 1.3 %.

[71] Arrowsmith, J.: Temporary agency work in an enlarged European Union, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2006, p. 11f.

Over three quarters of the temporary agency workers report that they chose TAW voluntarily with age and work experience being important factors. For some of the temporary agency workers, age seems to be an obstacle in finding a permanent position. Some of the younger women in childbearing age reported that getting another job is difficult. Others stress lack of work experience as a main obstacle for a permanent job. Unfortunately, there is no substantive and clear evidence whether temporary agency work can serve as a stepping stone towards a permanent job for individual workers.

I.5. Self-employment

Overview on the Development of Self-employment

Over the last years self-employment increased in the European Union remarkably. As part of this trend, the share of self-employed workers who are operating their enterprises without the support of dependent employees is growing particularly as well. Members of this category of self-employed are also known as "own-account workers". However, working self-employed without dependent employees does not necessarily mean to work "atypically" or even "precarious", especially if individual preferences are taken into account. But working predominantly for one commissioning company means the self-employed is dependent (e.g. in terms of income) from this company.[72]

According to Eurostat there are approx. **22.7 million self-employed** persons (without workers) in the EU-27, of which around 7.4 million are women, i.e. 32.7 % (2006). A comparison with the year 2000 reveals an increase of around 2 million persons being self-employed. Moreover, the number of self-employed women increased by around 800,000, that is the share of women in self-employment increased by 0.9 percentage points. Despite the increase expressed in total numbers, the share of self-employed relative to total employment decreased from 16.6 % in 1997 to 15.6 % in 2005 and the prevalence of self-employment as a proportion of total employment varies substantially across MS, ranging from 5 % in **Sweden** to 44 % in **Romania**.[73]

Transitions between Status of Employment and Mobility Patterns in four MS

It seems that own-account work becomes more attractive as a **transition phase during working life** for a growing number of people. In the area of own-account work it is important that robust bridges should be built in both directions, both into self-employment and dependent employment. The mobility created in this way also increases the opportunities for **"**outsiders" to regain "regular" employment. An in-depth analysis of four European MS (Germany, Italy, The Netherlands and the United Kingdom) suggests the following results on mobility into and out of self-employment:[74]

- The mobility rates in the area of own-account work suggest that this is a very dynamic segment of the labour market, i.e. flows into and out of own-account work are relatively high. Furthermore, it seems that a considerably higher share of workers experience a period of own-account work over time than is reflected by the self-employment rates for a specific point in time.

[72] This group of persons is also called semi-independent worker.
[73] BUSINESSEUROPE et al.: Key challenges facing European Labour Markets: A joint analysis of European Social Partners, Brussels 2007, p. 10f.
[74] See Schulze Buschoff, K.; Schmidt, C.: Own-Account Workers in Europe – Flexible, mobile, and often inadequately insured, discussion paper SP I 2006 – 122, Berlin 2006, p. 3ff.

For instance, in 2001 of all persons in working age (16-64 years), **5 % in Germany, 6 % in The Netherlands** and **8 % in Italy** engaged in own-account self-employment at least once during the past 8 years (1994-2001). The highest share of 12 % was found in **the United Kingdom**.

- The **mobility rates** of own-account workers are significantly higher than those of dependent employees. In the comparison between **men** and **women** it seems that in almost every year women in all MS exhibit higher mobility rates than men. In particular**,** transitions from non-employment are much more frequent among women than among men.
- Over time and in all MS, considerably more individuals have the status of own-account workers than is revealed by the aggregate data for individual years. The share of people who were own-account self-employed at least once during the period 1994-2001 is around twice as high as the share of own-account workers in 2001 (with the exception of **The Netherlands**).
- **Germany** displays the highest mobility rates for own-account workers since 1996. However compared to the other MS it (still) exhibits the lowest share of own-account workers compared to total employment. Compared to the other MS, the share of transitions between dependent employment and own-account work are the highest in Germany also. Exits from own-account work leading to dependent employment are also on an upward trend – and more so among women than men.
- **The United Kingdom** differs from the other MS by displaying the highest share of own-account workers compared to all self-employed. In 2003, no less than three quarters of all self-employed were running own businesses without employees. Additionally, the United Kingdom has the second-highest mobility rate (after Germany) for own-account workers. Finally, the share of repeated short-term phases of own-account work was the highest in the United Kingdom.
- In **The Netherlands,** 7 % of all employed are own-account workers and the latter account for two thirds of all self-employed. Compared to the other MS, the share of transitions from own-account work into non-employment is by far the highest in The Netherlands. By contrast to the other MS, very few exits from own-account work lead to dependent employment.
- **Italy** has by far the highest share of self-employed compared to the other four MS. In 2002, 23 % of all employed individuals were self-employed. Similar to Germany, in Italy around half of all self-employed are own-account workers, i.e. 11 %. Italy is also outstanding for the low mobility rate of its own-account workers compared to the other MS.

Finally, it must be emphasised that transitions from and into self-employment have to be considered within the flexicurity debate. Self-employment can form an attractive alternative to dependent employment and to unemployment in particular.

As already mentioned in the introduction, a large number of persons exhibit several atypical work characteristics at the same time. Consequently, the categories of the analytical approach have overlaps and intersections. Thus, to consider a **composite indicator** as well, seems to be necessary.

Thus, we constructed a composite indicator consisting of two sub-indexes: one for the tier of employment and one for the tier of unemployment. These composite indicators are presented in chapter IV.[75]

II. The Tier of Unemployment

II.1. General Trends in Unemployment

In 2006, the EU experienced its most substantial decline in unemployment since the end of the last decade.[76] The EU's average unemployment rate decreased from 8.7 % in 2005 to 7.9 % in 2006. The strongest reduction was displayed in the new MS **Estonia**, **Latvia**, **Lithuania**, **Poland** and **Slovakia**, although the latter two MS still have the highest unemployment rates with 13.8 % and 13.4 %, respectively.

Rates went up in only seven MS, although only marginally in most cases. The highest increase in 2006 was recorded in **the United Kingdom** (+ 0.5 percentage points). But **the United Kingdom** continues to have by far the lowest unemployment rate among the large MS. Low unemployment rates in 2006 are also observed in **Denmark** and **The Netherlands** (3.9 % each) and **Cyprus**, **Ireland** and **Luxembourg** exhibit rates well below 5 % as well.

Gender differences in the average EU unemployment rate continued to decrease to 1.6 percentage points in 2006, with unemployment rates at 7.2 % for men and 8.8 % for women. Nevertheless, in several MS the unemployment gender gap remains large, especially in **Greece**, **Italy** and **Spain**. However, in a few MS, especially **Estonia, Latvia, Lithuania, Ireland, Romania** and **the United Kingdom,** unemployment rates for women are actually lower than those for men. The drop in the overall unemployment rate is also reflected by a further fall in **long-term unemployment** (see section II.6 below).

II.2. Unemployment of the Young

General Structure of Youth Unemployment

The integration of young workers into the labour market is a major policy objective all over the European Union. Despite the overall positive labour market developments this specific group faces considerable integration problems in many MS. Moreover, many of those who have gained a foothold in the labour market often have unstable and even precarious jobs.[77]

The overall development may be characterized as follows: in absolute numbers, both youth[78] unemployment and youth employment have decreased in recent years for the EU-27. Between 2000 and 2006, the total number of unemployed young workers decreased from slightly over 5 million (18.5 %) to 4.6 million (17.4 %). During the same period, youth employment in the EU-27 dropped from around 22.6 million to about 22 million. According to the Labour Force Survey the number of young individuals who do not actively participate in the labour market increased slightly from 33.2 million to 33.8 million. This means a decrease in the youth activity rate from 45.6 % to 44 % in the same period.

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[75] The Social Science Research Centre Berlin (Wissenschaftszentrum Berlin – WZB) also developed a composite indicator for "atypical work" which consists only of four components. See long version of the study, section II.8, p. 38ff.

[76] European Commission (ed.): Employment in Europe 2006, Luxembourg 2006, p. 24, 35f, European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 29.

[77] See e.g. European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 29ff.

[78] In general, youth are young persons aged 15- 24.

Thus, to a large extent, the positive development of youth unemployment is probably due to a higher share of young people in education and training. However, youth unemployment remains twice as high as overall unemployment.[79]

Regarding the different MS, **Denmark** and **The Netherlands** display the lowest shares of unemployed youth relative to the youth labour force (7.7 % and 6.6 % respectively). Youth unemployment rates below 10 % are also recorded in **Austria, Ireland** and **Lithuania**. On the other hand, several MS exhibit unemployment rates for the young of 20 % and more; among them are **Belgium, France, Greece, Italy, Poland, Romania, Slovakia** and **Sweden**.

In general, youth unemployment ratios seem to correspond to adult unemployment ratios. But there are remarkable differences between the MS. In **Poland** and **Slovakia** and, to a lesser degree, in **France, Greece** and **Spain**, both the percentage of unemployed young workers and unemployed adults is relatively high. On the other hand, **Finland**, **Sweden**, and, to a lesser extent **Malta** and **the United Kingdom,** display considerably higher unemployment ratios among the young than among prime-age adults.[80]

Development of Youth Unemployment since 1995

In the 1990s, youth unemployment was a challenging problem in EU-15 with an average unemployment rate among the young of 20.5 % (1995). However, there was also a large variation across the old MS, ranging from 5.9 % in **Austria** to 41.2 % in **Finland** and 41.9 % in **Spain**. In 2000, the average unemployment rate for youth decreased to 14.6 % in EU-15 with still a large variation across single MS. The lowest proportions were recorded in **The Netherlands (5.3 %), Austria** (6.3 %), **Luxembourg** (6.4 %) and **Ireland** (6.5 %), the highest rates in **Italy** (31.5 %), **Greece** (29.2 %), **Finland** (28.4 %) and **Spain** (25.3 %). Five years later, the unemployment rate of young workers increased again, now up to 16.5 %. In 2005, the lowest rates can be found in **The Netherlands** (8.2 %) and **Denmark** (8.6 %); the highest in **Sweden** (22.8 %) and **Belgium** (21.5 %).

Youth unemployment appears to be a serious problem also in the new MS.[81] In 2000, the unemployment rate in this age group (under 25) was 22.1 %. However, also in these MS observable rates vary enormously from 10.2 % in **Cyprus** to 36.9 % in **Slovakia** and 35.7 % in **Poland**. Five years later, the labour market situation of the young has slightly improved. In 2005, the average unemployment rate is 20 %, ranging from **Latvia** (13.6 %) and **Cyprus** (13.9 %) on the lower end, up to **Poland** (36.9 %) and **Slovakia** (30.1 %) at the upper end of the distribution. Thus, youth unemployment is a serious and persistent problem in most of the new MS, in particular in Poland and Slovakia.

[79] BUSINESSEUROPE et al.: Key challenges facing European Labour Markets: A joint analysis of European Social Partners, Brussels 2007, p. 11.
[80] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 33f.
[81] Including the (former) candidate countries.

II.3. Unemployment of the Elderly

Overview on the Labour Market Situation of Older Workers

Population ageing due to demographic change is one of the main challenges of societies in Europe.[82] One likely consequence of the aging workforce might be that participation levels as well as the size of the labour force are more and more influenced by the activity patterns of the older generations. However, unemployed older workers still face enormous difficulties to be reintegrated into labour market.

According to the Labour Force Survey, the employment status of the 56.6 million persons aged 55-64 in the EU-27 can be summarized as follows (2006):[83]

- 24.6 million are in employment;
- 1.6 million are unemployed;
- 30.4 million are inactive.

While the European Commission usually defines older workers as individuals being 55-64 years old, labour market problems which are associated with age typically concern also individuals aged 50 and older. Furthermore, a substantial share of individuals over 60 years is inactive and/or already retired (for transitions into retirement see also chapter 3.2 below). Hence, it seems reasonable to concentrate the investigation of unemployment problems of older workers to individuals aged 50-59.

In general, the EU-27 exhibits an unemployment rate of older workers (50-59) of 7.2 % in 2000 and of 6.4 % five years later.[84] However, the unemployment rates for this age group vary remarkably between MS:

- In 1995, the shares in the old MS (EU-15) ranged from 4.3 % (**Greece**) to 13.3 % (**Spain**) with an average rate of 7.4 %. Below the 5 % line were also **Austria**, **Italy, The Netherlands** and **Portugal**. Considerably above average was also **Germany** with 10.3 %.
- In 2000, the rates in EU-15 range from 2.0 % (**The Netherlands**) to 11.5 % (**Germany**) with an average rate of 5.7 %. In the new MS the lowest unemployment rate for older workers is 3.3 % (**Romania**), the highest 14.0 % (**Bulgaria**). The average unemployment of elderly workers was 9.1 % in the new MS.
- In 2005, in the EU-15 the unemployment rates of elderly workers range from 2.9 % (**the United Kingdom**) to 12.2 % (**Germany**) and from 3.8 % (**Cyprus**) to 14.2 % (**Poland**) in the new MS. The average rates for this age-group are 5.2 % in the old MS and 7.9% in the new MS.

[82] See European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 53ff.
[83] Ibidim, p. 60. Additionally there are 3.5 million persons aged 65 and over who are in employment.
[84] Source: own calculations with data provided by Eurostat.

Transitions of the Elderly

It is important to examine the transitions between economic statuses (employment, unemployment and inactivity) for older workers, since increasing labour market participation and employment rates for older individuals require both reducing the flows into inactivity (by delaying their exit from employment and the labour market) and raising the outflows from inactivity and unemployment into employment. Statistics from the Labour Force Survey for transitions between 2005 and 2006 indicate the following within the EU: for the working-age population as a whole, the transition rates from work into unemployment (2.5 %) or inactivity (2.9 %) are more or less similar. By contrast, for those aged 55-64 the risk of moving from employment into unemployment is lower (1.5 %), but there is a much higher probability of moving from work into inactivity (8.2 %) and retirement in particular.[85]

Furthermore, it seems worth mentioning, that the high share of older job leavers moving into retirement well before the official retirement age might be the manifestation of a variety of early retirement schemes. Finally, job separation among older inactive individuals for reasons of personal or family responsibilities appears to be relatively rare in most MS, but seems to be a much more important reason in **Cyprus, Ireland, Latvia, Sweden** and **the United Kingdom**, where the respective shares range from 5 % to 11 %, and are, thus, considerably larger than the EU average of around 2 %.[86]

II.4. Labour Market Situation of Migrants

Patterns of Migration Flows

With respect to the integration into the labour market, migrants face several problems. Due to the disadvantageous opportunities for getting a job, this group of persons is considered within the analysis. The overall increasing trend in immigration masks significant differences between MS. **Austria, the Czech Republic, France, Ireland, Italy, Poland, Spain** and **the United Kingdom** have experienced a remarkable growth of inflows. In other MS, the upward trend is less pronounced, and in the case of **Denmark, Germany** and **The Netherlands** a declining trend can be observed.[87] More generally, the following developments can be summarized:[88]

- all **Mediterranean countries** display increasing levels of immigration, albeit to a varying extent;
- in richer **eastern European MS** – namely, the **Czech Republic**, **Hungary** and **Poland** – immigration has grown, yet still remains rather low in absolute terms;
- **Scandinavian countries** host a limited number of immigrants, and in the case of Denmark the number of foreign individuals is declining over time;
- a rather mixed picture emerges for **western continental Europe**, with some cases of growth in immigration, such as **Austria**, **Belgium** and **Luxembourg**, and others of decline, such as **Germany** and **The Netherlands**.

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[85] Except in Germany, see European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 76f.
[86] Ibidem, p. 80.
[87] This trend is attributed to restrictive migration policies in these countries in recent years. See: European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 5.
[88] For net-migration flows see also "Key challenges facing European Labour Markets: A joint analysis of European Social Partners", Brussels 2007, p. 15.

Employment and Unemployment of Migrants

Eurostat data referring to the first quarter of 2006[89] (except for Luxembourg, for which data refers to the year 2005) documents a substantial share of non-nationals living in EU MS. In particular, **Luxembourg** exhibits the highest proportion of foreigners as part of the total population (39.4 %), which is most likely due to the international character of its economy. In **Austria, Cyprus, Estonia, Germany** and **Spain**, the percentage of foreigners within the total population is relatively high and ranges between 8.7 % (**Germany** and **Spain**) and 16.2 % (**Estonia**). To the contrary, the MS with the lowest percentages are **eastern European** MS: **Slovakia**, **Bulgaria**, **Poland**, **Lithuania**, **Hungary**, **Slovenia**, the **Czech Republic** and **Latvia,** which all exhibit proportions of 1 % or less.

The labour market situation of migrants may be summarised as follows: in the vast majority of EU MS foreigners face a higher risk of unemployment, but considerable differences arise among them according to gender, education, country of origin and duration of stay in the host country. Furthermore, Eurostat data reveals that migrants usually exhibit worse employment prospects than natives. This is particularly true for non-EU-25 citizens, for which higher unemployment rates than nationals are almost always recorded, with the only exceptions of **the Czech Republic and Greece**. Differences between non-EU-25 nationals and natives can be as high as 22 percentage points in **Belgium** and is around 15 percentage points in **France, Finland** and **Germany**. Non-nationals from EU-25 MS experience a similar detrimental situation in the labour market, although the difference compared with the native population is considerably lower than that of non-EU-25 citizens.

It is also difficult to take into account the existence of **undeclared work**[90] among migrants, although this is suspected to be relatively widespread in some EU MS. According to the European Foundation for the Improvement of Living and Working Conditions, the available data and estimates for some MS suggest the following picture:[91]

- For **Austria** it is estimated that 109,000 migrant workers were employed full time in undeclared jobs in 2002, particularly in the areas of agriculture, construction, catering, tourism, household services and cleaning.
- In **Belgium**, public authority inspections have discovered a sizeable proportion of immigrants in undeclared work, particularly in the hotel and restaurant trade and construction sectors.
- In the **Czech Republic**, a considerable number of immigrants seem to be illegally employed as unskilled building workers, cleaners, dish washers, packers, sawmill workers, woodcutters or warehouse workers.
- In **France**, a correlation is found between recruitment difficulties in specific sectors, such as construction, hotels and restaurants, retail and agriculture, and the illegal employment of foreigners.

[89] European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 6.
[90] Although there is probably a strong relationship between illegal immigration on the one hand and undeclared work of migrants on the other hand, it is not necessarily the case that illegal migrants are working undeclared and that all migrants working undeclared are illegally staying in the Member State.
[91] European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 16.

- In **Italy**, within the active migrant population, 55.3 % of men are estimated to work as employees in regular employment and 14.4 % in undeclared employment. The corresponding values for women are 59.7 % and 19.7 %, respectively.

Overall one can conclude that in several MS foreigners face exposure to undeclared employment, which seems to be associated with low or even bad working conditions.

II.5. Unskilled and Low-skilled Workers at the Labour Market

Disadvantaged Employment Situation of the Low-skilled

For unskilled or low-skilled workers the risk to become unemployed and to remain in unemployment for a rather long time is significantly higher than for medium- or high-skilled workers. With respect to the structure of employment the variation in employment rates across the MS is the largest among the low-skilled and remarkably less pronounced among the medium- and high-skilled.[92] Employment rates of the low-skilled vary from 25 percentage points above the EU average in **Portugal,** which is the country with the highest population share of low-skilled. **Denmark** and **Sweden** are more than 10 percentage points above the average of the EU. More than 20 percentage points below the EU average are recorded in the **Czech Republic, Poland** and the **Slovak Republic**. **Belgium** and **Germany** also exhibit employment rates of the low-skilled well below the EU average. Comparatively high employment rates of unskilled workers are observed in the **Baltic MS, Cyprus, Denmark, Portugal, Spain** and **the United Kingdom.**

Labour Market Development for Low-skilled Workers since 1995

The labour market for low-skilled workers[93] shows an improving tendency compared with the situation ten years ago. However, there are considerable differences between old MS around the average rates of 13.1 % (1995), 10 % (2000) and 11 % (2005). A differentiated look at population groups exhibits the following picture for the **old MS** (see also **Figure 3**):[94]

- In 1995, we observe for the prime age-group 15-59 shares of low-skilled unemployed which vary from 3.7 % in **Luxembourg** to 24.2 % in **Finland** and 24.6 % in **Spain**. Shares below 10 % were also recorded from **Austria, Greece** and **Portugal**. In most MS the respective proportions for women are considerably higher than for men.
- In 2000, for low-skilled prime-age workers the unemployment rates are relatively low in **Luxembourg** (3.7 %), **Portugal** (4.1 %), **The Netherlands** (4.5 %) and **Denmark** (6.4 %). Above average rates can be found in **Finland** (19.6 %), **France** and **Spain** (15.6 % both). In general, low-skilled women in this age group exhibit higher rates than men, varying between 4.1 % (**Luxembourg**) to 24.2 % (**Spain**).

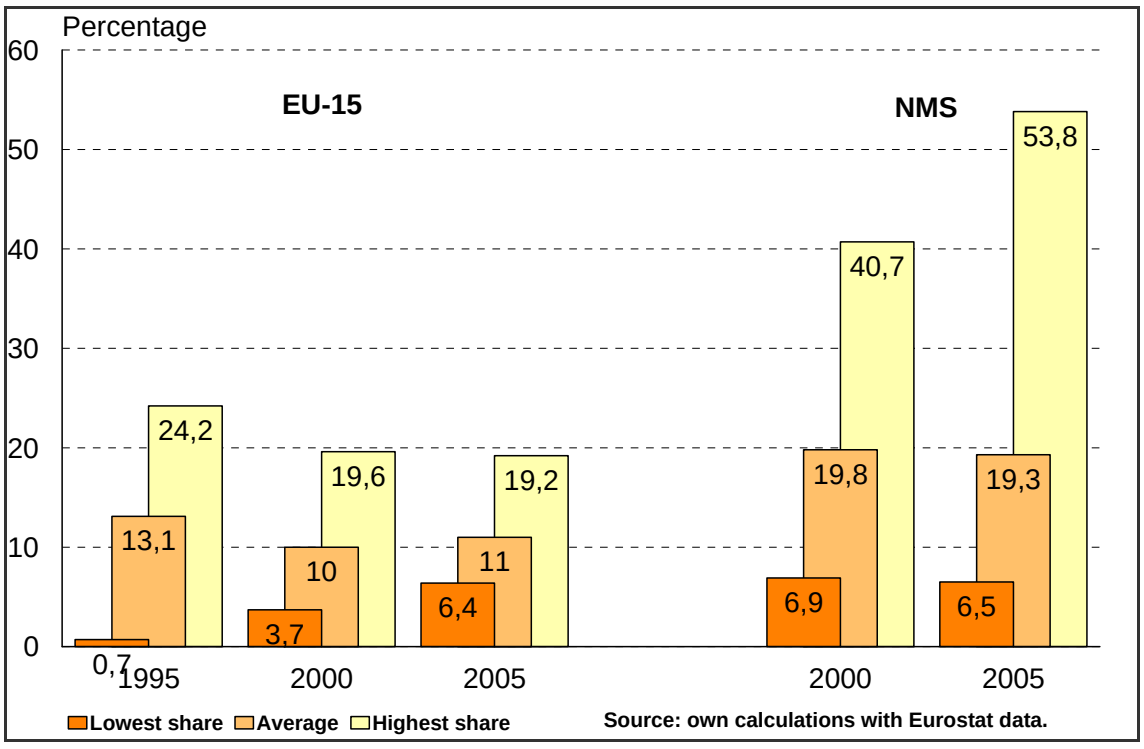
[92] See European Commission (ed.): Employment in Europe 2004, Luxembourg 2004, p. 110ff.
[93] Low skilled corresponds to level 0 to 2 of the International Standard Classification of Education (ISCED).
[94] Source: own calculations with data provided by Eurostat. No data available for the Netherlands and partly also for Luxembourg.

- In 2005, low-skilled prime-age workers display shares varying between 6.4 % **Luxembourg** and 19.2 % in **Germany**. In most MS low-skilled women are more frequently found among the unemployed than men. Female low-skilled unemployment rates range from 7.9 % (**Luxembourg**) to more than 17 % in **Belgium, Germany** and **Sweden**.

In general, within the old MS unemployment of low-skilled workers is a persisting problem, which is especially pronounced in Germany. However, the majority of the **new MS** has to deal with high unemployment among low-skilled individuals as well. In more detail we observe the labour market situation for this group slightly improved between 2000 and 2005 (19.8 % and 10.3 %, respectively). However there is a substantial variation between the new MS (see **Figure 3**).[95] In the prime-age group (15-59) the share of low-skilled unemployed ranges from 6.5 % (**Cyprus**) to 53.8% (**Slovakia**). Above average shares are recorded in **Poland** (30.2 %) and the **Czech Republic** (27.5 %). By contrast to the year 2000, the number of new MS with below average proportions for women decreased, so that five years later only three of them reported lower rates for women than for men. These MS are the **Czech Republic, Hungary** and **Romania**.

Hence, for the new MS unemployment of low-skilled workers is a vital problem as well. This observation holds in particular for **Slovakia** which displays rates up to 75 % and more for some person groups, e.g. the young. The situation of low-skilled workers is similarly problematic in **Poland** and **Bulgaria**, though to a quantitatively lower degree.

Figure 3: Shares of low-skilled unemployed of all unemployed in EU-15 and NMS 1995, 2000, 2005, percentage



MS with lowest and highest shares and average rates in each country group.

[95] No data available for Estonia and partly also not for Lithuania.

II.6. Long-term Unemployment

Long-term Unemployment as a Persistent Problem in the EU

Long-term unemployment is of particular concern for Europe since long-term unemployment is associated with a number of problems like social exclusion, poverty and low productivity growth (or poverty traps). Typically, individuals with rather long unemployment experiences exhibit multiple handicaps for re-integration into employment.

The decline in the overall unemployment rate, which is described above, is associated with a fall in long-term unemployment rate. After a peak of 4.2 % in 2004 and 4 % in 2005, it decreased to 3.6 % in 2006, the lowest rate in the period 2000 to 2006.[96] Among the MS, some have been particularly successful in reducing long-term unemployment by more than 2 percentage points until 2005, notably **Spain, Ireland, Italy, Lithuania, Hungary**, and **Finland**.[97] In some MS, notably **Slovakia** and **Poland**, the long-term unemployment rate is above 10 % and has increased since 1999. Corresponding numbers are also above the EU-25 average in **Germany, Estonia, Greece, Latvia** and **Lithuania**. Despite a considerable reduction, **Poland** and **Slovakia** still display the highest long-term unemployment rates in the Union (7.8 % and 10.2 %, respectively).[98] At close to 5 %, it also remains high in **Germany, Greece and Bulgaria**.

Similar to overall unemployment rates, women are relatively more affected by long-term unemployment than men in the majority of MS, with the largest **gender differences** being found in the **Czech Republic**, **Italy**, **Poland, Slovakia, Spain** and, above all, **Greece**. With respect to long-term unemployment, **young individuals** are, on average, less affected than prime-age adults, due to their higher hiring and job separation rates. Although still high, overall long-term unemployment of young workers also has, on average, decreased since 2000. In 2006, 30 % of unemployed youth were long-term unemployed, down from almost 34 % in 2000. By comparison, the share of long-term unemployed among unemployed adults aged 30-54 is on average around 52 % (2006) and increased since the beginning of the decade.[99]

Development of Long-term Unemployment during the last ten years

In the last ten years, the overall long-term unemployment rates exhibit a decreasing trend. In 1995, the long-term unemployment rate expressed in percentage of labour force was 4.9 % in EU-15. Until 2005, this rate declined almost steadily to 3.3 %.

However, we again observe different developments across the old MS in this period. In some MS, the long-term unemployment rate increased since 1995, e.g. in **Germany** and to a lesser extent also in **Austria, Luxembourg** and **Portugal**. Remarkable decreases are recorded in **Spain** (- 8.3 percentage points), **Ireland** (- 6.5 percentage points) and **Italy** (- 3.4 percentage points). In the majority of the new MS[100] the long-term unemployment rates are explicitly higher than in the old MS. In 2005, **Slovakia** (11.7 %) and **Poland** (10.2 %) display the highest rates, **Cyprus** (1.2 %) the lowest one.

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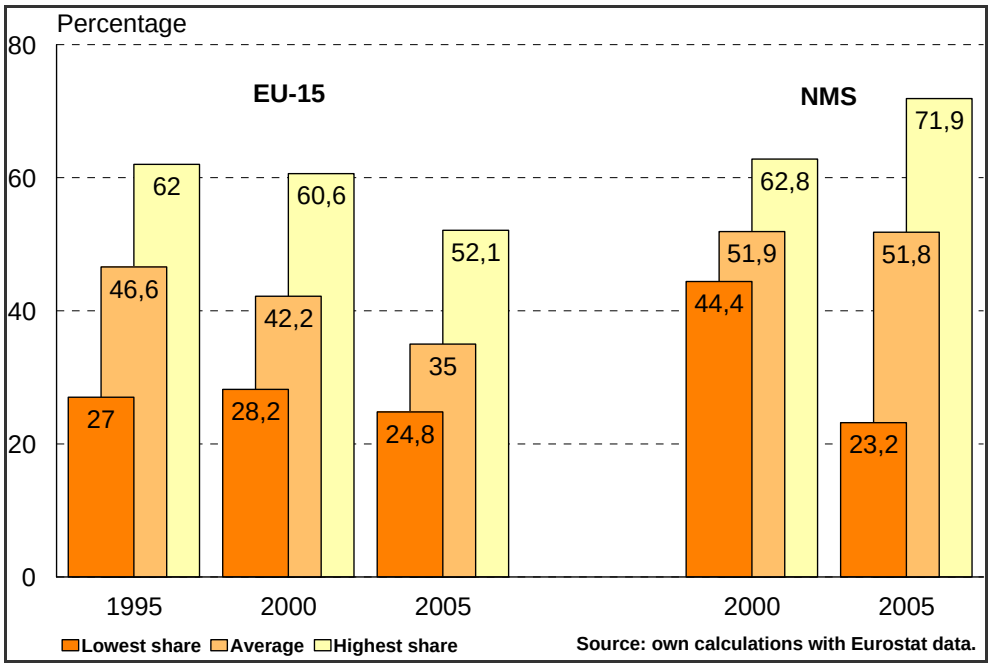
[96] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 29 and BUSINESSEUROPE et al.: Key challenges facing European Labour Markets: A joint analysis of European Social Partners, Brussels 2007, p. 11.
[97] European Commission (ed.): Employment in Europe 2005, Luxembourg 2005, p. 124f.
[98] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 29.
[99] Ibidem, p. 31.
[100] Including (former) candidate countries.

Despite the relatively small rates of long-term unemployment in relation to the overall labour force, the problem of long-term unemployment appears to be persistent. With respect to the share of long-term unemployment among all unemployed, 4 of 10 unemployed persons are currently 12 months or longer without a job (EU-27). In the **old MS** (EU-15) this share decreased remarkably since 1995. Ten years ago, the share of long-term unemployed amounted to on average 46.6 %, decreased to 42.2 % in 2000 and further to 35 % in 2005.[101] **Figure 4** illustrates for the EU-15 and the NMS the variation in shares of long-term unemployment. For the new MS the opening gap between the country with the lowest share and the country with the highest share is striking.

Figure 4: Share of long-term unemployed in EU-15* and new MS 1995, 2000, 2005, percentage



* Without Sweden
MS with lowest and highest shares and average rates in each country group.

While in 1995, the share of long-term unemployed women amounted to 45.4 % in the old MS, which was slightly below the average, the corresponding numbers exceed the overall average in the following periods: slightly in 2000 with 42.8 % and considerably in 2005 with 40.3 %. In 2005 the share of long-term unemployed women is more than 5 percentage points higher than the average share.

In the **new MS** the share of long-term unemployed amounted to 51.9 % in 2000 and remained stable in 2005 with 51.8 %. Compared with 2000, the development in the new MS can be summarized as follows: In 2000,[102] the lowest shares are displayed by **Poland** (44.4 %), **Estonia** and **Hungary** (44.9 % for both), the highest by **Slovenia** (62.8 %) and **Bulgaria** (58.3 %). In 2005,[103] **Slovakia** exhibits the highest share of long-term unemployed (71.9 %). Above average rates are also recorded in **Bulgaria, Romania** and **Poland**.

[101] Source: own calculations with Eurostat data. No data available for Denmark, Sweden and Luxembourg in 1995 and for Denmark, Sweden, the Netherlands and Luxembourg in 2000.
[102] No data available for Cyprus, Malta and Slovakia.
[103] No data available for Estonia, Latvia and Malta.

III. Composite Indicator (SMOP)

In this section we present the results of our own empirical application aiming at the construction of two composite indicators: one is a sub-indicator for flexible employment in Europe and the second is a corresponding composite sub-indicator for unemployment. Before presenting the results of our composite indicator we provide a brief overview on the methodology of our approach.

Overview

The first step comprises the identification of relevant indicators measuring the phenomenon under study, i.e. flexible employment on the one hand and unemployment on the other hand. In principle, a very large set of indicators might be able to represent flexible employment or unemployment. However, the specific choice is limited by data availability and has to take into account that different indicators are interrelated, i.e. measure very similar aspects of the respective phenomenon or carry almost the same amount of information. In technical terms, these indicators are highly correlated. Thus, in a preliminary step, we conduct different *factor analyses* to identify interdependencies between the large number of potential indicators. The aim of these analyses is to reduce the number of variables for index construction. In our empirical application, we started by considering a set of 14 variables on the tier of employment and a further 14 variables on the tier of unemployment.[104] With several statistical analyses we reduce the number of variables to five for the side of employment and to four for the side of unemployment.

In the next step each chosen indicator will then be standardized in a so-called radar-chart, in which the largest observable value in the sample serves as the upper bound (sometimes also called the "benchmark") and the lowest value as the lower bound for each indicator. The standardized indicators can be represented graphically by a polygon, for which each indicator constitutes one axis of the polygon (see figure 5 below). The surface area of the polygon can be calculated and interpreted as an additive composite indicator for the respective phenomenon under study.[105] This composite indicator is known as the SMOP (***S**urface **M**easure of **O**verall **P**erformance*) which can be calculated. The SMOP can then be analyzed in detail to investigate patters over time and/or across MS.

Preliminary Step: Reducing the Number of Indicators on the Tier of Employment

The following paragraphs summarize the results of the analysis for flexible employment indicators. In our empirical application, we started by considering a set of 14 variables including, for instance, share of part-time workers in the prime age-group (i.e. 15-59), share of involuntary female fixed-term contract workers in the prime age-group, share of (total and female) own-account workers in the prime age-group, etc.

Due to data restrictions, and high correlations between some of these indicators, the overall number of variables has to be reduced. The different steps of the analyses enable us to confine the indicator set above to a rather small subset of variables which is manageable and carries the majority of information contained in all variables. As a result of the *factor analysis*, the following five variables are chosen to construct the composite indicator of flexible employment:

- Share of part-time workers in the prime age-group (15-59)

[104] For details see p. 42f and p. 74f of the long version of the study (volume IV).
[105] In the analyses, each indicator has the same weight.

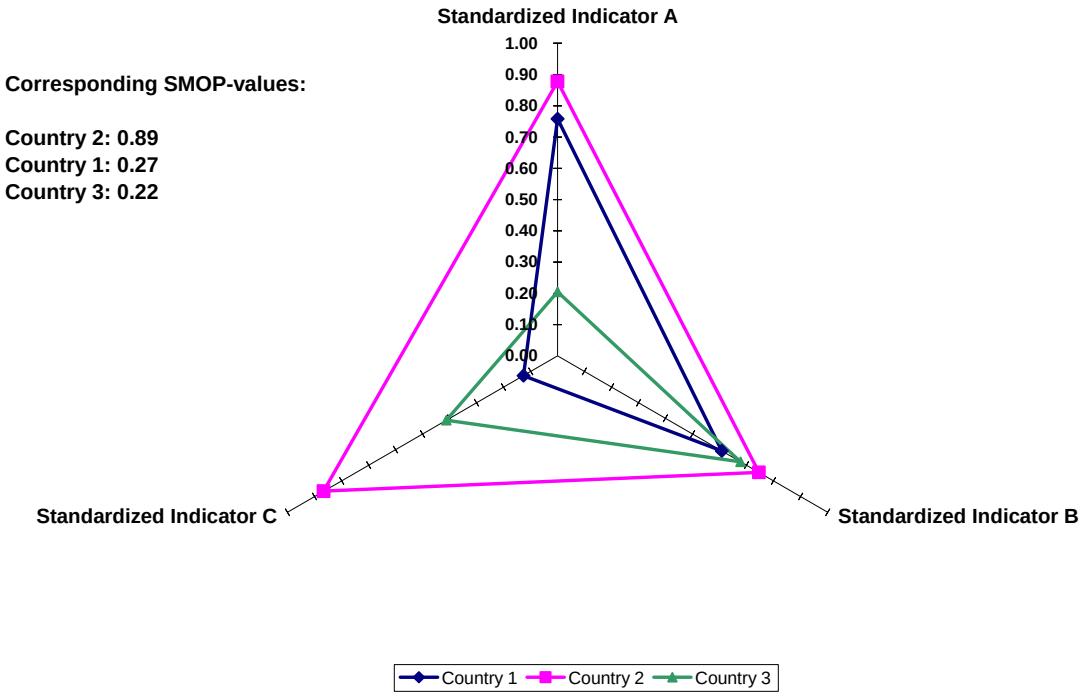
- Share of fixed-term contract workers in the prime age-group (15-59)
- Share of involuntary fixed-term contract workers in the prime age-group (15-59)
- Share of involuntary fixed-term contract workers over 50 years (50-59)
- Share of shift-workers in the prime age-group (15-59)

These five variables will be summarized to one composite index of flexible employment forms using a radar chart approach as mentioned above. This is explained in detail in the next section.

Index Construction by Radar Chart Analysis

In a next step, the chosen indicators have to be made comparable. In this endeavor, the highest observable values in each year serve as the upper bound, i.e. receives the value of 1. The lowest observable values form the lower bound, i.e. zero. With these standardized indicators we then calculate the SMOP for each country in every year. Graphically, the SMOP is the area of the polygon which is spanned by all indicators. To illustrate this, **Figure 5** provides an example for the case of three indicators and one year with three[106] hypothetical MS.

Figure 5: Example for a radar chart with three indicators and one year



From this figure it becomes transparent that country 2 exhibits the highest values in sample for all indicators and, thus, displays the highest SMOP (0.89). Consequently, country 2 receives the highest value of the flexibility indicator in this year. Countries 1 and 3 differ with respect to their position on the three indicators. While country 3 displays higher values for B and C than country 1, the opposite holds for A.

[106] Three instead of five indicators are used for expositional purposes only. In our empirical application we use the five indicators outlined above.

Since all indicators receive the same weight in the calculation of the SMOP, country 1 exhibits a higher value of the flexibility indicator than country 3. Hence, the considerably higher value for A in country 1 overcompensates the slightly lower values for B and C.

In our empirical application of this approach, we calculate the SMOP for all MS in the sample with observations on the five indicators outlined above in each and every year (1995-2006). By ordering the calculated SMOP values in each year, we receive a first ranking of the MS with respect to the flexibility indicator.

The ranking indicates that there is a substantial amount of variation across MS over time. For instance, **the United Kingdom** moves from a rather high value of flexibility during the 1990s towards a relatively low position compared to the other European MS at the end of the observation period. However, we can also observe some MS which remain rather stable over time. **Spain**, **Finland**, and with the exception of two single years also **Sweden**, display labour markets with a comparatively high value of flexibility.

To shed some more light on the differences of the flexibility indicator across MS and over time, we investigate the SMOP-values in more detail.[107] Specifically, we investigate whether and to what extent differences in labour market flexibility exist across the country groups used in labour market analysis: The country groups used in the report are:

- **Continental MS**: Austria, Belgium, Germany, France, Luxembourg.
- **Scandinavian MS**: Denmark, Finland, Sweden and also The Netherlands which show similarities with the labour market regulations of the Scandinavian countries.
- **Central and eastern MS**: Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Slovenia, Slovakia.
- **Southern MS:** Greece, Italy, Portugal, Spain, and also the new MS Cyprus and Malta.
- **Anglo-Saxon MS:** Ireland and the United Kingdom.

Furthermore, we consider a time trend to examine if we can pin down a robust temporal variation in SMOP-values. Finally, we analyze if observable flexibility is associated with past changes in overall economic activity by taking into account the one year lag of gross domestic product (GDP) per capita growth.

Hence, in both models all observable values between the continental country group and all other country groups are significant except the difference with the Anglo-Saxon MS. Furthermore, the difference between the Scandinavian and the southern European MS is also statistically insignificant. In other words, on average the Scandinavian country group and the southern European MS exhibit significantly higher values of our flexibility indicator than the central and eastern European MS, which in turn display larger values than the continental MS group and the Anglo-Saxon countries.

Since the coefficients for the time trend as well as for GDP growth are statistically insignificant in both models, we can neither observe a robust development in the flexibility indicator over time nor a significant association of flexibility with overall economic activity. This suggests that different labour market institutions and regulations together with individual preferences seem to play an important role in explaining cross-country differences.

[107] For this purpose we use a regression model. Such models allow the consideration of several potential explanatory variables simultaneously and provide information on the significance of observable differences in SMOP-values.

Composite indicator for the Tier of Employment

Preliminary Step: Reducing the Number of Indicators by Factor Analysis

The following paragraphs summarize the results of the analysis for indicators of the unemployment situation in the Member State. In our empirical application, we started by considering a set of 14 variables, considering the relevant person groups.

Again data restrictions and high correlations between some of these variables imply that a reduction to a smaller set is necessary. Based on the results of statistical analysis (*factor analysis*) the following four variables are chosen for the composite indicator of unemployment:

- Unemployment rate 15-59
- Unemployment rate 50+
- Share long-term unemployed 15-59
- Share unemployed with low qualification 15-59

These four variables will be summarized to one composite index of flexible employment forms using a radar chart approach.

Index Construction by Radar Chart Analysis

In a next step, we repeated the standardization exercise. These standardized indicators are then used to calculate the SMOP-values, which are the values of the composite indicator for unemployment. It is important to note that the chosen standardization procedure implies, that **high** values of the composite indicator reflect **large** values of the underlying unemployment variables. In other words, higher values of the composite indicator have to be interpreted as higher unemployment problems. A first ordering of the calculated SMOP values in each year again yields a ranking of the MS with respect to the unemployment indicator.

The ranking indicates that there is a substantial amount of variation across MS over time. For instance, **the United Kingdom** moves from a middle ranking of unemployment problems in 1995 and 1996 towards a relatively low position compared to the other European MS at the end of the observation period (2006). This means that the relative unemployment problems in **the United Kingdom** declined during these years. A similar development can be observed for **Spain** where the composite indicator suggests severe unemployment problems in the 1990s which reduced considerably over time. By contrast, the SMOP values for **Austria** and **The Netherlands** indicate comparatively low unemployment problems over the complete observation period.

Finally, we investigate the SMOP values for unemployment in more detail.[108] We investigate whether and to what extent differences in unemployment problems exist across the country groups used in this study. Furthermore, we consider a time trend to examine if we can pin down a robust temporal variation in SMOP values and investigate whether and to what extent observable unemployment problems are associated with past changes in overall economic activity. The latter is again modelled by the one year lag of GDP per capita growth.

[108] Again we used a regression model.

The reference group for the comparison of MS is again the continental group. Thus, the estimation results of the model indicate that the **Anglo-Saxon countries** experienced significantly lower unemployment problems than **continental Europe**, whereas the opposite holds for the **Central and Eastern European countries**. The difference between **continental Europe and the Scandinavian countries** group is only weakly significant which suggests that unemployment is a slightly less severe problem in **Scandinavia** and **The Netherlands** than in **continental Europe**. No significant differences are exhibited by the comparison of **southern European** with **continental countries**.

The coefficients for the time trend in both models suggest a statistically significant declining trend in unemployment problems over time. By contrast, coefficients for GDP growth are statistically insignificant in both models indicating that there is no significant association of unemployment problems with overall economic activity. The latter result does not change qualitatively when the model is re-calculated without the time trend. Hence, putting too much faith in economic growth as a prime solution of unemployment problems in Europe seems to be misleading. Instead, the differences between the country groups suggest that labour market institutions play a decisive role in combating persistently high unemployment.

IV. Results of Composite Indicator Analysis and Conclusions

The Relationship between Flexible Employment and Unemployment across the EU

In a final step, we analyse the correlation between both composite indicators, i.e. the SMOP values for flexible employment on the one hand and unemployment on the other hand. Clearly, which tier of the labour market impinges upon the other is anything but obvious, i.e. we can by no means claim a causal relationship between both indicators. It is easily conceivable that the unemployment situation may have an impact on the extent and structure of flexible employment, but is as easily imaginable that flexible employment might affect unemployment. Hence, the following correlations must not be interpreted as causal effects whatsoever.

Overall, the correlation coefficient between the composite index for flexible employment and the unemployment index suggests that higher unemployment problems are associated with higher flexibility and vice versa.[109] This correlation is, however, only significant for the **EU-15 MS**. In the **new MS** we do not observe a statistically significant correlation between both composite indicators.

Furthermore, the positive association within the EU-15 is completely driven by the **Scandinavian countries** group and, within this group, by **Finland** to the largest extent. Neither the **continental** or the **southern European** MS nor the **Anglo-Saxon countries** exhibit statistically significant correlations between flexible employment and unemployment.

Hence, we cannot pin down a robust relationship between both tiers of the labour market for the vast majority of MS within the EU. In other words, the use of flexible employment forms and unemployment exhibit no strong systematic relationships. This suggests that the assessment of the determinant factors and consequences of flexible employment is an intricate issue for which a complex interaction of labour market institutions on the one hand and individual preferences of employees as well as employers on the other, have to be taken into account. In this endeavour, the use of aggregate statistics across MS seems to blur the picture more than make it brighter.

[109] Correlation coefficient = 0.24.

Instead, an in-depth analysis of individual data covering spells of flexible employment and the transitions between and out of such forms of work seems to be a much more promising way to shed light on the determinant factors and consequences of atypical work.

Main Results and Conclusions

Flexible work arrangements are an increasing phenomenon all over Europe. This general result seems to be commonplace. However, our analyses demonstrate that this is the central common conclusion for the labour market developments across Europe in the last ten years. Within this common result, we do not observe strong similarities or universally valid patterns for the different elements or components of employment and unemployment across Europe. In other words, the different European MS are remarkably heterogeneous with respect to the incidence and temporal development of different forms of atypical work. The same conclusion holds for all aspects of unemployment considered in our investigations. Even groups of MS with similar historical roots in terms of labour market regulations do not display a robust overall picture. By contrast, the overall picture appears to be rather fragmented, which might be illustrated by some exemplary findings:

- The **Scandinavian countries** in general exhibit a relatively high incidence of flexible employment arrangements. However, the extent of flexibility varies considerably between these MS. For instance, the prevalence of part-time work is clearly above the European average in **Sweden** and **Denmark** but not in **Finland**. Furthermore, unemployment is relatively low in the **Scandinavian countries**, in particular in **Denmark**. However, **Denmark** also exhibits comparatively high unemployment rates for unskilled workers.

- **The Netherlands** are exceptional with respect to their high degree of flexible work arrangements in almost all categories such as work organization and working time, part-time work and temporary agency work. However, regarding (voluntary and involuntary) fixed-term work, **The Netherlands** are not in the top group of MS. The high extent of flexibility is associated with low unemployment. **The Netherlands** exhibit one of the lowest overall unemployment rates and also below-average rates for the young and the elderly.

- In the **western continental countries** the picture is extremely heterogeneous. Similar developments in several categories are relatively seldom and common patterns can not be observed, neither for flexible employment characteristics nor for unemployment.

- For the **Anglo-Saxon countries** it is worth noting that they display low rates of fixed-term workers and also relatively low incidence of almost all other flexible work arrangements. However, we observe a high degree of temporary agency work in **the United Kingdom.** This is associated with by far the lowest unemployment rate among the large MS and one of the lowest in the overall ranking. Furthermore, **Ireland** and **the United Kingdom** are exceptional with respect to unemployment rates for women, which are lower than those for men.

- Among the **southern European countries** the prevalence of flexible characteristics is very high in **Spain**. For instance, the proportion of fixed-term contracts is larger than elsewhere in the EU and an above average share of workers holds fixed-term contracts involuntarily. In contrast to western and northern European states, the shares of part-time workers in **southern Europe** are, however, clearly lower than in the other old MS. Also in contrast to the other old MS, southern European countries exhibit higher proportions of self-employment in particular in **Greece** and **Portugal**.

Finally, the relatively low flexibility of working time arrangements is a further difference compared to the other MS in the EU-15. Unemployment is a serious and persistent problem in some southern European MS. With respect to youth unemployment, **Spain** and **Italy**, for instance, display unemployment rates clearly above EU-average. On the other hand, there are some Mediterranean countries with low unemployment rates of the elderly such as **Cyprus** and **Portugal**.

- The new MS in **Central and Eastern Europe** are still in the process of transition. This is also reflected in the labour market, which in general exhibit considerably higher problems than those of the old MS. For instance, we observe extremely high shares of low-skilled unemployed in **Slovakia**. Furthermore, across the new MS we find larger variations in unemployment rates such as the proportions of unskilled workers without a job, long-term unemployment etc. Moreover, the majority of flexible work arrangements such as flexible working time, part-time work and temporary agency work are considerably below the average of EU-15.

Another more general finding across the European MS is the increasing phenomenon of **multiple characteristics**. This holds for atypical employment combinations, e.g. fixed-term contracts combined with part-time work as well as for unemployment for which, for instance, we observe long-term unemployment together with low qualifications. These multiple attributes seem to be one of the largest challenges for policy.

Whether and to which extent **active labour market policies** might help the unemployed is a controversial issue. The results of two meta-evaluations[110] display several quite unambiguous results. Firstly, training measures seem to exhibit a rather modest effectiveness, if any. Secondly, direct job provision schemes seem to reduce net-integration rates of participants, i.e. exhibit a detrimental impact of the job prospects of participants. Thirdly, services (e.g. counselling) and sanctions seem to unfold a positive effect on the probability to find work. However, both analyses do not take into account further objectives of active labour market policies, e.g. the improvement of personnel stability or of employability.

From a theoretical perspective, high employment rates in combination with only short spells of unemployment – if unemployment cannot be avoided – are decisive if flexibility and security can be combined in a favourable way for employees and employers: "To sustain a flexibility-cum-security system, however, high employment rates are required and security should be work- and not welfare-based for those able to work. Therefore, the goal of increasing the employment rates of the population as stated by the European Union is indeed of utmost importance."[111]

[110] Kluve, J. et al.: Study on the effectiveness of ALMPs, RWI Essen, Research project for the European Commission, DG Employment, Social Affairs and Equal Opportunities, Essen 2005, findings presented in European Commission (ed.): Employment in Europe 2006, Luxembourg 2006, p. 141f and Koning, J.; Peers, Y.: Evaluating Active Labour Market Policies Evaluations. Discussion Paper of Social Science Research Center Berlin SP I 2007-112, Berlin 2007.

[111] Auer, P.: In search of optimal labour market institutions. Economic and Labour Market Paper 2007/3, Geneva: ILO, 2007, p. 17.

List of abbreviations used in the summary of Labour Market Analysis

EWCS	European Working Conditions Survey
ESWT	Establishment Survey on Working Time and Work-Life Balance
EU-15	European Union, old 15 Member States
EU-27	European Union, all 27 Member States
GDP	Gross Domestic Product
ILO	International Labour Organization
ISCED	International Standard Classification of Education
ISG	Institut für Sozialforschung und Gesellschaftspolitik, Köln
LFS	Labour Force Survey
MS	Member States
NMS	New Member States
PC	Personal Computer
SMOP	Surface Measure of Overall Performance
TAW	Temporary Agency Work
WZB	Wissenschaftszentrum Berlin

Volume II

National Case Studies -

The Netherlands, Poland, Spain

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I - EXPERIENCES WITH FLEXIBILITY AND SECURITY IN THE NETHERLANDS

I.1 Summary

Relating flexibility and security was a widely debated issue in The Netherlands during the nineties of the last century due to the rise and proliferation of 'non-standard' types of employment, like temporary work, agency work, on-call work, freelance work and home work. The debate culminated in the introduction of a new Act on Flexibility and Security in 1999, aimed at creating a better fit between labour law and the realities of temporary work. Basic principles of the Act were already elaborated some years before in a joint Agreement of the social partners in the Foundation of Labour. The government almost integrally accepted the recommendations of the Agreement in the design of the new Act. Furthermore, the recommendations inspired the Temporary Employment Agency (hereinafter, TEA) sector to further develop the system of labour relations.

From empirical evaluations of the new arrangements it can be concluded that the Act has clarified uncertainties in the status of temporary workers. The new regulations enlarged the opportunities for companies to hire temporary workers and, at the same time, improved the position of temporary workers by maximizing the total duration of temporary work and the total chain of contracts. In practice, vague, unclear contracts grossly disappeared, contracts are better administrated now and there is a shift from insecure on-call contracts to fixed duration contracts. Transitions to open ended contracts are still limited, however. The new law included the possibility of sectoral deviation by mutual agreement in collective labour agreements (hereinafter, CAO's). In most CAO's social partners stayed within legal standards. In some branches they used the right to deviate from legal standards to stretch arrangements beyond what was intended. According to the employers, administrative tasks increased due to the greater complexity of the new rules. However, extra administration is often taken over by TEA's.

The related recommendations of the Foundation of Labour further improved the rights and provisions for flexible workers, especially agency workers, by providing a framework for the establishment of better collective arrangements in the segment of temporary labour. The up-coming system of labour relations in the TEA branch further unfolded with representative organisations, social dialogue, collective negotiations and labour agreements, certification systems, collective pension schemes and other social funds. This made the TEA branch a better regulated sector. It improved the image of the branch and strengthened the position of workers vis-à-vis agencies and hiring firms.

In other sectors, flexible work has had limited effects on social dialogue and industrial relations. It was mainly absorbed through adaptations in existing (collective) arrangements and institutions. At the level of companies, social dialogue and labour relations are hardly affected. In most companies, temporary workers are seen as a kind of outsiders. They usually do not take part in representative organizations, like works councils. Works councils only take account of their interests to a limited degree. These are points that could be improved.

Besides the Flex Act, in general, labour contract law has not changed substantially. The basic defining criteria of an employment relationship are still the same as at the beginning of the 20th century when labour law was introduced. They are uniform, open criteria which many experts still consider to be valid.

Pleas for differentiation of the labour relationship are heard, but the issue is not very high on the political agenda. A specific issue currently is how to cope with (economically dependent) self-employed workers, e.g. the question of whether or not - and if so: how - they could be covered by labour law.

I.2 Background of the case report

I.2.1 Selection of the case

The objective of this report is to provide a case description of experiences with flexibility and security in The Netherlands, with the focus on labour contract regulations. There are several reasons to take a closer look at these experiences. The Dutch flexicurity approach is well known in the EU, as being one of the socio-economic policy models that tries to combine measures to increase labour market flexibility with measures to improve social security of vulnerable groups. It has attracted a lot of attention in the debates regarding the reform of welfare state regimes into more 'activating' participation societies. Recently, the flexicurity concept has been adopted by the EC as a major strategy to create more and better jobs in the future (EC, 2007). The approach is promoted by its supporters as a realistic option to balance economic and social interests in an increasingly competitive environment.

The flexicurity approach is disputed also: on the one hand by right-wing liberal critics who still consider it a too rigid model to meet the requirements of modern businesses; on the other hand by left-wing social critics for whom it puts employment protection and social security arrangements too much at stake. In The Netherlands, flexicurity has been put into practice now for more than a decade. Knowledge of these experiences might give practical input into the discussions at policy levels.

I.2.2 Focus of the case

In its recent publication '*Towards common principles of flexicurity'* (EC, 2007**)** the Commission promotes an 'integrated flexicurity approach'. In such an approach, policies should neither increase flexibility for enterprises or security for workers but they should be designed in such a way that they enhance, at the same time, flexibility and security of the labour market. Policies must not contradict or neutralize each other in this sense but must be mutually reinforcing, by focussing on (labour market) transitions and skills and benefits for people to facilitate successful transitions during their life course. The Commission distinguishes four components of an integrated approach (see: EC, 2007, p.12):

- flexible and reliable contractual arrangements, through modern labour laws, collective agreements and work organization;
- comprehensive lifelong learning strategies, to ensure continual adaptability and employability of workers;
- effective active labour market policies, that help people cope with rapid change and ease transitions to new jobs;
- modern social security systems, that provide adequate income support, encourage employment and facilitate labour market mobility.

These components were also key issues in Dutch social and economic policy during the past decade. They are the constituent elements of the strategy to make labour market institutions more flexible and dynamic.

They were not developed in a fully integrated way, but measures aimed at different components were gradually and increasingly connected and adjusted to one another in the development of a framework for a transitional labour market.

In this report, we focus on the first component because contractual arrangements are a basic component that often influences specific arrangements for further training, labour market mobility and social security. Furthermore, it is directly linked to the general subject of this study: the impact of new forms of work on labour relations and the evolution of labour law in the EU. Where this is functional, however, we will also refer to developments regarding the components of lifelong learning, active labour market policies and social security. To discuss them in detail would extend the scope of this study. They partly belong to other institutional fields, covered by other legal arrangements (education law, social security law).

I.3 Scope of the issue

Some data about flexible work in The Netherlands are presented in the tables below to give an impression of the scope of the issue. The data are mainly derived from a recent evaluation (in 2006) of the Dutch Flexibility and Security Act of 1999 (Knegt e.a., 2007).

I.3.1 Rise of 'non-standard' jobs

The number of 'non-standard' jobs, especially part-time jobs, has grown substantially during the past decades. Since the beginning of the seventies the total volume of jobs almost doubled in The Netherlands. In 1969, there were around 4.5 million jobs, in 2005 there were more than 8 million. As table 2.1 illustrates, the share of 'standard' (e.g. permanent fulltime jobs) sharply diminished and the share of 'non-standard' jobs strongly increased during this period. In particular, the number of part-time jobs has increased to a level that they can now be considered to be almost as 'standard' as fulltime jobs. Most part-time jobs are open ended jobs with a fixed number of working hours, but they can also be of fixed duration. As the table shows, the number of really flexible jobs - e.g. jobs with no weekly or monthly fixed number of paid working hours - has grown substantially too and now amounts up to almost 1 to 10 in 2005.

Table 2.1 – Share of different types of jobs in total job volume, in 1969 and 2005

	1969	2005
Full-time jobs	82%	47%
Part-time jobs	14%	44%
Flexible jobs	5%	9%

Source: CBS, in Knegt e.a., 2007

I.3.2 Different types of flexible contracts

The scope of the problem becomes even clearer when we look at persons instead of jobs. Table 2.2 gives an overview of the estimated proportions of persons with different contractual statuses in the total Dutch active population. The estimates are based on survey data of a representative sample of 72,805 persons between 18 and 65 years old (Knegt, e.a. 2007).

As the table shows, around one-third of the workforce has a flexible contract in 2006. Fixed duration contracts, on-call contracts and temporary work agency contracts are the most widely used types of flexible contracts. Furthermore, circa 7% of the workforce is self-employed or are freelance workers.

Table 2.2 – Share of different types of contractual statuses in total population, in 2006

Open ended contract	58.6%
Fixed duration contract	10.5%
On-call contract	6.4%
Temporary work agency contract	5.0%
Self-employed, freelance contract*	7.3%
Home worker	0.4%
Trainee, apprentice	2.4%
Holiday worker	2.0%
Other type of paid work	3.6%
No paid work, social insurance benefit	17.1%
Status not known	3.8%

* Including working partners and self-employed workers in health care sector (‘*alphahulpen’*)
Source: Knegt, e.a., 2007, p 27

I.3.3 Spread of flexible contracts across companies and sectors

Table 2.3 shows the spread of flexible labour across companies and different economic sectors, as revealed by a survey among 900 companies (Knegt e.a., 2007). As we can see in the total-column, 63 percent of all companies used fixed duration contracts in 2006, 28 percent hired workers from temporary work agencies, 30 percent employed on-call workers, 14 percent hired self-employed workers and/or freelancers and 2 percent made use of home workers.

Table 2.3 – Percentage of companies working with different types of contracts per sector (2006)

	Agriculture, Energy, Industry	**Construction sector**	**Trade, Repair, Horeca**	**Transport, Communi-cation**	**Services sector**	**Health and Care sector**	**Total**
Percentage companies with:							
Permanent contracts	97.4%	100.0%	95.3%	97.8%	100.0%	98.3%	97.6%
Fixed-duration contracts	60.4%	44.5%	58.3%	65.3%	74.4%	71.8%	63.0%
Temp.work agency workers	46.1%	30.8%	15.1%	38.7%	32.8%	28.0%	27.7%
On-call workers	26.6%	11.3%	37.9%	34.3%	18.9%	49.8%	30.3%
Self-employed/ Freelancers	15.8%	31.3%	5.0%	18.4%	20.7%	12.9%	14.4%
Home workers	2.0%	1.9%	0.0%	0.7%	5.7%	0.2%	1.9%
Total number of companies	154	155	150	147	151	152	909

Source: Knegt e.a., 2007, p. 18

There are differences between sectors also:

- the high share of fixed duration contracts in the services sector;
- the high share of temporary agency workers in agriculture, industry and energy;
- the high share of companies with on-call workers in the health and care sector;
- the high share of companies with self-employed workers in the construction sector;
- the low share of home work in general, except in the services sector.

I.4 Proliferation of flexible contracts

Particularly during the eighties and nineties of the last century the use of flexible contracts proliferated in the Dutch economy. Various factors have influenced this process.

I.4.1 Factors influencing the use of flexible contracts

A first factor was the general structural development within the Dutch economy, with a rising share of the services sector at the cost of the industrial sector in total employment. Companies and institutes in the services sector were often more inclined to deploy persons in new flexible forms of work than companies in more traditional branches of industry, transport and trade.

A second factor was the recurring cyclical problems caused by fluctuations in the economy, especially at the beginning of the eighties and nineties. Problems caused many companies to close down or to reduce their staff. They became more careful regarding staff costs and staff planning. When growing again, they were less inclined to hire new staff on a permanent basis but they searched for more flexible forms that made it easier to quickly adapt staff capacity to market fluctuations.

A third factor was the openings made in CAO's with regard to opportunities for employing temporary workers in companies. The phenomenon of flexible work was put on the agenda and became accepted in many branches. In many CAO's, specific arrangements were made to regulate the deployment of temporary workers. Arrangements usually aimed at regulating the use of fixed duration contracts by limiting their use to certain types of work, certain occasions (for instance, replacement of workers absent due to illness or holidays) or certain periods.

A fourth factor was the rise of private intermediaries on the labour market, in particular the commercial temporary employment agencies (TEA). For a long time commercial mediation on the labour market was strictly regulated in The Netherlands, with a system of permits granted by the public employment office. However, in the mid eighties this system was abandoned. Permits were no longer needed and establishment of TEA's was left to the market. During the nineties this has lead to a strong increase in the number of TEA's. In particular, in years of economic turmoil (second half of the eighties and the nineties) many new TEA's were established.

I.4.2 Variety of flexible contracts

With the rise of more flexible forms of work, the variety of contractual regulations increased. As indicated above, the basic and most common forms of temporary employment contracts are fixed duration contracts, on-call contracts and temporary work agency contracts. Within these basic types several sub-types can be distinguished (Diebels, 2004). Table 2.4 gives an overview of the sub-types.

Table 2.4 – Variety of flexible contracts

Fixed duration workers	a) contracts with prospect of an open ended contract b) contract without prospect of an open ended contract
On-call workers	a) contracts with guaranteed working hours b) contracts with guaranteed minimum and maximum working hours c) contracts without guaranteed working hours, but with right to refuse in case of calls d) contracts without guaranteed working hours and compulsory attendance in case of calls
Agency workers	a) agency contracts b) posting contracts c) pooling contracts d) fixed duration contracts (with TEA) e) open ended contracts (with TEA)

From the point of view of hiring companies, all these types of contracts can be considered as forms of quantitative, numerical flexibilisation e.g. as strategies to facilitate adaptations of a companies' staff capacity to market fluctuations via the external labour market. In particular, on-call contracts and agency contracts provide opportunities to realize this kind of flexibility. These types of contracts became popular among employers during the eighties and nineties.

I.4.3 Problems encountered

Already during the eighties, signals from various sides were received that the use of these new types of flexible contracts caused imbalances in the labour market, which were especially felt by the workers involved.

An important point, often heard from temporary workers themselves, was that they could easily be subjected to a prolonged use of temporary contracts, also in cases where their work in fact had a permanent character. This could lead to extended sequences of (short) temporary contracts, one after another, interrupted by periods of non-activity to prevent establishment of real or fictitious permanent employment relationships. Such sequences could go on for many years, with the workers being temporarily employed all the time and lacking the security and protection rights of permanent workers.

The trade unions stressed the precarious position of temporary workers, especially in cases of prolonged sequences of temporary jobs. Temporary workers were subjected to the risks of job insecurity and insecurity of income, with all kinds of related problems like limited access to social insurance provisions, less opportunities for savings and pensions, less opportunities for getting credits, loans, housing facilities etc. They strongly contested the imbalances in the labour relationships between employers and temporary workers, especially agency workers and on-call workers.

Social scientists and economists revealed the tendency of a growing segmentation on the labour market. At the one side a primary segment of 'good' permanent jobs, with much job security, good payment, good working conditions, qualified work and career opportunities. At the other side a secondary segment with 'bad' temporary jobs, often short term, with less job security, lower payment rates, bad working conditions, lower qualified work with less career opportunities.

Work in the primary segment offered better employment protection and social insurance provisions than work in the secondary segment. Inequalities became harder to overcome, as segmentation tended to become structural.

Furthermore, activities of inspection agencies revealed problems with the deployment of temporary workers, in particular by unorganized labour market intermediaries. In various economic sectors, there were active malafide contractors and employment agencies that misused the precarious position of temporary workers for their own benefits.

I.5 Measures regarding flexibility and security: Flex Act of 1999

As a reaction to the debate about these issues the government launched proposals to better regulate the new forms of flexible labour relations and to mitigate risks of excesses, especially as regards prolonged temporary work, on-call work and agency work. At the beginning of the nineties, after several years of study, the new coalition cabinet of social democrats and liberals published a report about 'Flexibility and Security', in which it recognized the importance of flexible work, expressed its concerns about inequalities due to the rise of flexible work and its intention to create a new balance on the labour market by at the same time improving the opportunities for the employers to hire flexible workers and improving the security of the flexible workers involved. Concrete measures were proposed to adapt labour legislation in this direction.

I.5.1 Agreement social partners in Foundation of Labour 1996

The proposals were sent to the social partners in the Foundation of Labour, the highest bipartite body for mutual consultation of employers and trade unions in The Netherlands. The social partners largely subscribed to the analysis of the government and reached an agreement about the reform of labour law. This agreement is known as the *'Agreement on flexibility and security 1996'*. It is a milestone in the debate about flexibilisation of labour in The Netherlands and laid the basis for the new *Flexibility and Security Act of 1999*.

I.5.2 Flexibility and Security Act of 1999

The advice of the Foundation of Labour was accepted by the government. In the new Act on Flexibility and Security of 1999 (Flex Act) the proposals of the social partners were almost integrally included. The Flex Act is a second milestone in the debate. It partly codified a number of already existing practices, but it also introduced a number of innovations in Dutch labour law aimed at a better regulation of new forms of flexible work. The major elements of the Flex Act are (Van den Toren e.a., 2002):

1. The introduction of a '*refutable presumption of law' regarding the existence and size* of an employment contract. This can be applied if no clear arrangements between an employer and an employee have been made. If an employee has worked for at least 3 months and 20 hours a month for an employer, an employment relationship is legally supposed to exist. This article is particularly relevant for small and diffuse contracts, like in many cases of on-call work.
2. The introduction of a *'chain article'* that facilitates the use of sequences of temporary contracts but at the same time bounds sequences within clear limits. If an employee has worked for 3 years on a temporary basis or has had 3 temporary contracts after one another, without interruption of more than 3 months, a further continuation of the employment relationship will automatically transform this contract into an open ended contract. This article is also called the '3-3-3 formula'.

3. The introduction of the figure of an *'agency contract'* and the labelling of an agency contract as a special form of a *'labour contract'*. This article is especially relevant for TEA workers. The article brings agency work under regular labour law, with all the (protective) rights and obligations applicable. However, the first 6 months of agency work are exempted from the article. In this period, agency workers are still employed on a hire-and-fire basis.
4. The introduction of a '*payment exclusion article*' that limits the period for which employers do not have to pay employees if they do not work for them. This period is limited to 6 months. After 6 months employers are obliged to continue paying wages also if no work is available for employees. This article is also particularly relevant for TEA-workers. Furthermore, for on-call work it arranges that employers at least pay a minimum of 3 hours every time an employee is called for work.
5. A modification of the rules for *'probationary periods'*. In case of temporary contracts for less than 2 years, probationary periods should be limited to 1 month instead of 2 months for open ended contracts.
6. A modification of the rules for *'notice and dismissal'* of temporary workers. Employers are given more opportunities to terminate temporary contracts during their duration. Dismissal procedures for temporary workers are shortened and simplified.

The introduction of the chain article and the agency contract plus the labelling of the agency contract as a special form of employment relationship were real novelties in Dutch labour law. Furthermore, the Flex Act introduced another innovation: the *right to deviate* from the rules laid down in the law, if employers and employees can mutually agree to deviate and to design other rules that are better suited to the specific situation in their sector of company. Agreements can be concluded both at the level of sectors e.g. between employers and trade unions as well as at the level of companies e.g. between employers and works councils. This right to deviate gives social partners a greater say and facilitates tailor-made arrangements.

I.5.3 Further elaboration in collective labour agreements TEA-sector

Introduction of the Flex Act of 1999 implied a factual acceptance of TEA-work in The Netherlands as a regular phenomenon on the labour market. Work agency relationships were accepted as employment relationships. Agency workers became employees. Temporary employment agencies became regular employers. In this sense, observers consider the law as a milestone in the development of the TEA-branch (Van den Toren e.a., 2002).

In its advice on Flexibility and Security the Foundation of Labour recommended the TEA-branch to further elaborate and regulate the position of agency workers in special collective labour agreements. Social partners in the TEA-branch accepted the recommendations and negotiated new CAO's in the course of the nineties. Based on the CAO's, new arrangements were developed which further strengthened the position of agency workers.

I.6 Structural reforms: collective arrangements in TEA sector

The Flex Act has had a major impact on the TEA-sector during the past decade. An important effect is that it further encouraged ongoing initiatives of social partners to further regulate labour relations in the branch and to further elaborate rights and obligations of TEA's and agency workers in collective systems and arrangements (Korevaar, 2000). Self-regulation at sectoral level was expressed in several (new) institutions.

- The TEA's established an *employers association* in the branch, the Algemene Bond van Uitzendondernemingen ABU. The ABU was the first representative association in the branch and gradually organized more and more members. Actually, it represents approximately two-thirds of all TEA's. Later in the nineties another TEA employers association was established, the NBBU, covering a substantial part of smaller TEA's.
- The *trade unions* established separate departments for TEA workers and other flexible employees. The FNV (general trade union federation) and the CNV (Christian trade union federation) recognized flexible workers as special groups to promote interests for and appointed specialists to negotiate their terms and conditions of employment.
- Employers and trade unions negotiated a first *collective labour agreement* CAO for TEA's, the ABU-CAO. The agreement was signed by the ABU and the trade unions FNV, CNV and the Unie. The ABU-CAO was declared applicable for the whole TEA branch by the Dutch government.
- In later years several *other CAO's* were established: a CAO for members of the smaller association NBBU, a CAO for international labour market intermediaries, a CAO for workers of payroll companies and CAO's for a number of larger TEA companies. These CAO's cover only the employers and workers associated in the organizations involved.
- Later, based on the CAO's, *special social funds* for TEA workers were created, such a pension savings fund for long-term agency workers and a training fund for agency workers with fixed-duration or open ended contracts with a TEA. The training fund is closely connected with the ABU. It is a bipartite fund, run by the employers and trade union representatives. It stimulates training of agency workers and facilitates courses with financial grants. The fund is financed with an annual levy on the wages of TEA's.
- The ABU introduced a special *company certification system* for TEA's. The system provides extra guarantees that TEA's are reliable companies as regards management, administration and staff policy. A certificate guarantees that a TEA complies with the rules of the CAO and contributes taxes and social insurance premiums. When working with certified TEA's hiring companies run a lesser risk of getting involved in malafide practices.
- The ABU established a special *reporting station*, where employers and agency workers can report cases of malpractice or non-compliance with CAO-regulations.

An important innovation in the CAO was the introduction of a 'phased system' of TEA employment. This system distinguishes 4 - later 3 – phases in an agency worker's 'career'. At every phase different contractual arrangements are applicable. The longer agency workers are employed by a TEA, the better are their terms of employment and their employment protection and social insurance rights. After a maximum of 3.5 years they have all the rights of an open ended contractual employment relationship. We will come back to this point in the next paragraph.

These CAO arrangements for the TEA branch were inspired by the recommendations of the social partners in the agreement of the Foundation of Labour 1996 and the arrangements made in the Flex Act of 1999.

I.7 Results of Flex Act and TEA sector arrangements

The Flexibility and Security Act has been in operation now for almost a decade. Experiences with the Act have been evaluated in 2002 (Van den Toren e.a., 2002) and 2006 (Knegt, e.a. 2007). For these evaluations research was done at the level of social partners/sectors, companies and workers. The evaluation of 2006, for instance, contained an analysis of 110 collective labour agreements (CAO's) and a survey of 900 companies and 450 (flexible) workers. We will use these studies here to give an impression of the results of the Flex Act and TEA sectoral regulations.

We will focus on 4 elements:

a) the presumption of existence/size of an employment relationship;

b) the payment articles

c) the 'chain' articles for sequences of temporary employment contracts;

d) the subsumption of agency contracts under regular labour contract law.

The data below are primarily derived from the evaluation in 2007 by Knegt, e.a. They give a picture of the state of affairs in 2006.

a) Existence and size of an employment relationship

In actual practice it only very rarely occurs that employees use this article to enforce recognition of existence and size of their labour contract. If workers report differences of opinion with employers about numbers of working hours (e.g. 7% of the cases), they seldom take further legal action. The article appears to have first of all a preventive function.

b) Payment articles

These articles are particularly relevant for on-call workers and agency workers. The articles are not very well complied with in practice:

- 50% of on-call workers have no arrangements in the contract regarding on-call times and minimum working hours.
- Only 25% of on-call workers do indeed get paid the minimum number of 3 working hours per call;
- 75% of on-call and agency workers have an arrangement that they do not get paid when they do not work; in 2% of the cases the contract limits this arrangement to 6 months; in one-third of the cases it covers a longer period.

Furthermore, social partners have used their rights to deviate from the legal standard of 6 months in several cases. In 14 of 110 CAO's social partners have extended the period that employers are not obliged to pay on-call and agency workers in case of lack of work. In the TEA sector this period is prolonged, to 1.5 years in the ABU-CAO and 2 years in the NBBU-CAO. These are the periods they work with agency contracts. In the Horeca-CAO payment is totally excluded. In other CAO's continuing payment is excluded in certain circumstances (for instance, bad weather conditions).

c) Chain articles

Social partners in several branches have also used their right to deviate in case of the chain articles of the Flex Act: the 3-3-3 formula.

- In 23 CAO's the maximum number of 3 temporary contracts is adapted, in half of the cases to a lesser number (usually: 2), in the other half to a higher and even unlimited number.
- In 30 CAO's the maximum period of 3 years is adapted, with 13 CAO's having maxima of 5-6 years or even an unlimited period.
- In 14 CAO's the maximum interruption of 3 months is adapted, usually shortened to 2 months.
- In 9 CAO's the chain articles have been excluded partly or totally.

Extension of the maxima by CAO's was also an outcome of the evaluation in 2002. It caused some concern among government and social partners then; in particular, the total exclusion of the chain articles. This was clearly not the intention of the law. For the employers and trade unions in the Foundation of Labour it was a reason to send a letter to their members with the recommendation to bring sectoral agreements more in line with the legal regulations.

Data from employers and workers revealed the following outcomes on this point:

- In 35% of the cases, after having completed one or more temporary contracts, employees got no new contract, a new contract was postponed, or a new contract was an agency contract with less job security. This is a lower percentage than in 2002.
- In 65% of the cases, after having completed one or more temporary contracts, employees did get a new temporary contract (44%) or a new open ended contract (21%). This is a higher percentage than in 2002.
- In 5% of the cases interruptions between two contracts lasted for more than 3 months. This might indicate that interruptions were planned with the intention to by-pass transitions to less flexible contracts, by breaking existing chains and starting new ones.
- In particular older flexible workers (55-plus) run the risk of getting no new temporary contract, having an interruption of more than 3 months or getting a new contract with less security than the previous contract. This also occurs in certain age categories of younger workers (aged less than 30).

Knegt e.a. conclude that employers have used the opportunities offered by the chain article to a substantial degree. In general, from a workers' point of view, positive transitions (65%) outnumber negative transitions (35%), more than in 2002. However, still more than a third of the workers did not get the opportunity to improve their position. Especially older flexible workers and certain categories of younger workers run the risk of getting involved in long and insecure sequences of temporary contracts.

d) Subsumption of agency work under labour contract law

This article has had important consequences for the TEA sector. With this subsumption, in principle, agency work has become subjected to all the rules of regular (temporary) labour contracts, like for probationary periods, periods of notice, protection against dismissal, procedures for dismissal, chain articles and payment articles. The Flex Act, however, exempted the first 6 months, when 'normal' agency work regulations are still applicable.

Terms of employment for agency workers have further been elaborated through special TEA CAO's. An important adaptation the social partners made on the Flex Act standard of 6 months was that they extended this period by introducing a phased system for agency work. In the latest ABU-CAO the system is built up in the following way:

- a first phase A, that lasts for 78 weeks, during which the agency worker is employed on an agency contract basis;
- a second phase B, that lasts for 2 more years, during which the agency worker is employed on the basis of a fixed-duration contract with the TEA;
- a third phase C, after 3.5 years, where the agency worker has gained the right of an open ended contract with the TEA.

The worker might have up to 8 temporary contracts while working in phases A and B. During phases A and B the agency worker gradually gets more protective rights, insurance provisions and training facilities. In phase C he has all the rights and provisions connected with an open ended employment contract. Observers conclude that with these regulations the position of agency workers has been strengthened (Van den Toren e.a., 2002; Knegt, e.a., 2007).

The study of Knegt e.a. reveals some interesting data about the actual position, rights and facilities of agency workers:

- Of all 900 companies involved, 46% employed TEA workers in 2004 to 2006.
- As regards payment and other terms of employment, an average of 48% of TEA workers followed the TEA-CAO, 52% followed the CAO's of the hiring companies.
- Approximately 75% of the companies know the rules that TEA workers have a right to a fixed duration contract or an open ended contract after a certain period.
- Knowledge about regulations among workers is limited. Around 50-60% of TEA workers are not acquainted with their own rights regarding the period of notice, pensions, payment in case of illness or social insurance benefits in case of illness.
- Transitions: 15% of TEA-workers moved from an agency contract to a fixed duration contract at the TEA, 28% got a fixed duration contract at the hiring company. 9% moved from a fixed duration contract to an open ended contract at the TEA, 20% to an open ended contract at the hiring company.
- Interruptions: in 28% of the cases relationships were ended when transition of an agency contract to a fixed duration contract was at hand. In 19% of the cases relationships were ended when transition of a fixed duration to an open ended contract was at hand.
- Training: on average 18% of the agency workers followed a training course in 2006; in 63% of the TEA's less than 10% of the agency workers followed training courses, in 9% of the TEA's this was more than 50%; the average number of training days was 4 days per worker; workers in phase B (fixed duration contract with TEA) spend twice as much days for training than workers in phases A (agency contract) and C (open ended contract with TEA): 13 versus 7 days.
- Pension schemes: almost 100% of the TEA's in the sample offered a pension arrangement to their workers; on average, 64% of the agency workers were covered by the arrangements.
- A majority of the TEA's (60%) has a positive attitude towards the Flex Act and the rules for agency contracts; however, they also point to increased costs, mainly due to more administrative requirements.

I.8 General conclusions regarding effects

A general conclusion can be that the Flex Act and related TEA arrangements have improved the position and terms of employment of flexible workers, especially agency workers. But in certain cases and as regards certain rules, actual practice still stays behind what was intended. In several sectors limitations on the duration of temporary work, the number of contracts and the periods of non-payment in case of layabouts are extended beyond legal standards. Employers still have opportunities to extend the duration by interrupting (chains of) contracts and starting new ones, despite the chain articles. However, as the studies demonstrate, in general positive transitions to better contracts outnumber negative transitions in the 'careers' of the workers.

The study of Knegt e.a. further commends that the rules of the Flex Act have had only minor influences on the decisions of employers to hire (more or less) TEA workers. These decisions are mainly determined by cyclical economic developments, not so much by legal regulations. In 2006, the year of evaluation, the Dutch economy started booming again. That must be kept in mind, when one interprets the outcomes.

A further conclusion is that the Flex Act has indeed increased the space for employers to apply temporary contracts as a strategy for the flexibilisation of staff capacity. However, other flexibilisation strategies have also become popular during the past decades. Most employers prefer to realize flexibility in the first place by overtime and flexible time arrangements of available staff. The liberalisation of the Working Times Act has given employers more opportunities to introduce flexible working time arrangements, like overtime, shifts in working hours, gliding time schedules or extended time frames. In several sectors, annual working times schedules are increasingly applied because they provide the opportunity to raise working hours in busy periods and reduce them in slack periods over the whole year. Another popular strategy is flexibilization of job tasks and staff qualifications. By designing broader job profiles and qualifying workers for different types of jobs, companies can employ them all-round and thus create more opportunities for adaptations to changing demands.

Both these strategies are forms of internal flexibilisation. They can partly be applied as alternatives to external strategies like hiring temporary workers from TEA's or from the labour market. However, other external strategies have also come forth in recent years, like outsourcing of work to subcontractors, hiring of freelancers and self-employed workers and pay rolling, e.g. hiring staff capacity from specialized payroll companies who take over the employer's role from the hiring company. These might also be used as alternatives for hiring workers on temporary contracts. In the next paragraph we come back to these points.

Criticisms that regulations are too complicated and increase administrative burdens are now heard to a lesser degree than in the first years after the introduction of the Flex Act. Burdens for employers have increased indeed, but they are usually taken over by the TEA's. TEA's are already required to keep good records, also because of taxes and social insurance obligations. That the rules are complicated is also recognized by the government. Many TEA workers are not acquainted with the rules, probably because they are so complicated. A lesson learned by the government is that more information is needed to raise workers' knowledge. It will launch extra campaigns. But it also appeals to the TEA's to inform their workers and customers.

One other point has to be mentioned here. Some observers state that the Flex Act might also have counterproductive effects for (agency) workers, with its maximum for number and duration of agency contracts. An agency worker runs the risk of getting jobless when the maximum number of contracts has been reached or the maximum period has been expired, even if there is work available, but not of a permanent nature.

In these cases, a TEA or hiring company will not be inclined to employ the worker any longer, because a new temporary contract is no longer an option and a permanent contract would be too risky. One option to by-pass this situation is to extend the maximum duration beyond the legal standards. Another option is to interrupt employment for more than 3 months and start a new chain at a later stage.

I.9 Further influences on labour contract law

The Flex Act introduced several novelties in Dutch labour contract law at the end of the nineties. Besides the Flex Act, however, new forms of work did not have much impact on labour contract law in The Netherlands. The basic principles of labour contract law, like the definition of a labour relationship and the basic rights of employers and employees, were established already in the Labour Contract Act of 1907, which is part of the Civil Code now.

These principles have stood the test of time during the past hundred years, despite all changes in economy, society, social policy and industrial relations. Experts explain this persistence of labour law with a reference to its general and open character (Loonstra & Westerbeek, 2007). A point of departure from the original law was that it should cover all workers in all kinds of work and all kinds of relationships. There should be one uniform regulation for all workers in The Netherlands. This led to a broad definition of the 'labour relationship' with 5 defining criteria:

- doing work
- on a personal basis
- for a certain period of time
- in service of someone else
- compensated by a wage.

With these criteria a law could be made that covered all types of 'wage-workers', at the same time distinguishing them from independent or self-employed workers. Independent workers would not be covered by the law.

These general criteria, especially the criteria of 'work', 'in service of' and 'with wage compensation' are still the basic criteria for the establishment of a labour contract. The criterion 'in service of', e.g. the authority relationship between employer and employee, has appeared to be mostly decisive. On the basis of High Court arrests further criteria have been developed to decide whether or not an authority relationship exists, and - thus - whether or not an employment relationship is governed by a labour contract with all rights and obligations connected to it. Case law prescribes that the specific circumstances and the intentions of the actors involved in the case must always be taken into consideration (Loonstra & Westerbeek 2007).

During the past years, the uniform regulations of labour contract law have become the subject of debate among law experts. For instance, De Jong (2007) states that labour contract law has not been differentiated despite the fact that authority relations between employers and employees have changed substantially during the past century. Differentiations in actual practice did not lead to pluriformity in law. Labour contract law still has a uniform character, with only exemptions regarding flexible (agency) workers (Flex Act). A basic principle is the distinction between employees and independent workers, with independent workers excluded from labour law.

There is a growing number of self-employed workers and freelancers now, however, with an 'intermediate' status between employees and independent workers, who are not covered by labour law. They often fall between two categories. Thus, one might ask if the distinction still fits actual relations and if labour law should not be further differentiated to include also the various new types of employment. Perhaps, changes in the defining criteria for an employment relationship are needed. A definition based on the level of economic dependency instead of authority relationships could be an option. This question is urgent as social risks and insurances are increasingly privatized and transferred from collective to individual levels, for instance insurances against loss of income in case of illness or insurances against disability to work (De Jong, 2007). Other experts propose possible differentiations according to criteria such as level of education, level of wages or type of employer (public, private).

However, other experts still oppose differentiations. In their view, one uniform law for all workers best fits with both the protective as well as the regulative function of labour contract law. According to these experts, workers - also higher educated workers - are still legally subjected to their employers and economically dependent from their employment contract. General protective regulations for these contracts can not be missed. The existing uniform and open rules are still adequate. Differentiations in labour contract law would cause all kinds of demarcation problems and would stimulate desolidarization in labour systems and arrangements. Where differentiation is functional, it should primarily be shaped through exemptions in subarticles of labour contract law (Asscher-Vonk & Peeters, 2007).

I.10 Further influences on social dialogue and industrial relations

Debates on flexibility and security have evidently had an impact on the TEA sector in The Netherlands. The sector developed a whole new system of labour relations, including sectoral associations, collective labour agreements, collective social funds and sectoral social and economic policies. This process of self-regulation received further encouragement from the Flex Act and related recommendations of employers and trade union. Establishment of the TEA sector as a collective entity (Warmerdam, 1997) also strengthened its influence at political level.

TEA work is a better regulated phenomenon in the Dutch economy now. TEA's are generally accepted and active in almost every economic sector. Many companies use the services of TEA's. TEA's have become 'real' employers, with qualified staff, professional management and extended social provisions for their workers. They offer recruitment services, but often also education and training, reintegration, outplacement and consultancy services for small and medium sized companies, especially in the segment of qualified labour (Warmerdam, 2007b).

Further influences at sectoral level have been limited, in general. Issues regarding flexible employment contracts have been dealt with primarily in existing sectoral institutions (trade union departments, sectoral agencies, sectoral funds) and through existing arrangements (collective labour agreements). During the past years some new interest organizations for flexible workers have been established, like an 'alternative' union for TEA workers and an association of self-employed workers, but they are rather small and their influence is rather limited until now, as compared with the influence of traditional interest groups.

At company level, impact on social dialogue has also been limited. Research demonstrates that temporary workers very rarely participate in works councils of hiring companies. Agency workers only have access to these councils after 2 years. The works councils often do not pay much attention to the interests of temporary workers, in particular TEA workers.

However, several larger TEA's have established their own works councils in the mean time. In some cases they have a double representation, for permanent staff and for agency workers (Van den Tillaart e.a., 1999).

I.11 Further issues on the national agenda

Partly related to the issue of labour law, two other issues have been dominant in the debate about flexibility and security in The Netherlands during the past decades: the reform of social insurance arrangements and the development of arrangements for continuous training.

I.11.1 Reform of social insurances

The reform of the social insurance system has been inspired by the idea of the introduction of more activating elements in traditional insurance provisions against the risks of loss of income due to illness, unemployment, partial disability to work, early retirement. An important aspect of the reform was a partial transfer of responsibilities from the collective level to the level of individual companies and workers, with the assumption that people will be more inclined to take measures to prevent or reduce risks as they have a greater personal financial interest in controlling the costs they might bring with them. Several measures were negotiated with the social partners:

- introduction of a period of 2 years in which employers have to take salary costs of ill workers in their own account;
- obligation of employers to design reintegration plans for ill workers, in cooperation with professional health support services;
- obligation of (ill) workers to cooperate with employers and health services with regard to reintegration measures;
- more selective access criteria for income insurance provisions against (partial) disability to work;
- (re)placement and other reintegration regulations for employers and workers in case of the risks of disability to work;
- more selective access criteria for income insurance provisions against unemployment; reduction of periods of unemployment benefits;
- introduction of a new 'private market' for reintegration services; many companies in this field were established;
- extension of various subsidy schemes to facilitate reintegration of (long term) unemployed workers;
- more facilities for tailored arrangements in collective schemes, for instance, for early retirement and sabbatical leave.

I.11.2 Role of continuous training

On the one hand, these measures are presented as measures to control and reduce social insurance costs, and on the other they are also instruments of a more activating labour market policy. However, as regards flexibility on the labour market, the crucial role of continuous training is also stressed. Government and social partners agree that continuous training is a crucial prerequisite on labour markets where employment security increasingly becomes dependent on up to date qualifications.

Social partners have already recognized this during the nineties. They incorporated training arrangements in CAO's and developed systems for further training in many branches (Warmerdam 1997). These contained:

- rights to training for workers, usually a certain number of days per year;
- obligations for employers to continue salary payment in case of training;
- regulations for reimbursement of study costs, travel costs etc. in case of training;
- an obligatory levy on total wages to contribute to a collective training fund;
- rights of workers to receive reimbursements from the training fund;
- rights of employers to receive subsidies from the sectoral training fund;
- facilities and subsidies for employers to develop in-company training plans;
- tools and instruments to support career planning, for both companies and workers;
- specific supply of training courses, often provided by sectoral training centres.

So, in the nineties, training was high on the agenda of the social partners. It ranked lower for a while, because debates became dominated by social security reforms. But it became an actual issue again in relationship with the discussion about adaptation of dismissal regulations. Last year, the Dutch cabinet launched proposals to make rules for dismissal protection of employees more flexible, which would imply less 'job' security for (permanent) employees. At the same time it stressed that 'employment' security should be extended by furthering employability of employees. Continuous training is an important element of permanent employability. Facilities for training should be extended. The proposals included extra training facilities, also for temporary workers.

The employers associations supported the proposals of the cabinet, as a necessary step in the adaptation of labour market regulations to the globalizing knowledge-based society. The trade unions supported the plans for furthering training, but strongly opposed the plans to liberalize dismissal rules. In their view, combating segmentation (temporary vs. permanent workers) and exclusion (employed vs. unemployed) on the labour market should not be at the cost of protective rights of the vast majority of permanent employees (see: Dutch country report).

I.12 Conclusions

Overlooking the experiences we can conclude that the rise of new forms of flexible work has had an impact on Dutch labour law, in particular with the introduction of the Act on Flexibility and Security of 1999. This Act clarified some uncertainties in the legal status of temporary workers. It enlarged the opportunities for companies to hire temporary workers, while at the same time it improved protective rights and provisions for the workers involved, especially agency workers and on-call workers.

Besides the Flex Act, in general, labour contract law has not changed substantially. The basic criteria of an employment relationship are still the same as those that were defined at the beginning of the 20th century with the introduction of labour contract law. They are uniform, open criteria which are still considered to be valid by many experts. Pleas for differentiation of the labour relationship are heard, but the issue is not very high on the political agenda. A specific issue is how to cope with (economically dependent) self-employed workers, e.g. the question of whether or not - and if so: how - they could be covered by labour law.

The regulations for flexibility and security have had a clear impact on the segment of flexible work, in particular in the TEA sector. The TEA sector has established a whole new system of social dialogue and industrial relations during the past 10-15 years, which was partly inspired by the Flex Act and related recommendations of the employers and trade union federations in the Foundation of Labour. This made it a better regulated sector. It improved the image of the branch and strengthened the position of workers vis-à-vis agencies ánd hiring firms.

In other sectors, flexible work has had limited effects on social dialogue and industrial relations. It was mainly absorbed through adaptations in existing (collective) arrangements and institutions. At the level of companies, social dialogue and labour relations are hardly affected. In most companies, temporary workers are seen as a kind of outsiders. They do not usually take part in representative organizations, like works councils. Works councils only take account of their interests to a limited degree. These are points that could be improved.

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II - SELF-EMPLOYMENT IN POLAND

II.1 Executive Summary

This case study is a part of an external study on the impact of new forms of labour on industrial relations and the evolution of labour law in the European Union, carried out for the European Parliament. Together with the other two cases studies (on temporary employment contracts in Spain, and on practical dimensions of flexicurity in The Netherlands), it is supposed to be an attempt to address three topics of special interest in the context of the overall report.

The following chapters present the issue which has proven to be one of the very controversial phenomena on the Polish employment market: self-employment.

The first chapter ('Background') describes the scope of the problem, by limiting it to the most debatable form of individual economic activity, i.e. "forced" or false self-employment. It also gives a historical overview of the changing legislation and approaches that have taken place since 1989, and describes available results of statistical and qualitative research.

The second chapter ('Defining self-employment') is dedicated to a more in-depth definition of Polish self-employment. It includes descriptions of various legal concepts that exist in the Polish law: from the Constitution, to the business and civil law, labour and social security regulations, and tax legislation. The dispersion and lack of integrity among individual acts is a reason for certain problems to appear. They are summarised in the chapter's last section.

The third chapter ('Position in national agenda') addresses different points of view on self-employment that are presented by the Government, employers' associations, and representatives of employees.

Finally, in the last chapter ('Conclusions'), the case study is summarised and concluded.

II.2 Background

One of the effects of the political and economic reforms that started in Poland in 1989 has been greater entrepreneurship among Poles, with a fast increase of the number of small and medium-sized enterprises (SMEs). Many of these SMEs are just private individuals pursuing a business activity in their own name, who literally *employ themselves*. The extent of this phenomenon has always been relatively significant, and thus it constitutes one of the key points of most economic analyses, development strategies and discussions among social partners. Depending on the context, an attitude towards self-employment might be, however, very different. On the one hand, it may suggest a very positive trend towards greater entrepreneurship among people; on the other hand, it may be much criticised if related to infringements of basic employee rights.

Therefore, before going into analysis of the self-employment phenomenon in Poland, it is necessary to define the scope of the problem that is going to be described in this case study. It is due to the fact that even though self-employment itself might be defined as:

offering services (work) to one (or several) entities by natural persons who run, on their own behalf and responsibility, economic activity as entrepreneurs, and who do not employ other persons or use other persons' services on basis of civil contracts,

such definition encompasses at least four different groups of persons:

- natural persons who plan to create their own company and who offer certain services to a number of entities; for them, self-employment is usually an interim period, after which they are able to develop their business;
- natural persons who decide to run business activity in a form of a private partnership[112] (a business-oriented partnership created under the Polish Civil Code, with no legal personality) that does not hire other persons;
- natural persons who run business activity as free-lancers (doctors, lawyers, architects, etc.);
- natural persons who run their business activity and collaborate with only one entity (usually their former employer), being economically dependent on this collaboration.

For the needs of this study, we should focus mostly on the latter group – economically dependent self-employed, as they raise most doubts and constitute a basis for continuous discussions among the social partners in Poland. The other three categories might be considered as "typical" self-employment (similar to that existing in e.g. France or Germany), and, as such, not subject to controversies.

It has to be said that the increased rate at which such businesses have been set up since 1989 has not been, unfortunately, driven exclusively by entrepreneurial enthusiasm among Poles. Another, if not more important, reason for this were amendments to the tax laws which reduced the fiscal burden on both entrepreneurs and self-employed individuals and let achieve certain savings on social security payments by switching from an employment contract to being self-employed. This was (and still is) particularly interesting for highly qualified specialists who were well paid and wanted to keep professional freedom by maintaining the status of 'freelancer'.

However profitable it might have been for entrepreneurial individuals, self-employment should be questioned in cases when employees are forced into such a move by employers, i.e. when enterprises see subcontracting work to independent sole traders as a way of eliminating payroll taxes and other responsibilities associated with full-time employment and, thus, to improve profit margins. The very high unemployment rate (circa 20 per cent) that Poland experienced in the last years only strengthened the negotiation power of employers and, very often, made self-employment the only chance to get or keep the job for many workers.

Of course, putting employees into the position of having to establish a business activity in their own name and then continue working for the same enterprise is subject to certain legal restrictions, but practical enforcement of the applicable laws has not been very effective.

II.2.1 History

Since the early 90s the number of persons who run their individual economic activity has been very high in Poland. It has also remained relatively unchanged, with small fluctuations between 27 and 30 per cent of the total workforce[113]. As mentioned earlier, this popularity can only partially be explained by the presence of an overwhelming entrepreneurial spirit among Poles.

[112] pol. *spolka cywilna*
[113] depending on the calculation method; for the qualitative analysis comp. Fig. 1 (presenting a number of self-employed in the period of 2000-2007) and section '*Statistical view*'

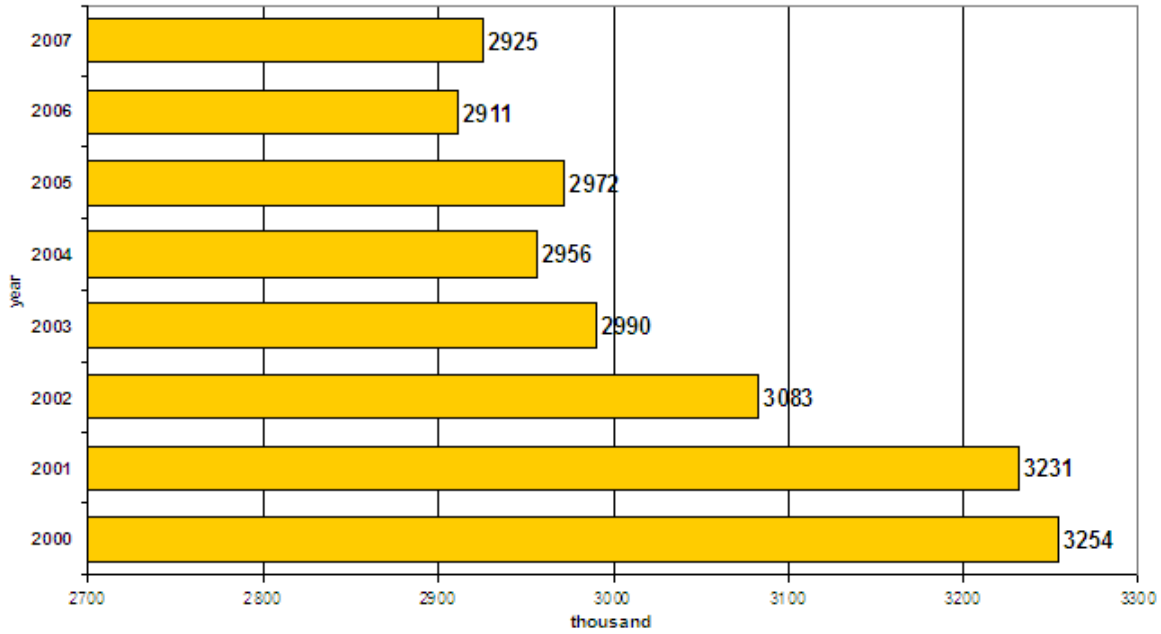
The other, equally (if not more) important reason has always been certain economic benefits (with regards to income tax and social security payments) that the self-employed can take advantage of: depending on their income level, self-employed are currently able to save from a few hundred to a couple of thousand PLN a month just by changing their employment contract into self-employment. Additionally, the self-employed acquire a possibility to offer their services also to other commercial entities which, as the experience has shown, is not a rare situation (but is not the core area of interest for this study).

Benefits did not apply to a sole trader only, though. Employers as well were able to take advantage of hiring self-employed persons instead of regular employees: even if there might have been no significant financial savings (as, in some cases at least, the social security payments that had been borne by the employer previously only enlarged the remuneration paid to an individual entrepreneur), a company freed itself from the numerous obligations that were inseparably connected to the employer's status (e.g. paid holidays and sick leaves, cumbersome lay-off procedures, collective bargaining, etc.). Therefore, an additional 'push' for the popularity of self-employment in Poland came from the employer's side: from a mere consent, to suggestions (but still with no direct pressures), to presenting employees with "a proposal they couldn't refuse". And especially the latter case has to be considered a very negative phenomenon that, for almost a decade now, consecutive governments have tried to fight, strongly supported by labour unions.

One of the first attempts to inhibit fake self-employment was the introduction, in 2002, of an amendment to the Labour Code which explicitly stated that transforming an employment contract into a civil agreement while all the working conditions, characteristic for the former, remained unchanged, was inadmissible. The regulations did not, however, imply that such a transformation was, *de jure*, illegal, but at least they created a legal basis for questioning it before the court. In hindsight it has to be said, however, that the amendment was not very effective, as courts took a rather liberal position and considered statements of will and liberty of civil agreements as prevailing over the subjective assessment of employment-like working conditions. Such approach was constantly criticised by labour unions, but they were still supposed to wait a few years for a more pro-social employment policy to be implemented in Poland.

In 2003, a truly significant change in the legal basis for establishing new business undertakings came about with the enactment of a legislative act amending the Personal Income Tax Law. Under that new law, legal entities (including self-employed) were able – as of the beginning of 2004 – to opt for a lower, flat-rate tax of 19 per cent on their aggregate income. Even though the financial benefits (or rather savings) were then more evident than before, no sudden increase in the number of registered self-employed could have been noticed. The reason for that might have been that the overall number of sole traders was already quite high, and the most entrepreneurial part of the working population had already begun their business activities. And for those who felt tempted only by the new tax scheme there was not much time left to decide, as the preparations for new, that time – limiting, legislative changes were just about to start.

Fig. 1. Number of self-employed in Poland 2000-2007 [Polish Central Statistical Office]



Since early 2006, after the parliamentary elections, a new government was created by the pro-social Law and Justice party (led by Jaroslaw Kaczynski). The new Minister of Finance – critical of self-employment in its existing form – began voicing the need to prepare adjustments to the legislative environment that would limit the possibilities for a sole trader, whose obligations to another business entity were, for all intents and purposes, those of an employee to an employer, to qualify as a self-employed person in legal terms. Additionally, the President proposed amendments to the National Labour Inspectorate Act that broadened Inspectorate's control prerogatives with regards to the legality of employment.

New regulations came into force at the start of 2007. The amendment to the Personal Income Tax Law provided new criteria for defining self-employment (they are literally listed in the section '*Legal conception of self-employment*') which were based on the following assumptions:

- not all positions in a company can be taken by a self-employed person; it concerns especially these positions that, by their nature, require employer's supervision;
- self-employed persons should be treated as independent contractors; thus, they may not be managed in a way that regular employees are (particularly with regards to the time, place and manner of their work performance);
- self-employed persons cannot, as a rule, be remunerated (nor awarded) in accordance with schemes reserved for company's employees;
- self-employed persons should not be subject to other benefits typically enjoyed by employees (like e.g. paid vacation or paid sickness leaves);
- self-employed persons should bear certain liability and risks related to the activities they undertake;
- and last but not least: there should be no restrictions as for the freedom of self-employed to provide services to third party contractors.

The above criteria were generally considered as providing clear distinction between a "regular" employee and a self-employed contractor – even, or maybe particularly, if the latter continued to work for the previous employer.

Nonetheless, experts (especially independent economists and representatives of employers' organisations) pointed to the fact that the new regulations, being restrictive on the one hand, but also leaving supposedly too much of interpretational freedom for tax authorities and labour inspectorates on the other hand, might contribute to greater uncertainty among entrepreneurs and, thus, to worsening the economic environment in Poland (comp. '*Problems*' section).

II.2.2 Statistical view

The number of self-employed persons has been relatively invariable in Poland since 2000, and, in absolute terms, remains close to 3 million (comp. Fig. 1). Data from the Central Statistical Office, GUS[114], indicate that at the end of 2006 self-employment was chosen as a career path by up to 2.9 million people which constituted ca. 27 per cent of all working Poles. Before, during the 90s, the level of self-employed also remained in the vicinity of 27-31 per cent[115].

It has to be said here, however, that there are very different interpretations of the above figures with regards to the share in the overall number of working persons. The same 27 per cent of self-employed as seen by GUS or OECD, become 14 per cent in the case of data from Eurostat[116]. The discrepancies most probably result from different methods for calculation of both the overall workforce (which may include or not people working in the public administration and military) and the self-employed (that may be extended or not to employers and farmers).

For the purposes of this case study, the number which is of interest would be the number of self-employed who switched their employment contract into an individual economic activity and remain, at least practically, economically dependent on their former employers. However, no reliable research-based data exists concerning this group, and only expert estimations can be taken into account. According to these, some 1.4 to 2 million of the overall number of self-employed registered their own businesses with intention of performing (at least – initially) the same or very similar activities that they had been doing (or would start doing, in case of individuals starting their careers) earlier for their employers. It is also not known, how many of them have actually extended the range of their contractors beyond a single company, and how significant that extension has been, but the current expert estimations of the size of the fake self-employment phenomenon in Poland are mentioning some 400 to 600 thousand people. It is a significant number, and, as such, it is the main cause for the public interest in the topic.

The sectors in which the largest share of self-employed work encompass: construction, agriculture, trade and repairs, and transport[117]. It has to be said, however, that among Polish self-employed there are also: office workers, waiters, nurses and even non-qualified workers performing physical works.

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[114] pol. *Glowny Urząd Statystyczny*, www.stat.gov.pl
[115] OECD Factbook 2006: Economic, Environmental and Social Statistics, OECD 2006
[116] Eurostat, Statistics in Focus, Industry, Trade and services 24/2006 „SMEs and Entrepreneurship in the EU"
[117] LFS data (2000-2006), as of 4th quarter of a year

These professions can hardly be included into a catalogue of activities that fall under individual entrepreneurship. Notwithstanding, it is not very uncommon that such working arrangements can be seen in Polish companies.

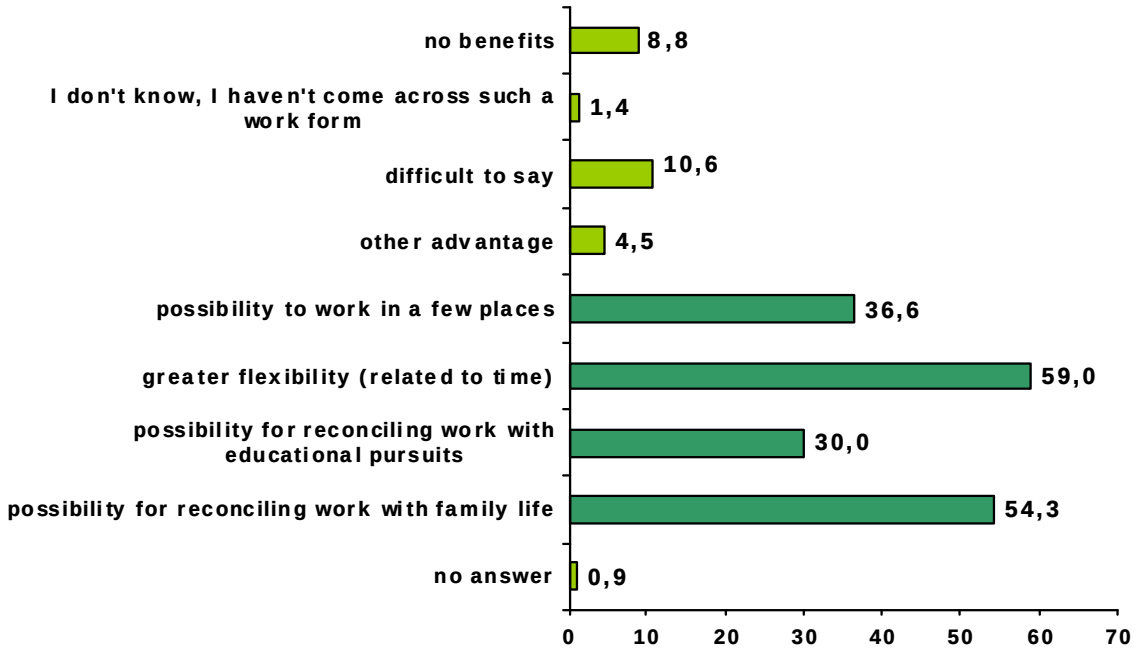
It is quite probable that recent and future legislative changes will eventually limit the extent of such fake self-employment arrangements, but their existence should make us wonder what are the actual reasons of the situation and if the measures that have been applied so far are effective enough?

II.2.3 Qualitative research

In this context it is interesting to look at the results of the latest research[118] undertaken by PKPP Lewiatan[119] that showed that almost 60 per cent of the self-employed made the decision of starting business activities on their own (and not under some pressures from their former employers). As not everybody from the other 40 per cent chose self-employment due to employer's direct or indirect compulsions, that result seems to be confirming the abovementioned estimations of the number of fake or "forced" self-employment. It is interesting to add that 75 per cent of respondents of the Lewiatan's research declared being satisfied with the change of their working relationship, while none indicated lack of satisfaction.

An earlier Lewiatan's study, from 2006, provided other valuable insights into the Polish self-employment situation and the benefits as perceived by the respondents: 59 per cent of them pointed to greater flexibility connected to self-employment, over 54 per cent to the possibility for reconciling work with family life, and 30 per cent to educational pursuits. Only ca. 10 per cent were not able to suggest a single advantage of self-employment over the traditional employment contract, and almost 9 per cent believed it did not offer any advantages (comp. Fig. 2).

Fig.2. Advantages of self-employment [Lewiatan's research "Working Poles 2006"]

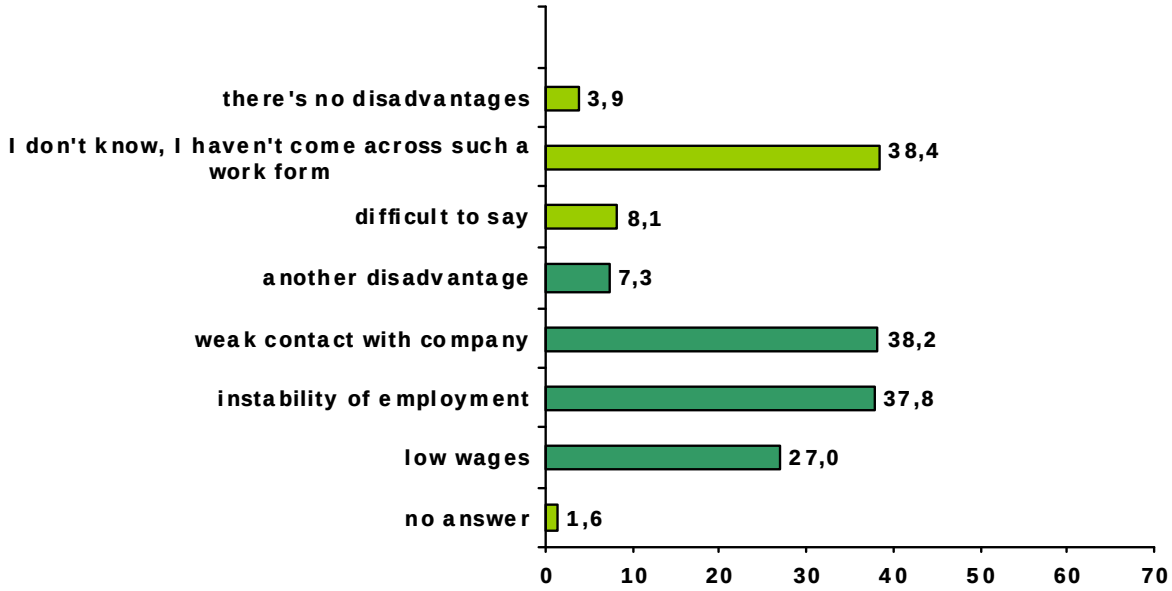


[118] "The Working Poles 2007" research undertaken in June – July 2007

[119] PKPP (Pol. *Polska Konfederacja Pracodawcow Prywatnych*) Lewiatan: Polish Confederation of Private Employers Lewiatan, www.pkplewiatan.pl

As for the disadvantages (comp. Fig. 3), Lewiatan's research respondents indicated instability and/or weaker contacts with the company (ca. 38 per cent each), and low earnings (27 per cent). An interesting aspect is the fact that almost two fifths of the persons questioned declared that they had not come across such a work form. It may suggest that, on the one hand, self-employment is quite 'concentrated' and its applicability is especially visible only in selected sectors, and, on the other hand, that the fact of being a self-employed is not a reason for pride. Perhaps it suggests that certain concerns exist related to the legal status of this form of work? [120]

Fig. 3. Disadvantages of self-employment [Lewiatan's research "Working Poles 2006"]



II.3 Defining self-employment

II.3.1 Legal conception of self-employment

As mentioned earlier, self-employment might be defined as: offering services (work) to one (or several) entities by natural persons that run, on their own behalf and responsibility, economic activity as entrepreneurs, and who do not employ other persons or use other persons' services on basis of civil contracts. Such definition is, however, very broad and includes three other groups of individuals apart from the group being the focal point of this study (i.e. natural persons who run business activity and collaborate with only one entity, usually their former employer, and are economically dependent on this collaboration): entrepreneurs in the initial phase of their business career, partners of private partnerships, and free-lancers.

Therefore, to define self-employment from the legal point of view, it is necessary to look at it from **perspectives of different Polish laws**, e.g. the Constitution, business law, civil law, labour and social security law, and tax law.

[120] for an analysis of the legal aspects of self-employment and possible consequences of potential infringements please see section '*Problems*' and '*Position in national agenda*'

According to the Constitution, each citizen has a right to entrepreneurial freedom with regards to a field, duration, but also – a form of economic activity. The right can be limited only by a legal act and only due to important public interest. Every citizen has also a right to freely choose their profession and a place of work. Additionally, the Constitution stipulates that the state has an obligation to protect work (thus, also self-employment) and to supervise the working conditions. Moreover, Article 65 of the Constitution reads that the state has an obligation to realise policies aiming at full, productive employment through programmes that fight unemployment. Such programmes should stimulate undertaking of professional activities by persons who remain without work, also in a form of self-employment. Last but not least, all employed persons – independently of their employment status and its legal form – have the right, according to the Constitution, to safe and hygienic working conditions. From the point of view of the Business Law, the situation of sole traders does not differ from the situation of other entrepreneurs. Self-employment falls under the general heading of a 'business activity', as defined in statutes such as the legislative Act regarding Freedom of Business Activity[121] of Jul.2, 2004. Article 2 of this Act provides that 'business activity consists of for-profit production, construction, commercial and service activity, in prospecting for, exploring and extracting useful minerals, and in professional activity pursued on an organised and continuous basis'. Other articles define rules related to the establishment, execution and closure of an economic activity, and, as such, they have to be followed by self-employed. In some cases, possibility to run a given type of business activity might be subject to registration with a specific professional corporation (e.g. lawyers) or to obtaining a concession/licence from the state.

According to the Civil Code, a sole trader offers its services (work) to one or more entities pursuant to a service contract that describes relationships between both parties. Such a contract can be freely shaped and it gives flexibility to the contractors and to the companies, but there is a danger of imposing unfavourable conditions on the entity with a weaker negotiation position. It happens often that the weaker party is a self-employed person, while a contracting company benefits from the provisions of the Civil Code much more than in case of employment contracts based on the strict Labour Law (e.g. with regards to easy termination of contracts, lack of overtime payments and sick-leaves, full contractor's responsibility, etc.).

The Labour Law, on the other hand, defines two points of view on self-employment: instruments foreseen to stimulate unemployed to undertake a business activity on their own and influence of the legislation on the legal situation of self-employed persons. The former includes mainly grants from the Labour Fund that can be used for initiation of an economic activity (the maximum amount should not exceed the limit of five times the average national salary); the whole procedure is, however, rather complicated and cumbersome, thus experts doubt if the instrument can indeed stimulate entrepreneurship among the unemployed. The latter aspect, the influence on the situation of self-employed, may be considered as relatively insignificant. It is due to the fact that the Labour Law mainly concerns issues related to the employment relationship – in which a hired employee personally performs a voluntarily subordinated job: on behalf of their employer, under their supervision and in a place and time set by them, with all risks to be borne by the employer, and for certain remuneration. And, by definition, this is not the case for the self-employed entering a business agreement with their employing (or rather: contracting) entity, therefore the Labour Law does not encompass sole traders.

As a result, they cannot enjoy most of the benefits and guarantees that employees have, and their relationship with the other contracting party is governed by Civil Law.

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[121] *Ustawa o Swobodzie Dzialalnosci Gospodarczej*, Dz.U. z 2004 r. Nr 173, poz. 1807

There is, however, a certain group of rights that the Labour Code grants to all workers – also those working under civil contracts: protection of health and hygienic and safe working conditions. The recently issued Law on National Labour Inspection, in force since July 2007, obliges an employer to secure safe and hygienic working conditions for all persons working on its premises or in a place designated by the employer – independently on their employment status. On the other hand, the law imposes on all workers (thus, also on self-employed) certain responsibilities related to safety, and especially they have to: know and respect all safety rules and obligations (including the rules set individually by the employer), participate in safety trainings and exams organised by the employer, take care of equipment and machines. They also have to, and this is most controversial, undergo initial and periodic medical examinations similarly to all other employees.

Even though all above provisions seem to be a right step towards greater flexibility of the employment laws, experts underline that they might result in some practical complications. It is not certain, for example, what rules should be applied to a self-employed person who infringes the safety regulations. One of the suggested solutions is a completely new safety and health protection law which would encompass all relevant areas and define the applicability of the provisions to different groups, including self-employed.

According to the Social Security Law, the self-employed bear the whole responsibility for their own social security. Unlike in an employment contract, where most of the obligations are put on the employer, they have to individually cater for all related payments: pension fund or accident and health insurances.

It has to be noted that the existing regulations provide certain measures to support the self-employed who have recently started their businesses (excluding, however, those who provide services for their former employer), e.g. 50 per cent lower base for calculation of the social security payments. Sole traders can also include the payments into the costs of their activities or subtract them from their income and tax, which lets decrease the tax burden.

The taxation schemes that are imposed on natural persons who perform individual economic activity are described in the Law on Natural Person Income Tax. A natural person who begins their individual economic activity can choose a method for calculating their taxes from among:

- a general taxation regime (with a taxation scale of 19, 30 or 40 per cent, depending on the income accrued over the year);
- linear (19 per cent);
- based on a tax card or lump sump (generally – lower than 19 per cent, but limited to certain types of activities).

The general regime is available for everybody, and it is the only method that is available for individuals working as employees. A self-employed entrepreneur can follow the general regime of the tax scale too, but the real benefits appear only when they change to the linear taxation or tax card / lump sum.

The aforementioned most recent amendment of the tax law (in force since Jan.1, 2007) gives a new definition of a non-agricultural business activity, and – what is especially important with regards to self-employed – it defines (in Art. 5b) a closed set of negative conditions that – if met jointly – indicate that an economic activity cannot be treated as such for taxation purposes. The conditions are the following:

- legal responsibility, excluding responsibility *ex delicto*, for a result and execution of an order is borne by the contracting party (not – the self-employed);

- work is carried out under supervision and in the time and place determined by the contracting party;
- the performer does not bear economic risks of the activity.

The new regulations were welcome very differently by various entities. Employers and most of self-employed expressed their concerns, while trade unions and the National Labour Inspectorate claimed the changes might have been even deeper. Independent experts were careful with their opinions, but generally they doubted if any major change of the situation would happen.

There is no data available yet to assess if and how the latest amendment has affected the labour market. It may be expected, however, that the influence was rather moderate, similarly to experts' expectations. The reasons for this are described in the following sections of the case study.

II.3.2 Expected changes in legislation

It is yet uncertain when the next round of amendments to the Labour Code is going to be issued (work on them was temporarily stopped due to parliamentary elections at the end of 2007).

It is important to note, however, that there was a new type of contract planned among the planned changes: a "non-employee contract" foreseen for workers employed on the basis of civil contracts, performing work for the same contractor (employer) of a continuous or repetitive character, for remuneration not lower than half of the minimum wage[122]. These workers will be entitled to some of the rights currently provided only to employees: at least a one-week period of notice for termination of their contract, unpaid holidays and unpaid maternity leaves and, similarly to the current situation, security and health provisions. It seems probable that this kind of contract may be a sensible alternative for self-employment.

II.3.3 Problems

Since the beginning of 2007, independent experts have expressed their concerns regarding the latest tax law amendments. They indicated that for the tax authorities, backed by the enforced National Labour Inspectorate, the new regulations might constitute a basis to reclassify some of the business relations previously falling under the 'self-employment' category into typical employment contracts. And, if this re-classification would happen to be done over-diligently, a non-insignificant number of companies (as well as former "self-employers") might be subject to serious legal and financial consequences.

These consequences are due to the fact, that the employer is a tax remitter under the Tax Code. As such, he has to calculate and pay all due taxes and social security contributions. Had the legality of a self-employment relationship been revoked and the contract been reclassified into an employment contract, the service recipient (employer) would risk being liable to covering all underpaid taxes and social security contributions increased by penalty interest (unless, which is unlikely, it is the employee who is held guilty for the underpayment of tax). The employer might be additionally fined under the Fiscal Penalty Code (the average fine in Warsaw region amounts to PLN 9,000[123]).

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[122] W. Sanetra, "*Niektore prawne zagadnienia kodyfikacji prawa pracy [w:] Problemy kodyfikacji prawa pracy. Wybrane zagadnienia zabezpieczenia spolłecznego*", Gdansk 2007, p. 45

[123] i.e. ca. EUR 2,500

Moreover, the Labour Code provides that any person representing an employer who enters into a civil law agreement (such as, for example, agreement for rendering of services) under terms and conditions typical for an employment contract, i.e. factually replaces an employment contract by another type of agreement, may be subject to a fine of up to PLN 5,000 to be imposed by a labour inspector.

As prof. Witold Modzelewski[124] underlines, the new regulations might also cause problems for certain sectors. For example, a common practice in the construction industry is that on a construction site a number of self-employed specialists work under supervision of the construction site manager; at the same time, both the time and the place of their work are clearly defined, and the responsibility for the results rests with the main contractor. It seems, therefore, that such a situation might be at least questionable for the labour or tax inspectors, and that legislative grounds for the abovementioned re-classification might be fulfilled. Other sectors endangered by the new regulations also include: media (operators, sound engineers), education (lecturers and trainers), or IT specialists (software developers).

Another, potentially significant problem is the Social Security Fund. The Polish market economy is relatively young, and certain habits or behaviour patterns still do not exist on a larger scale. One of such patterns is related to social security insurance. Before 1989, the situation in the country might have been described by a paraphrase of the famous American saying: "there are only two certain things in life: death and taxes", where "taxes" was changed to "pension". In the situation of the regulated socialist market, most people were not aware of the existence of any taxes (as there was no VAT, and income taxes were paid by employers in a non-transparent way), but they were sure that at a certain age they would retire from their jobs and keep living on a decent pension from the state. It is no longer true: today, employees have to pay taxes and share contributions to the social fund with their employer. Some of them, however, do remain in a state of a characteristic carelessness with regards to the pension schemes; they do not see the need to accumulate money for the retirement period, focusing on the current economic problems. Others, know perfectly well that what they pay now to the state social fund has practically nothing to do with the pitiful pension they are most likely to be receiving in future. Most people have not been taught about the importance of the pension funds, and for the young ones retirement is still a rather distant future. Therefore, when it comes to the choice between contributions to the social fund (to be used once in future) and receiving cash (here and now), the choice is simple: as less as possible should be paid to all taxes and funds, and as much as possible earned as direct remuneration.

Therefore, one of the reasons behind switching from an employment contract to self-employment is the possibility to reduce pension scheme contributions. According to Aleksandra Wiktorow, the former chair of the Polish Social Insurance Institution, ZUS[125], 95 per cent of all self-employed pay only the very minimum fees. It might be understandable from their short-sighted perspective (more income now, no contributions to the inefficient system), but it is going to cause significant problems in future, when these people will have to retire. Provided they just consume the excess income now (as only a relatively small part of them have signed up to private, non-obligatory pension funds), their pensions will not be adequate to live without help of family or the state.

But the state, on the other hand, is facing the problem already today: as ZUS receives less and less money from fees, they are not able to regulate even the current obligations towards existing pensioners, and have to be subsidised by the State.

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[124] Witold Modzelewski – a former Minister of Finance, creator of the Polish VAT Law in 1993, currently one of the most renowned tax and legal advisers

[125] ZUS – *Zakład Ubezpieczen Spolecznych*

Currently, the yearly subsidy for the state pension funds (ZUS and KRUS[126]) reaches PLN 38 billion, which means ca. PLN 1,000 from every citizen's tax (including children and pensioners).

II.4 Position in national agenda

All the key players of the Polish employment market have divided themselves into two distinct groups. On the one hand, the government (in the last two years) and trade unions perceive self-employment mainly through the lenses of the "false" or "forced" self-employability and, as such, they firmly oppose it. On the other hand, various employers' associations and entrepreneurs' organisations do support individual entrepreneurship and point to its importance for the further development of the country's young market economy. Of course, neither do they support false self-employment, but – at the same time – perceive the legislative constraints that have been created by the government as harmful and inefficient. They often indicate that the problem of fake self-employment is artificially inflated in Poland, and that the main issue of concern should be the long-existing fiscal and administrative barriers that have contributed to its creation.

II.4.1 Government's view

For the last two years the government, led by the Jaroslaw Kaczynski's Law and Justice party, has been sharing the opinion of the trade unions on the need to eliminate pathologies in employment. It is characteristic that the approach taken by Mr. Kaczynski – who used to be an active member of the 'Solidarity' movement and labour union – proved to be more socially-oriented than the earlier government formed by post-communists.

The overall effects of the government's cadence (which finished with early elections in Oct. 2007) are assessed in a rather moderate, if not critical, way by independent experts. They question the real effects of the proclaimed active labour and social policies, and suggest that – from the point of view of flexicurity – these two years may be considered as lost[127]. The same applies to the economic policy and the lack of real structural reforms that might have solved many of the painful problems (like high unemployment rate, administrative barriers hindering entrepreneurship, etc.). The government was not able to adequately address the pressures from strong lobbies of some groups of workers (e.g. mining industry) and, in effect, implemented partial and very narrow measures to which Marek Rymsza from the Institute of Social Affairs refers as "precise social give-outs".

The therapy that the Kaczynski's government applied to the employment market included amendments to the definition of "self-employed" which created grounds for distinction between them and regular employees. And even though the new definition built on reasonable intentions (comp. section '*History*'), it still leaves too much interpretational space, e.g. for tax offices, to be warmly welcome by employers. As most of non-governmental experts say, these attempts to size up with the problem were mostly limited to healing symptoms of the illness of the economy, and did not fight the causes behind it. The government seemed to be setting more and more constraints on self-employment (even though the support of entrepreneurship as such has been on the national agenda for some time), instead of addressing the high employment costs.

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[126] KRUS – *Kasa Rolniczego Ubezpieczenia Społecznego*, responsible for the social insurance system for the agricultural sector

[127] EIRO Conference "*Flexicurity in Poland*", Sept.2007

Of course, decreasing them is very difficult for the state budget and social security system (as self-employed pay lower taxes and contribute less to the obligatory pension system than 'regular' employees), but examples of other countries have shown that higher taxes and more control do not necessarily correspond to the higher income of the budget and more dynamic economy.

Also the President of Poland, Mr. Lech Kaczynski, who shares the Prime Minister's political objectives, has been clearly backing labour security for the sake of flexibility. His words, spoken out during the meeting with shipyard workers in Gdansk in Feb. 2007, became famous as they roused indignation among employers and labour market experts. The President said that "self-employment is paranoia in its purest form". And even though the statement was later softened by the President's spokesperson (as referring exclusively to fake self-employment and its negative consequences), the fact clearly illustrates the state's approach towards self-employment in the last years.

II.4.2 Employees

For the trade unions, spreading of self-employment constitutes a threat for the number of their members (which is decreasing since self-employed cannot keep or apply for membership) and thus it weakens their, not very strong anyway[128], bargaining position. They claim self-employment creates unfair competition for employees, and – consequently – may lead to increase of the unemployment rate[129].

Such opinions are, however, criticised by employers' associations which underline that, in the current situation, very often the only alternative to self-employment is, unfortunately, unemployment or undeclared work, as many employers cannot afford to pay the excessive employment costs (which in small companies may exceed 70 per cent of their overall costs). Statistics, however, do not confirm such statements: since 2005 the number of self-employed has remained on a relatively stable level (of slightly below 3 million), while the unemployment rate has fallen by almost half (from almost 20 per cent at the beginning of 2005 to currently 12 per cent)[130].

Mr. Janusz Sniadek, the chairman of the "Solidarnosc" trade union, says that the difficulties in fighting fake self-employment result from the ailing execution of laws. According to him, the courts give priority to the will of both parties (employer and employee) over the literal provisions of the employment laws and thus support freedom of choosing an agreement. Mr. Sniadek insists: "(…) such formula is inadmissible. It is the law that defines when we have an employment contract in place. The 'free will' of an employee is usually subject to their former employer's blackmail".

Speaking about labour courts, it is worth mentioning here that, according to data from State Labour Inspection, PIP[131], a number of legal suits related to determining actual labour relationship of 'atypical' employees (mainly self-employed) has increased considerably over the period 2004-2006 (comp. Fig. 4.). On the one hand, it may suggest that the self-employed are not that satisfied as it would stem from the Lewiatan's research mentioned earlier in the study; on the other hand, however, after a closer look at the graph, it becomes obvious that the absolute numbers of suits are very low.

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[128] today only 18 per cent of employees in Poland belong to trade unions; what is more, the majority of them think that trade unions do not represent employees adequately

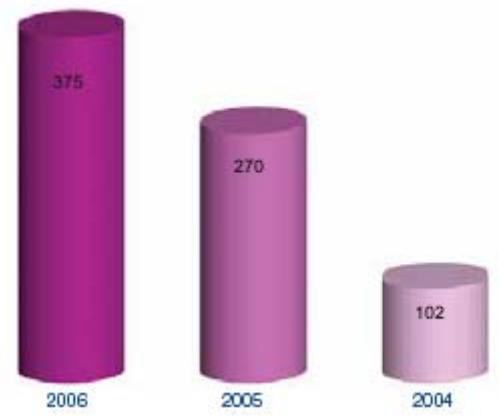
[129] opinion of D. Sniadek, the Chair of NSZZ Solidarnosc, the largest Polish trade union, expressed during the meeting of the Tripartite Commission on Feb.28, 2007

[130] both numbers from the Central Statistical Office

[131] pol. *Panstwowa Inspekcja Pracy* (www.pip.gov.pl)

And, in such a situation, a yearly growth of 100 per cent should not be surprising. It has been influenced by the "snowball effect" (as some of the more spectacular cases won by self-employed forced to work as such by their former employers were made very public) and the falling unemployment rate (which encourages employees to oppose the imposition of working conditions that they do not like more firmly).

Fig. 4. Legal suits related to determining actual labour relationship [source: PIP]



II.4.3 Employers

A completely different diagnosis of the current situation comes from the employers' side. They are in favour of limiting state interventionism and lowering employment costs instead of imposing further contributions on companies, but during the last two years of the Kaczynski's government they have lost the increased influence enjoyed before 2005 and have not been able to outweigh the pro-social lobby of trade unions.

The Polish Confederation of Private Employers Lewiatan has always underlined that the attitude of responsibility for one's own life, that is so characteristic for most of entrepreneurs and that employees so often lack, is a social wealth that cannot be recklessly squandered. Self-employment is also very often the first step towards other forms of business activity that are to create future workplaces for others. Of course, not every self-employed person will ultimately become an employer; many will remain sole traders offering individual services. But this is essential in today's economy in which creation of *ad-hoc* project teams consisting of free-lancers becomes not only a norm but also a necessity. Experiences that one can earn from private economic activity are beneficial also for these people who will return to the role of employees: they become more responsible, and they better understand the economic rules governing the functioning of firms in the free market.

The Confederation, of course, has never supported "forced" self-employment. Such practices are illegal, but they cannot be eliminated if the employment costs (other than the salary) are not decreased. Currently, for every PLN 100 that is received by an employee, an employer has to pay additionally almost PLN 70 for various funds and taxes. The monthly social security contribution that a Polish self-employed person has to pay is higher than the yearly fee to be borne by their colleague from the United Kingdom! Thus, Lewiatan strongly supports all the government's undertakings that aim at lowering employment costs. Only then might the false self-employment phenomenon disappear while, at the same time, the 'real' self-employability is still to constitute an important factor for economic growth.

On the other hand, according to the Confederation's experts, the only law that should be governing employment relationships is supposed to be the Labour Law, not tax regulations. Similarly questioned should be all government's efforts to fight the processes to optimise employment costs that are undertaken by companies within the limits of the current legislation.

A very similar opinion has been expressed by the Adam Smith Centre: its experts say that these are the high employment costs in Poland that may be called pathological, and not the self-employment as such. According to the Centre's President Robert Gwiazdowski, 'forced' self-employment cannot be supported nor defended, but for many (especially – smaller) companies, increasing the number of employment contracts would equal "economic suicide". And, until very recently, in the conditions of the high unemployment rate, for many individuals "no self-employment" equalled "no employment at all".

Also the Confederation of the Polish Employers (KPP[132]) firmly opposed the way the government used to address self-employment. KPP is of the opinion that, instead of discouraging and limiting this, very important, form of business activities through increasingly restrictive tax and labour legislation (as has been happening in the last years), the authorities should support the individual entrepreneurs though creating better conditions for running business, decreasing administrative barriers and red tape, and introduction of tax incentives.

Business Centre Club[133] (BCC), one of the active members of the Polish tripartite commission, shares the abovementioned view: the state should be strongly supporting, and not limiting, self-employability.

The question is if the new Polish government, led by Donald Tusk's liberal Civic Platform and agrarian Polish People's Party, is going to be able to successfully deal with the legacy of problems. So far, no specific information on the government's plans with respect to self-employment has been given. However, Civic Platform's pre-election declarations assumed that one of the government's priorities would be stimulation of the economy and support for entrepreneurship through decreasing taxes and other payments (including social contributions), as well as minimising various administrative barriers and state interventionism. And the employers' organisations are optimistic: it will not be easy, but with the new government it is possible to work out solutions acceptable for all sides.

II.5 Conclusions

While discussing the phenomenon of self-employment in Poland it is important to remember that it is not the fact of its relative popularity that makes it interesting and unusual (even though estimations of the National Statistics Office, GUS, place Poland, with 27 per cent of self-employed, among the most entrepreneurial Member States), but rather a significant share of "forced" self-employment driven by the employers trying to avoid high employment costs and strict Labour Law regulations so as to remain economically competitive.

[132] KPP – pol. *Konfederacja Pracodawcow Polskich*, www.kpp.org.pl
[133] BCC (Business Centre Club), the largest Polish organisation of individual employers, www.bcc.org.pl

For most of the Polish self-employed such a work arrangement is not only acceptable, but also satisfactory (results of the latest studies indicate a satisfaction level of 75 per cent). A similar approach can be seen from the side of employers: they are very keen on employing individual contractors, and two thirds of them are of the opinion that eventually regular employment contracts are to disappear almost completely[134].

However reassuring the above numbers may be, it cannot be forgotten that there is a group of former employees who were forced into self-employment and/or remain in a very dependent and employment-like relationship which should not be qualified as individual economic activity – firstly because of the legal constraints, secondly because of its character: can a secretary be a sole trader?

How many falsely self-employed people work in Poland is not known exactly, but expert estimations point to ca. 5 per cent of the total workforce. And this number has supposedly not changed significantly over the last years. The social partners have not been able to agree on constructive solutions, when both employers' associations and employees' organisations presented their particular opinions (the former supporting more entrepreneurial freedom, the latter – proclaiming a need for even more strict labour security measures) with not much negotiations space.

The consecutive governments, on the other hand, have not come up with structural solutions. Solutions that would apply to the very problems that are the origins of the situation, i.e. high employment costs (today, for an employee to receive PLN 1,000 net salary, their employer has to pay additionally over PLN 850 of various taxes and social contributions). But instead of fighting these problems, the visible symptoms of the underlying illness have been treated: the government introduced more strict regulations and gave more power to tax and labour inspectors. By doing this, it has affected the whole group of self-employed (who might be deprived of a chance to start or continue their legitimate business), and acted – in fact – against its own strategies of stimulating entrepreneurship and building a more competitive economy.

As the required changes will definitely have to affect the whole labour market system (including taxes), it is uncertain if the new, liberal government will be ready to seriously address these issues. Taking into account the pre-election declarations, it seems that it might succeed. Especially since the social partners also declare willingness to collaborate. Employers' associations have already proposed a new and more efficient structure and procedures for the tripartite commission, and trade unions have been expressing their cautious support for increasing the general flexibility of the employment market.

The last, but not least, aspect that might prove to be positively influencing the situation is the falling unemployment rate. Over the last years it has decreased almost two-fold (from over 20 per cent), and therefore it is now a much lesser factor influencing employees' behaviour and their (lack of) opposition towards "forced" self-employment.

Poland's employment market is relatively flexible (or even very flexible when compared to other states in the region). Many of the 'atypical' forms of employment do exist and are included in the legislative system. The discussion on flexicurity has, however, started only recently. And, without any doubts, self-employment and economic dependence of workers will have to be included into it, as well.

[134] J.Fudala, D.Steczkowski: „*Fikcja samozatrudnienia*" Ozon no. 12 (www.ozon.pl)

Perhaps one of the first steps on the way towards this goal will be the planned changes to the Labour Code and introduction of a new “non-employee contract” as an attempt to marry flexibility- and security-related sides of the problem. The next steps, however, probably even more important, will have to include measures to remove the economic ‘driver’ of the phenomenon: excessively high employment costs. Without it, even the best laws will not convince financial directors of Polish companies that forced self-employment should not be used.

III - TEMPORARY EMPLOYMENT CONTRACTS IN THE SPANISH LABOUR MARKET

III.1 Executive summary

Undoubtedly, the massive presence of temporary employment is the main problem of Spanish labour market, and has been in the centre of every debate or initiative regarding labour market policies since the mid-1980s. This question has gone beyond the labour arena, and is nowadays a common discussion topic for politicians, sociologists and other social science academicians.

Papers and reports by the European Commission have also focused on Spain, first pointing out the need to reduce the presence of fixed term contracts in its labour market in recommendations and other documents within the European Employment Strategy; later, analysing it from the perspective of flexicurity.

The only way to fully and properly understand the present situation is to analyse the historical process that took place in Spanish labour and employment policies in the last thirty years. The **starting point** of this report should be the **Spanish tradition with employment contracts**: open-ended contract as the normative model, fixed-term contract as the exception, allowed only for jobs of a temporary nature. According to this "golden rule", undertakings could use fixed-term contracts only when the activity was also temporary. In the early 1980s, and in order to fight rampant unemployment, successive Labour Law reforms from 1980 to 1994 allowed the use of fixed-term contracts to cover permanent positions of the firms, breaking this rule. As a result of this option, all the flexibility of Spanish Labour Law was concentrated in this type of contract, while the cost of dismissals remained unchanged.

This strategy produced a rampant increase in the presence of temporary employment, and fixed-term contracts became in practical terms the only way to hire workers in the country. It had other effects: other ways of flexibility like self-employment or part-time employment were not used in Spain as often as in others European Countries. In the early 1990s it became clear that these reforms, intending to be a solution, had become a problem. From 1994 to 2006, all legal reforms have tried to reduce this rate, but all of these have had a scarce success.

Spain is currently the country with the **highest rate of employment with fixed-term contracts** within the European Union, approximately 34% of the total labour force, a rate which is far higher than any other member state, and much higher than the average in European Union. This is, undoubtedly, the main problem of the Spanish labour market: according to the Active Population Survey in 2006 there were 3,071,600 persons with fixed-term contracts.

Although for decades there has been a tendency to explain the extension of temporary employment in Spain as being the consequence of one single factor, the statutory framework for hiring workers which granted employers ample possibilities to use fixed-term contracts, a new understanding of this phenomenon has been growing in the last few years, whereby there is not a single cause but a combination thereof.

According to many, the main reason explaining this feature of the Spanish labour market is the imbalance between the costs of terminating an employment relation for permanent and fixed-term contracts. This being true, there are nonetheless other factors to be taken into account:

- The particular features of Spanish economy, in which there is a constant demand of temporary employment as many economic activities are seasonal or limited in time
- The composition of the country's workforce, with an important presence of young, female and low-skilled workers
- The personnel policies of the public sector
- The extension of outsourcing in Spanish economy
- The existence among personnel managers of a certain "culture of temporality"

In the last decade and a half, a number of strategies have been tried in order to change this situation and restore the balance in the labour market. None of them has been particularly effective, and the performance of the last one to be put into practice, the consolidation of fixed-term contracts, is still to be evaluated.

In the last few years, a different attitude towards this problem can be identified in some sectors, a position according to which a new approach to this phenomenon is needed. Instead of considering these high levels of fixed-term contracts as the result only of a defective legislative framework and wrong human resources policies by companies, something to be avoided by all means, there is a new message according to which high levels of temporary work will always be present, and the role of public authorities and social partners should be to try to improve the quality of employment and the employment opportunities of these workers.

III.2 Foreword: why study the Spanish experience?

The election of Spain as an exemplary case deserving special attention in order to complete national reports is, at least in this reporter's opinion, fully justified. The massive presence of fixed-term contracts is, undoubtedly, the main problem of the Spanish labour market, and has been at the centre of every debate or initiative regarding labour market policies since the mid-1980s. This question has expanded from the labour arena, and nowadays is a common discussion topic for politicians, sociologists and other social science academicians.

There a number of reasons making Spain a singular experience regarding the use of fixed-term contracts. First of all, the volume of these in the Spanish labour market, reaching levels unknown to other EU member states; secondly, the centrality of this issue in all social and political debates as a consequence of its massive presence,. There is currently a wide consensus about the negative consequences of this situation, particularly regarding the negative consequences of a labour policy based exclusively on external flexibility, as was the case in Spain for over a decade. The effect it has had on labour market segmentation is also a general concern for public authorities and social partners, as it has eroded professional expectations and quality of life for vast groups of workers and their families. Finally, although the reduction of temporary employment has been a central objective for legislative reforms, employment policies and collective bargaining in the last two decades, the Spanish experience shows the difficulties to find instruments to introduce higher levels of security in employment.

Papers and reports by the European Commission have also focused on Spain, first pointing out the need to reduce the presence of fixed term contracts in its labour market in recommendations and other documents within the European Employment Strategy; later, analysing it from the perspective of flexicurity. The Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "Towards Common Principles of Flexicurity:

More and better jobs through flexibility and security" expressly includes a reference to the Spanish experience with temporary employment, listed among the Member States' experiences with flexicurity.

For the Commission, the policy of Spanish authorities to balance the presence of fixed-term and open-ended contracts in the labour market is a good example of how to reach the desirable mixture of flexibility and security in the use of workforce. In its own words,

> *"Spain experiences a persistently high share of fixed-term contracts, covering about 34% of total employment. A comprehensive agreement was signed in May 2006, running until the end of 2007, between the social partners and supported by the Government, curtailing the excessive use of fixed-term contracts and easing requirements on employers. Any worker having signed two or more fixed-term contracts with the same company, and having served in the same post for more than 24 months within a period of 30 months, automatically acquires an open ended contract; in this contract obligatory severance is reduced from 45 to 33 days' pay per year worked."*

Moreover, in this very Communication the Commission identifies the Spanish case as one of the so-called "Pathways to Flexicurity":

> ***Pathway 1: tackling contractual segmentation:*** *This typical pathway is of interest to countries where the key challenge is segmented labour markets, with insiders and outsiders. This pathway would aim to distribute flexibility and security more evenly over the workforce. It would provide entry ports into employment for newcomers and it would promote their progress into better contractual arrangements*

Even if not mentioning it by its name, Spain it is nonetheless easily identified:

> *In these countries, open ended contracts have been seen as the main access route to protection by labour laws and collective agreements. Training opportunities and social security provisions also tend to depend on having an open ended contract. Due to attempts to increase labour market flexibility, a high incidence of fixed-term contracts, on-call contracts, agency work, etcetera, has developed. Often workers are on repeated fixed term contracts for a long time before obtaining an open ended contract. Rather than as stepping stones, these contracts risk working as traps.*

Therefore, for the European Commission, Spain is not only interesting because of the problem its labour market suffers, but also, and specially, because of the solutions put into practice to solve it. In a somehow contradictory evaluation, Spanish labour market is at the same time a model of market needing flexisecure policies, and an example of these measures. We will try to offer some data and information in order to asses whether this analysis is accurate or not.

In the framework of the debate on the modernization of labour law with the general objective of flexicurity, the Spanish experience has gained a prominent role, as it shows in practice the negative consequences of a wrong approach to flexibility, and the availability of legislative and economic instruments to correct this by trying to introduce higher levels of security.

III.3 Definitions

As in other European Union member states, Spanish labour law regulates a number of contracts of employment, each of them with their own features and functions within the labour market. More specifically, Spanish labour law offers employers a wide array of types of contracts of employment for a fixed-term. Below are some examples of contracts of fixed duration currently being used by Spanish undertakings:

- Contract for a work task or particular service
- Contracts of a temporary nature due to circumstances of production
- Contract to temporarily substitute a worker with the right to keep his job post open
- Contract for work experience
- Contract for learning and for training
- Contract for change of personnel and for replacement with a view to anticipating the age of retirement
- Contracts for unemployed workers in a situation of social exclusion
- Contracts to replace early retired workers
- Contract for the partial replacement of a worker close to retirement

All these are legally dealt as modalities of the employment contract, subject to special regulations and allowed only in specific circumstances.

We must also bear in mind temporary work in the narrow sense, i.e. contracts with a temporary work agency in which a worker is placed at the disposal of a user firm. This particular kind of work was introduced in Spanish law in 1993, and has undergone an important increase in the volume of its operations. Its legal framework is rather complex, having suffered some major reforms in this period of time, and with an important role for collective bargaining in the build-up of the current regulatory situation.

Even when we are talking about "open-ended" contracts, a number of cases can be distinguished, as labour law currently in force in Spain regulates an array of contracts with the common feature of being signed for an indefinite period of time. These are the most relevant kinds:

- Contract for an indefinite period of time
- Contracts for an indefinite period of a permanent but discontinuous nature: this contract is concluded to carry out work of a fixed discontinuous nature, and which is not performed during certain periods defined by specific dates, within the normal work activity of the company concerned.
- Contracts for an indefinite period of time, formulated within the Programme for promoting Stable Employment; the aim is to promote contracts for indefinite periods for particular groups of unemployed workers.
- Contract for the promotion of permanent employment: its aim is to help towards the stable placement of unemployed workers and of employees with fixed-term contracts.

III.4 History

In this reporter's view, the only way to fully and properly understand the present situation is to analyse the historical process that took place in Spanish labour and employment policies in the last thirty years. In this process some landmarks can be found that can help us understand how we have arrived at this level of temporary employment in the labour market.

The starting point of this report should be the Spanish tradition with employment contracts: open-ended contracts as the normative model, fixed-term contracts as the exception, allowed only for those works of a temporary nature. According to this "golden rule" companies could use fixed-term contracts only when the activity is also temporary.

This rule was present in labour laws by the early 1970s, and produced a labour market structure in which temporary employment had a minor presence. This rule is still present in Spanish labour law, and article 15 of the Statute of Workers' Rights still supports it, as we will see. Indeed, there is nothing original about this rule, as more or less the same rule can be found in other European States, the labour markets of which show a completely different structure.

This situation of legal restraints to fixed-term hiring, and little use of it by companies, was coherent with the economic and political situation of the last years of General Franco's government: an authoritarian regime which strongly protected the national market and developed a vigorous paternalistic labour policy. With the transition to democracy the situation changed radically, as it coincided in time with a very important economic crisis, which eroded complete sectors of the Spanish economy and destroyed an enormous number of jobs. At the same time, demographic changes, with a significant increase in the volume of active population by the arrival of baby-boomers, and the entrance of women in the labour market due to cultural and legal changes, contributed to an exponential increase in unemployment, in a country whose social protection system was still underdeveloped.

To fight increasing unemployment, **successive Labour Law reforms** from 1980 to 1994 allowed the use of fixed-term contracts to cover permanent positions in companies, breaking the so-called golden-rule of temporary employment in Spain. This policy was attempted first on a temporary basis, through pieces of legislation related to employment policies and a duration limited in time. Later, a significant reform of the Statute of Workers' Rights in 1984 made this possibility permanent, introducing the so-called "contrato para el fomento del empleo" –contract for the promotion of employment-, as an option for employers and for which no cause had to be put forward; the employer merely needed to follow the scarce rules set up for this contract in the Statute of Workers' Rights and in some lower level regulations. The only compensation for the worker, in exchange for this high level of flexibility, was the payment of a lump-sum at the end of the contract, depending on its length and the wage level of the employee, as well as the option to continue the employment relation as a permanent employee if the employer decided to keep the worker in the company's ranks. Besides this special contract, the traditional work experience contract and contracts for temporary needs of personnel could be used in a wide array of situations. Fixed-term hiring was opened completely, and could be used in almost every circumstance.

This political decision was a risky one indeed, and must be understood in the context of a severe economic crisis, and under the pressure of strong resistance from labour unions against any attempt to reform regulations on the contract of employment in depth. Over time, it had many effects, affecting the development of the labour market for the next decade.

As a result of this option, **all the flexibility** of Spanish Labour Law was **concentrated in this type of contract**, an extreme form of "external" or "numerical" flexibility. Other aspects of flexible labour relations, like internal flexibility or even other forms of external flexibility – mainly dismissals-, were not tried. The cost of dismissals remained unchanged, making it an unattractive option for employers. Other instruments of adaptation and change, such as self-employment or part-time employment were not used in Spain as often as in others European Countries. Especially, the part-time employment rate has always remained below 10% of the labour force.

Fixed-term contracts became the most important type and the most frequently used type of labour relation in Spain, and their presence in the labour market sky-rocketed. As a consequence of the wide permission to use these contracts, the practice of "chain-hiring" was frequent, and the same worker could remain employed for the same company on a temporary basis for very long periods, through a succession of different kinds of fixed-term contracts.

These contracts usually involved poorer economic and working conditions, and they had a disparate effect on some groups of workers, thus producing a very clear segmentation effect in the labour market.

In the early 1990s, it was clear that the enormous level of external flexibility through the almost free use of fixed-term employment, intending to be a solution for the problems of the Spanish labour market, has become a problem in itself. From that moment onwards, all successive legal reforms have tried to reduce the rate of temporary employment and to increase the quality of the jobs available. As the free access to temporary contracts was a decision of the labour authorities, put into practice through a reform of labour laws, the idea existed that a new reform was needed in order to put the situation back to normal.

The first reaction against this situation came in 1992, when the minimum length of the contract for the promotion of employment was raised from six to twelve months. The biggest and furthest reaching reform of Spanish labour law in recent times, the so-called **"1994 labour market reform"**, included strong measures towards this objective. It started at the end of 1993 with Royal Decree-Law 18/1993, which contained far-reaching measures governing the labour market and terms of employment. In 1994, the Statute of Workers' Rights was profoundly altered with regard to the rules governing contracts of employment and collective bargaining. This reform was implemented by Laws 10 and 11 of 1994 and brought fundamental changes in the legislation on industrial relations in Spain and the labour market. In the same year, Law 14/1994 was adopted, which legalised temporary work agencies in Spain.

One of the main drivers of this reform was the advance of other forms of flexibility, mainly internal, setting new rules for the regulation and management of employment relationships. Collective bargaining was entrusted with the task to control and restrain the use of fixed-term contracts. The most relevant change was the almost complete derogation of the temporary contract to promote employment, which from that moment on could only be used for some limited groups of workers in the framework of employment policies, according to programmes set on a yearly basis, until its final disappearance at the end of the decade.

The effects of these reforms on the presence of temporary employment were nonetheless small, and further changes were needed. Consequently, in 1997 social partners signed up various national agreements; amongst others, an **agreement on stability in employment**. To give effect to these agreements, the Government undertook a new legislative reform, enacted initially via Royal Decree-Law 18/1997 and then Law 63/1997, which, *inter alia*, introduced the furthest reaching measure adopted during the 1990s to promote contractual stability. A new kind of contract of employment was introduced, this time for an indefinite period of time, the purpose of which was to promote permanent employment. This contract, which could be used only with some specific groups of workers, was made attractive to employers by having a smaller compensation in the case of economic dismissal. A reduction in the costs of dismissal was thus attained, though in a subtle and indirect way: instead of changing the regulation for all dismissals, a new kind of contract was introduced, with a special treatment in the case of dismissal.

In 1999, the Law on Temporary Employment Agencies was amended to establish a more stringent and controlled regime after serious dysfunctions had been found to exist in the sector.

By the end of the decade it was clear that Spanish labour law was rethinking the flexible labour policies put into practice since the transition to democracy. For the first time, legal instruments were produced which partly reversed the trend towards flexibility and refocused attention on the situation of workers and on the quality of their employment.

In 2001, when the 1997 inter-confederate agreements expired and no agreement could be reached for their renewal, the Government adopted a new and fairly significant reform, which, among other changes, altered many aspects of the legislation governing contracts of employment and implemented some Community directives, introducing provisions which on the whole were ambivalent with regard to labour flexibility. In the field of temporary employment the measures were modest, and most of them were presented as the implementation of European Directives:

- A new fixed-term contract was introduced, the so-called "contrato de inserción" – "contract for integration through employment"-, but with a rather limited scope;
- The regulation of work experience contracts was also altered so as to allow their use with a broader group of workers;
- New provisions were introduced for article 15 –contracts-, entrusting collective bargaining with the role to set measures to control their use; imposing on the employer the duty to inform temporary workers about vacancies in permanent employment at the undertaking; and ensuring the access to training for temporary workers.

The most relevant aspect was that the contract to promote permanent employment was made a permanent element in Spanish labour law, as in 1997 it had been admitted only for a four-year period; in fact, it is still in force *sine die*. Its scope regarding personnel was extended, including new groups of workers as possible targets for this contract.

All these amendments of the legal framework for temporary employment had, on the whole, only relative success and the problem of its massive use continued. It was clear that a different, more incisive approach was needed. The most recent development so far, started in 2005 when the new Socialist Government in office launched an initiative to change labour laws and employment policies in order to promote quality in employment.

Following this initiative, and after long and controversial bargaining rounds, national Trade Unions and Employers' Organisations (UGT, CCOO and CEOE) signed the so-called **"Acuerdo para la Mejora de la Competitividad y el Empleo"** –"Agreement to promote competitiveness and employment"-, generally known as AMCE, in 2006. The contents of this agreement were put into practice through a number of pieces of legislation during this and the following year; some aspects of these reforms are still to be concluded, as some bargaining tables are still operating.

In these two years a number of measures affecting temporary contracts and quality in employment were adopted:

- the scope of the contract for the promotion of permanent employment was limited;
- the scope of work experience contracts was also reduced with regard to personnel;
- a very ambitious and intensive programme to promote the conversion of fixed-term contracts into open-ended contracts was put into practice, with important economic incentives for employers doing so;

- collective agreements were allowed to include provisions aimed to reduce the systematic recurring to these contracts to cover the same work posts in companies;
- a new technique of compulsory conversion of fixed-term contracts was introduced, in which these contracts changed their nature by consolidation, with the mere passing of time.

So far these have been the last measures to be introduced in order to alter the unbalanced presence of temporary employment in the country's economy. The results of all these, as we will see, has been to some extent disappointing, as the labour market shows a sturdy tendency to increase the presence of these contracts, notwithstanding all legislative changes and economic incentives.

This fact must lead to place under scrutiny the common wisdom according to which labour law reforms are the best way to cope with these problems, as we will see. In any case, at least **two circumstances which affected and conditioned the process** of reforms throughout this period must not be forgotten.

The first element to be considered is that for many years, more than a decade, Spanish employers have been able to use temporary employment with almost no restriction, getting used to a new way of managing human resources through these contracts. The attempt to modify their behaviour by changing the rules governing them has proved to be inadequate or at least insufficient, as fixed-term hiring has become part of the culture of firms and personnel managers.

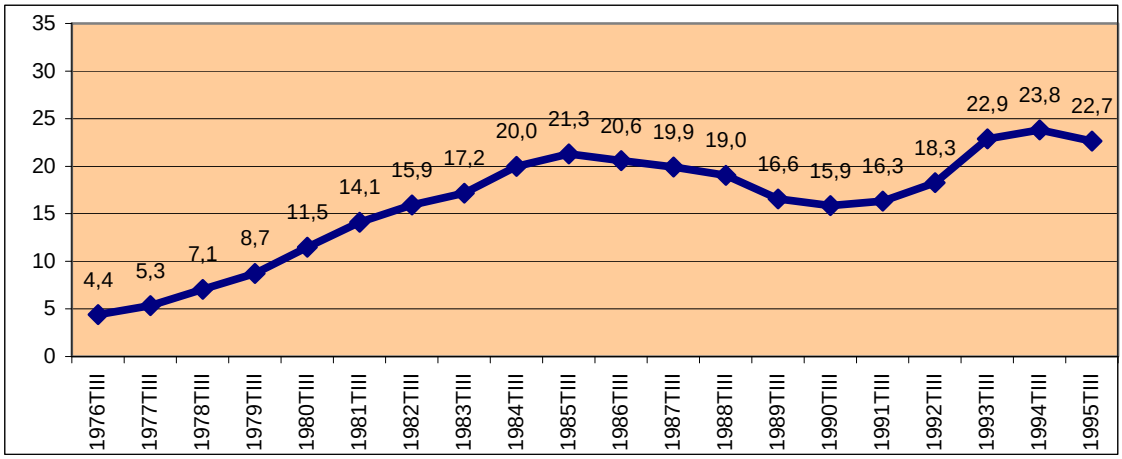
Another element which has to be taken into account is that, throughout this period, unemployment levels have been stubbornly high, and this fact has conditioned all labour and employment policies. Employment growth has been the main priority at all times, even when quality in labour contracts was already present as a concern. Although fixed-term contracting has always been considered as dangerous and ill-advised, there has always been an agreement that in the context of an economic crisis this was a way of creating or at least maintaining jobs, and therefore further-reaching measures to control and restrict them should not be tried.

III.5 Economic importance of fixed-term contracts

This is, undoubtedly, the main problem of the Spanish labour market: according to the 2006 Active Population Survey there were 3,071,600 persons with fixed-term contracts, 34.6% of the work force. And this rate was even higher in the case of female workers.

As stated earlier, the extension of temporary employment in the country cannot be understood without taking into account the enormous level of unemployment the country has faced in the last three decades. This imbalance of the labour market was the first priority for all of the successive governments' policies, and explains why quality in employment was neglected for a long time.

Graph 1: Unemployment rate in Spain (1976-1995)



Source: Active Population Survey

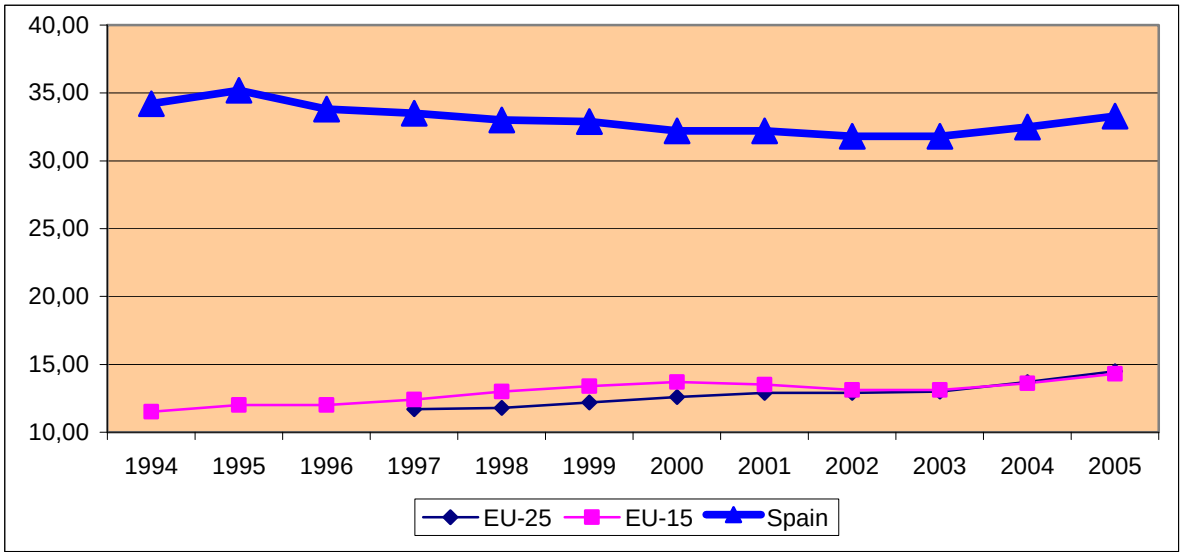
This high levels of unemployment justified a risky option for the use of fixed-term contracts as an instrument to promote access to employment for unemployed workers. This strategy, common to most European countries, was nonetheless taken to an extreme in Spain, and produced a rocketing increase in the use of these forms of employment.

Table 1: Types of labour contracts in Spain (1996-2006)

Years	TOTAL	ACCORDING TO DURATION				ACCORDING TO WORK-HOURS	
		Normal	%	Fixed-term	%	Normal	Part-Time
1996.....	8,627.50	354.4	4.1%	8,273.20	95.9%	7,001.10	1,626.40
1997.....	10,093.60	707.5	7.0%	9,386.10	93.0%	8,110.50	1,983.00
1998.....	11,663.30	971	8.3%	10,692.30	91.7%	9,296.20	2,367.10
1999.....	13,235.30	1,218.30	9.2%	12,017.10	90.8%	10,822.50	2,412.80
2000.....	13,828.90	1,208.40	8.7%	12,620.50	91.3%	11,316.80	2,512.10
2001.....	14,056.50	1,304.10	9.3%	12,752.40	90.7%	11,391.20	2,665.30
2002.....	14,179.20	1,283.00	9.0%	12,896.30	91.0%	11,220.50	2,958.80
2003.....	14,668.10	1,269.80	8.7%	13,398.30	91.3%	11,544.40	3,123.60
2004.....	16,350.80	1,419.70	8.7%	14,931.10	91.3%	12,629.60	3,721.20
2005.....	17,165.00	1,542.80	9.0%	15,622.10	91.0%	13,135.30	4,029.60
2005:(JAN-SEP).	12,628.70	1,143.20	9.1%	11,485.50	90.9%	9,758.60	2,870.10
2006:(JAN-SEP).	13,660.80	1,470.50	10.8%	12,190.30	89.2%	10,539.50	3,121.30

Within the European Union, Spain is the country with the highest rate of fixed-term contract employment, approximately 34% of the total labour force, a rate which is far higher than any other Member State, and much higher than the average in the European Union. This has been so for many years. Even today, when the general situation of employment has improved substantially and Spain is no longer the “sick labour market of Europe”, as it used to be, the percentage of active population employed through unstable and low-quality contracts is still very noticeable within the European context.

Graph 2: Fixed-term contract rate in Spain and in EU-25 and EU 15 (2005)



Source: Employment in Europe 2006

According to the Active Population Survey for the year 2006, there were a total of 10.7 million workers employed with open-ended contracts, and 5.5 with fixed-term contracts. The situation in the private sector was that 8.5 million workers had permanent employment and 4.7 million had temporary employment. In the public sector, the proportion was of 2.126.000 permanent to 755.000 temporary employees. That is 34% of the labour market as whole, with 35.7% in the private sector for 26.2% in the public sector.

The evolution in both sectors is worth pointing out. Whereas in 1997 the total percentage was of a 33.5%, in the private sector temporary employment accounted for 38.6% whereas in the public sector it affected 16.4% of the total workforce. This clearly shows the increase of temporary employment in the public sector, a major factor affecting the performance of the employment policies guided towards the increase in the quality of employment. The Spanish Economic and Social Council issued an official document on this problem (Informe CES 3/2004, *La temporalidad en el empleo en el sector público*), pointing out this fact and suggesting some possible solutions to it. The latest report on the Economic and Social State of the Country, from 2006, states that the situation has not improved, and identifies a reason explaining this: whereas the only real initiatives to reduce temporary employment have been issued by the central government administration, the bodies which use these contracts the most, regional and local authorities, have barely done anything regarding their employment policies.

It is also interesting to analyse the personal features of the temproary working population in detail. In the private sector, fixed-term contracts are particularly frequent among younger workers of both genders. The ratio of temporary employment is reduced as the age of workers increases, with no significant gender differences:

- 81.6% for male workers and 81.9% for female workers in the Group aged16 to 19
- 60.4% and 62.7% in the Group aged 20 to 24;
- 45.6% and 44.4% in the Group aged 25 to 29;
- 33.4% and 32.8% in the Group aged 30 to 39.

Over 40 years old, the rate of temporary employment continues to decrease, but the differences between male and female workers increase.

- 23.8% and 29.6% in the Group aged 40 to 49;
- 16.7% and 25.0% in the Group aged 50 to 59.

In the public sector, the presence of temporary employment is even higher for younger workers, and the impact of temporary employment in female workers is significantly higher for all ages.

Finally, the fact that fixed-term employment is particularly affecting immigrant workers, the fastest-growing sector in the Spanish labour market, should also be taken into account: among workers who are citizens from countries outside EU-25, temporary employment rises to over 62%.

These figures are relevant in themselves, but the situation can be even more appealing if it is analysed in a wider time perspective. For instance, if we study the evolution of these figures over the last three decades, during which we find a general and continuous trend to increase the presence of these contracts; a determination of this tendency despite all legislative changes; an increasing use of these contracts in the public sector; and an asymmetrical presence of these contracts within groups of population in the labour market; they affect young and female workers especially.

III.6 The reasons explaining the extent of fixed-term employment

Although for decades there has been a tendency to explain the extension of temporary employment in Spain as being the consequence of one single factor, the statutory framework for hiring workers which granted employers ample possibilities to use fixed-term contracts, a new understanding of this phenomenon is growing in the last few years, whereby there is not a single cause but a combination thereof. In this section, the report will try to offer a view of these explanations for the Spanish labour market performance.

There is a wide consensus among Spanish experts about the explanation of the massive presence of fixed-term contracts. According to many, the main reason explaining this feature of the Spanish labour market is the imbalance between the costs of terminating an employment relationship for permanent and fixed-term contracts.

Under Spanish law, **redundancies are a very costly**, time-consuming and complex way of adjusting workforces, and not much has changed in the last decades. Labour laws include a rather rigid and restrictive regulation for the termination of the contract of employment. According to the Spanish system of dismissal, if the employer intends to terminate a contract of employment unilaterally, a justification is required for doing so, with failure to provide it resulting in the dismissal being termed “unfair dismissal”. If the dismissal is so qualified, a system of reinstatement also exists according to which there is no obligation to reinstate workers but merely compensate them with a lump-sum payment considered as an indemnity for a breach of contract. However, compensation can be remarkably high since it depends on the workers’ seniority in the company and on their wages before dismissal. Constitutional Court case law introduced the concept of “null and void dismissal”, which, by way of exception, obliges the employer to reinstate workers in their work post, besides an obligation to pay compensation for damages; however, this only applies to a low number of dismissals, those in which fundamental rights have been violated. Even in the case of legal dismissal on economic grounds there is a legal obligation to pay compensation, although of a significant lower amount, for both individual and collective redundancies.

The type of dismissal determines the calculation of the compensation to be paid, since even in the case of legal dismissal the obligation to compensate the employee exists; but in all cases it will depend on the employee's wages and seniority. In relative terms, this system makes dismissal in Spain one of the most complex and expensive in the European Union as a whole.

However, if workers are on fixed-term contracts, all that is required is to wait until the contract comes to an end for them to be terminated at no cost. Compensation to be paid at the end of a fixed-term contract has been, until recently, an exception and their amount has always been considerably lower than those granted in the case of dismissal, whatever its cause and legal qualification.

The **cost differential between both situations is excessive** in practical terms, a fact that is aggravated by the fact that permanent employees are usually those with higher seniority and wages, making lump-sum payments in the case of dismissal even higher. This differential in costs between permanent and fixed-term contracts has acted undoubtedly as an incentive for the latter. This effect is particularly relevant in periods of economic uncertainty and systematic downsizing.

In terms of flexibility, the degree of flexible human resources management differs radically from one kind of contract to the other. Fixed-term contracts produce a high level of external flexibility, as undertakings can change the size and composition of their workforce at no cost, whereas open-ended contracts, on the contrary, reduce external flexibility substantially as they make this adaptation lengthy and costly.

In this context it is easy to understand why employers would systematically use all the legal possibilities to hire workers through an ample offer of contract types which are convenient, cheap and easy to dismiss, and why they would avoid open-ended contracts as much as possible.

This fact, deriving from institutional regulation, explains in itself much of the extensive presence of temporary employment throughout the labour market. In a certain way, this has been the official explanation in the country. Its main advantage is that it suggests a clear pathway to change the situation, to reinstate a balance between the dismissal costs of both kinds of contracts. As the present imbalance is a consequence of the application of labour regulations currently in force, the desirable balance could be reached again solely by a reform of labour laws.

Nevertheless, and notwithstanding the undisputed truth behind this model of understanding the present situation, the focus must not exclusively be made on institutional factors, but to try to identify the presence of **other elements contributing to this level of temporary employment**.

First of all, special features in Spanish economy exist, the effects of which can be seen in the levels of use of temporary employment; to mention one, the importance of seasonal activities such as tourism and certain types of agricultural production. The existence of these elements has been acknowledged by most experts, and this has forced a new attitude towards this problem. Instead of considering these high levels of temporary employment as the result only of a defective legislative framework and incorrect human resources policies by companies, something to be avoided by all means, a new message arises according to which these levels could very well be the consequence of structural factors in the Spanish economy. Therefore, high levels of temporary work will always be present, and the role of public authorities and social partners should be to try to improve the quality of employment and the employment opportunities of these workers. In order to improve the situation effectively and permanently, a change in the productive specialisation of the country would be needed.

Secondly, when the composition of the Spanish labour force is studied, intrinsic elements can be found that favour an extensive use of fixed-term contracts. In fact, in many studies a high correlation exists between certain personal features of workers and their chances of being hired through a temporary contract. These chances are higher for young, unskilled and female workers, the presence of which is considerably high in the Spanish labour market.

A factor which must be taken into account, though hardly mentioned in these debates, is the role of public employment in the growth of temporary employment in the country. Acting as an employer, the largest in the country, it has caused a substantial increase in the ranks of temporary employees, with a personnel policy that uses these contracts extensive and systematically. This statement could seem contradictory with the general knowledge regarding public employment, as there is a tendency to correlate public employment with life-long jobs; however, this is nonetheless accurate.

The **figures for temporary employment in the public sector** do not seem to be excessive if compared with those of the private sector, where the presence of fixed term contracts is still higher; nonetheless, they are remarkable under different points of views. These figures have been progressively growing, following a continuous and rather remarkable trend. Even when the situation in the private sector has improved in the last few years, the same can not be said about public employment. If employment patterns in public bodies is analysed in detail, a number of institutions appear with extremely high rates of temporary employment. Comparison with other countries is also rather obvious. Finally, temporary employment agencies are banned from the public sector by public legislation on public procurement, but even without them the use of temporary employment is massive.

There are also many reasons explaining this phenomenon. Firstly, the rigidity of the processes set to hire civil servants or private-law employees in the public sector has forced public administrations and enterprises to rely heavily on temporary employees, who occupy job positions until the due process to cover them permanently is completed. In some administrations, such as local and regional governments, there has been a rapid increase in temporary employment, either directly or through subcontractors. This is due, at least partially, to defective funding of these low-level authorities. As they depend on financing from regional, State or European funds to put some services into practice, particularly in the field of social services, these are organised in the way of temporary projects, the duration of which is that of the flow of funds supporting them. As a consequence, persons employed to man them have temporary employment contracts because they work in projects having this nature.

Another element which has to be taken into account is the progressive and unstoppable process of outsourcing that Spanish economy is undergoing. Due to a number of reasons, subcontracting gives rise to an increase in temporary employment. A service which is permanent in an undertaking, and therefore does not justify the use of any employment contract other than open-ended, allows the undertaking to hire temporary workers when the service is outsourced to an external contractor, as the contractual link between the employer and the user company is also temporary. In fact, most subcontractors use one of the fixed-term contracts envisaged by article 15 of the Statute of Workers' Rights, the contract to perform a specific independent work or service with its own substance within the activity of the company. The decision to produce either internally or to outsource production remains in the hands of the companies' management as an expression of the constitutionally recognized right to free enterprise; therefore, to a certain degree, this effect is almost impossible to control.

Some attempts have existed to break this link between subcontracting and fixed-term employment, and the unions pretend to make the use of such contracts illegal in these situations. In 2005 the government issued a proposal which was widely acclaimed as a good example of flexicurity: to ban subcontractors from hiring temporarily, but at the same time offering them a faster and cheaper mechanism of dismissal. Social partners did not support this proposal, and the socialist government withdrew it.

Finally, there is an element on which a certain degree of consensus exists among experts in labour relations, but which is systematically denied by employers and their associations: the existence of the so-called "cultura de la temporalidad" –"the fixed-term employment culture"- a common perspective among human resources managers who view fixed-term employment as the ordinary means of hiring workers. Personnel management would have adapted to this systematic use of temporary contracts, and open-ended contracts would be, in this view, something short of an exception to be used in few occasions and only once the potential employees are well-known and well-tested after a number of temporary contracts.

Although an explanation as such is always difficult to assess and verify, the truth is that the abuse of fixed-term hiring by Spanish companies cannot be explained solely on rational, sound economic grounds, and other components exist, some of them even irrational, which contribute to the present situation. Unions and labour authorities condemn these practices, and have coined this phrase to refer to it in a rather critical way. Nevertheless, this explanation has gained support within the economic academia, and many reports include it among the factors explaining the behaviour of employment in the country. For economists there is an economic rationale behind this culture. According to them this would be a clear example of "dependencia de la senda", path dependency, which means that once employers have got used to a certain way of using contracts of employment, mainly fixed-term, it becomes extremely difficult to change their practices. This could explain why successive labour law reforms have had little impact on labour market figures.

The main contribution of this idea to the debate is that it has made it clear that any set of measures designed to cope with the imbalances of the Spanish labour market should include some aimed to make employers and human resources managers change their minds about the disadvantages and negative consequences of permanent employment. Some "cultural" measures are therefore needed.

III.7 The strategies to confront the massive use of fixed-term contracts

III.7.1 The change of rules governing employment contracts

The first strategy which Spanish authorities have adopted to curb the excessive use of these contracts has been, in historical terms, the labour legislation reform with the intention of making it more difficult for employers to use them. If the origin of the problem lies within some decisions of the law-making bodies in the 1980s, the correction of these mistakes also lies in the same laws producing them, which have to be reformed in those aspects that make these schemes of hiring labour more flexible and favourable.

In fact, most of the post-1984 labour law reforms sought to make the use of fixed-term contracts more difficult and more expensive. After some early, but timid attempts in 1992, the first change worth mentioning took place in the 1994 reform, which had a profound effect on fixed-term contracting. The first step was to finish with the contract to promote permanent employment, the major factor of insecurity throughout the eighties.

As regards regulation of structural and work-experience fixed-term contracts, the objective was to control and restrict its use by limiting their maximum legal duration. Besides, collective bargaining was also given considerable authority to regulate these contractual arrangements.

In 1997, the legal reform following the important Social Agreements reached the same year also included some measures to this purpose. In 1999 a new and more rigid scheme for temporary employment agencies was introduced. The reform of 2001 also continued this trend, focusing directly on the issue of fixed-term contracts, with many new provisions tending to make the shift from temporary to permanent employment easier, while at the same time trying to implement the European directive on this issue. The last reform to date, in 2006-2007, has also introduced some restrictions in specific temporary contracts, such as those of a work-experience nature.

This strategy is, nonetheless, limited in its extent because a number of factors exist that prevent Spanish authorities from going too far in the restriction of the use of fixed-term contracts. First of all, unemployment is still a big problem in the country and the situation, after some years of continuous improvement, is becoming increasingly complicated. Moreover, the truth is that the growth of employment in the last two decades has come mainly through atypical contracts. Indeed, for many unemployed, temporary employment is the only opportunity to join the labour market and access employment. As a consequence, no one dares to risk this recovery with a stricter regulation for these contracts.

Secondly, there is always the risk that a stricter regulation of fixed term employment will produce a shift towards other alternatives of flexible employment rather than an increase in the use of permanent workers. In fact, some evidence suggests that more stringent regulations in the last decade have produced an increase in the use of different forms of outsourcing and self-employment, if not irregular work. Paradoxically, all of these alternative forms of labour have the effect of increasing temporary employment and uncertainty in the labour market, affecting workers negatively.

Thirdly, this strategy of limiting the availability of fixed term contracts can be counterproductive as there are many circumstances in which there is a real and objective need of this kind of employment. As mentioned earlier, Spanish economy does produce temporary employment and in a significant number of cases the use of fixed-term contracts is justified. For Spanish undertakings, or at least so they claim, the availability of these contracts is essential to be able to adapt to a changing environment and to seasonal demands in a context of strong competition, due to the fact that other alternatives, such as redundancy or internal mobility, are not a solution as a consequence of a rigid legislation on the contract of employment.

III.7.2 The reduction of the differential in workforce adjustment costs

As mentioned earlier, the real problem explaining the excessive use of fixed-term contracts in the Spanish labour market is the vast difference in costs between temporary and permanent employment at the time of ending the employment relationship.

In 1997, the Acuerdo Interconfederal para la Estabilidad en el Empleo (Inter-confederate Agreement on Stability in Employment) opened a new path to change the situation, not by changing the scheme governing fixed-term contracts, which remained substantially unchanged, but by changing the scheme governing permanent contracts in a bid to make them more flexible and reduce their costs. The reduction of the cost differences of adjustment in both kinds of contracts was addressed by making it less costly to dismiss persons who had permanent contracts.

This could not be done openly, by reforming legislation on dismissal, due to the "taboo effect" of this institution in Spain. So it was done surreptitiously, avoiding any overt reduction in the costs of dismissals and introducing a new contractual arrangement, the contract for promoting permanent employment, characterised by compensation for unfair dismissal which was substantially lower than for legitimate dismissal.

This harmonisation of the costs continued in the final years of the nineties, when after a new legal reform, fixed-term contracts were penalised by increasing the social security contributions which had to be paid by the employer. The idea was to increase the costs of fixed-term contracts in order to reduce the difference in costs between them and open-ended contracts so that the former became less attractive for employers. This measure was put into practice in a rather limited and timid way as the situation of employment in the Spanish labour market prevented more incisive measures being adopted: these higher social contributions applied only under certain specific conditions and for a very limited number of contracts. A more ambitious approach would probably have been very effective.

Finally, the probably most incisive attempt to reduce this differential was made by increasing the cost of dismissals through termination of fixed term contracts. This objective was put into practice by the 2001 labour law reform by including a new drafting of Article 49.1.c of the Statute of Workers' Rights, which now provides for compensation when the term of a fixed-term contract expired. This provision sets a kind of "compensation for insecurity" which was familiar from other national labour laws, and not completely unknown in Spain: it existed for some ten years in the case of the "fixed-term for the promotion of employment"; and it was present, and still is, in the case of workers hired by temporary employment agencies for user undertakings.

This compensation, to be paid at the end of fixed-term contracts, was intended to be an instrument to combat the excessive use of unstable employment, by making the use of these types of contracts more expensive. In any case, this measure was unsatisfactory; firstly, because it did not apply to all fixed-term workers, but excluded workers with interim, integration and work-experience contracts, and secondly, because the amount to be paid, equivalent to eight days' wages for each year of service, was very small given the short duration of fixed-term contracts.

III.7.3 The consolidation of fixed-term contracts

One of the last measures to be tried in Spain in order to reduce the presence of unstable employment has been the technique of consolidation of temporary employment, turning it into permanent employment under a number of circumstances.

The conversion of fixed-term contracts into open-ended contracts was envisaged by labour laws in a number of situations in which the temporary worker would acquire the status of permanent worker whatever the modality in which they were contracted. In most cases, this conversion acted as a sanction for an illegal or inadequate use of these contracts and operated automatically. This was the case, for instance, of fixed-term contracts signed by way of legal fraud; and also, whenever temporary workers' contracts were not registered at the Social Security Administration register.

Moreover, labour laws promoted the conversion of fixed-term contracts into open-ended contracts in other situations in which no fraud or breach of legal duties existed. In those cases of legal and regular temporary employment, once the time limit agreed upon expired, if workers kept on performing their work, their contract would be considered to be open-ended. Numerous and important economic support existed for this permanence, promoting the shift from temporary to permanent employment.

In 2006, the most representative Spanish social partners, by signing the so-called "Acuerdo para la Mejora de la Competitividad y el Empleo" ("Agreement for the Improvement of Competitiveness and Employment") introduced new paragraph 5 in article 15, which was unanimously regarded as the most interesting and relevant element of the whole reform, and which entailed a new and original use of the conversion technique. According to this provision, "*without prejudice to what is set forth in Sections 2 and 3 of this article, the workers who, in a period of thirty months, may have been contracted for a term superior to twenty-four months for the same work post with the same company by means of two or more temporary contracts with the same or different contract modalities of a specific duration, with or without resolved continuity, either directly or through a temporary employment agency, shall acquire the status of permanent workers* ».

In this case, there is a substantial difference as regards the previous experiences of consolidation. It differs substantially from others because in this case the use of fixed-term employment by the employer is legal, and the worker is still within the time limits agreed upon at the moment of signing the contract. The conversion into permanent employment is justified exclusively on the grounds of promoting this kind of employment. This conversion implies a system of legal consolidation of employment contracts, which change from fixed-term to open-ended by the mere passing of time.

As mentioned at the start of this report, this provision has drawn the attention of the European Commission which has considered it as a clear example of "flexisecure" arrangements, trying to reduce instability in employment without curtailing employers' powers to resort to flexible patterns of employment. Its effectiveness is still to be seen, as its scope is in real terms restricted.

III.8 Present legal aspects of the issue

In this section we shall study in detail the current legal framework for fixed-term contracts under Spanish labour law, regardless of the actual dates in which these regulations entered into force. We will focus mainly on the treatment the different kinds of contracts of employment get from the Statute of Workers' Rights, although we will also analyse other relevant pieces of legislation, both acts and lower-level regulations, as well as collective bargaining.

Article 3 of the Statute of Workers' Rights lists the sources of Labour Law, stating that "*the rights and obligations relating to the employment relationship shall be regulated by:*

a) legal provisions and regulations of the State;

b) collective agreements;

c) what is freely agreed upon by the parties and written into the contract of employment, constituting its legitimate aim and ensuring that in no case may less favourable conditions or conditions contrary to the legal provisions and collective agreements cited above, be established to the detriment of the worker;

d) local and occupational practices and customs."

III.8.1 Legal treatment of fixed-term contracts

Spanish labour law currently follows the "cause-required" rule, according to which employers may hire workers with fixed-term contracts only if there is a legal cause to do so; otherwise, the use of open-ended contracts is compulsory.

According to article 15.1 of the Statute of Workers' Rights, "*the work contract may be entered into for an indefinite period of time or for a specific duration*"; this could be literally understood as granting employers the right to freely choose among the two alternative kinds of contracts. But this same proviso states that "*contracts for a specific duration may be formalized in the following cases*". Putting both rules together, what the law states is that the employment contract can be drawn up either for an indefinite period of time or for a specified period, but only in those cases where such a measure is backed legally.

Article 15.1 lists three cases in which employers may use these contracts:

- When the worker is contracted to perform a specific independent work or service with its own substance within the activity of the company, the execution of which –albeit limited in time – is of uncertain duration.
- Where market circumstances, the accumulation of tasks or the excess of orders thus require it, even where this concerns the normal activity of the company.
- When dealing with the substitution of workers with a right to keep their jobs post open

Article 15 shows only part of the picture, as there are other cases in which fixed-term contracts are allowed, besides these three. Nevertheless, these three cases enjoy a special status within Spanish law, for a number of reasons. On the one hand, these are the only situations in which circumstances related to production justify the use of fixed-term contracts. In other words, article 15 lists the cases considered as legitimate employers' "temporary need" of work, thus allowing them not to hire workers on a permanent basis. On the other hand, these three cases have been present in Spanish labour law for a long time, whilst most of the others are relatively new and subject to continuous changes, as there are considered to be instruments of employment policies.

In fact, these three are often referred to as "permanent" fixed-term contracts, the rest of them being "interim" or "temporary". Finally, the bulk of fixed-term contracts in Spanish labour market belong to these three categories.

Despite their legal nature, these three are but exceptions to the "golden rule" of indefinite hiring of employees. In fact, the Statute of Workers' Rights sets a complete system of legal controls, in order to allow the labour authorities, unions and workers themselves to control the employer's use of fixed term contracts.

To begin with, a system of legal instruments is available to verify whether temporary contracts are legal or not.

- First of all, the form of the contract. Although employment contracts may be established either in writing or by word of mouth, article 8 of the Statute of Workers' Rights states that they should be drawn up in writing when the statutory provisions require it, including work-experience and training contracts, part-time contracts, and contracts for work which is permanent but interrupted or discontinuous, amongst others. Likewise, fixed-term contracts with a duration over four weeks should be drawn up in writing.
- Secondly, information to the worker: according to article 8, the employer, in the case of the employment relationship exceeding four weeks, should inform the worker concerned in writing with regard to the essential elements of the contract of employment and the main conditions concerning the performance of their work within the company, within two months from the communication date of the working relationship. The information will include, amongst other information, the foreseeable duration of the contract if it is of a temporary one.

- Thirdly, the employees' representative bodies' right to information concerning employment contracts: a concise copy of the contracts which should be drawn up in writing should be delivered within a period of ten days to the legal representatives of the workers concerned. They are also to be informed about the extension of these contracts, as well as notices of termination. The concise copy will contain all the data and information, with the exception of the national identity number, home address, marital status and any other items which may infringe the rights of privacy of the person concerned. Moreover, this information will be at the disposal of the workers' legal representatives through the governing bodies of the Public Employment Services.
- Fourthly, the employers' duty to inform the Employment Office: according to article 16 of the Statute of Workers' Rights, employers are obliged to inform the Public Employment Service of contracts being made, within ten days after the contract in question has been drawn up, the contents thereof or any relevant extensions, whether or not they have been agreed in writing or by word of mouth. This communication will be carried out by submitting a copy of the contract of employment or of relevant extensions. Besides, a basic copy of the contract – if there is any-, must be previously submitted to the legal authority.

The Law also envisages the conversion of fixed-term contracts into open-ended contracts in a number of situations, some of them as a sanction for the employers' inadequate use thereof, some of them for other reasons related to employment policies. In all of these cases the worker will acquire the status of permanent workers, whatever the modality in which they were contracted

- Workers who may not have been registered in Social Security, once a period equal to that which could legally have been set for the trial period has elapsed, unless the temporary duration of such activities or services as are contracted may be clearly deduced from their own nature
- Fixed-term contracts signed by way of legal fraud; this means, for instance, that the alleged cause of temporary need is not real.
- Workers whose contracts have not been drawn up in writing, if the law so imposed, except for proof to the contrary, which shows that this is not the case, namely that its temporary nature is clearly evident.
- When the end of the time limit of the contract has been reached, no official complaint has been made by either of the parties involved, and the provision of the labour or task agreed continues as it has done up to the time in question.
- Workers who, within a period of thirty months, have had an employment contract for twenty four months or more, whether continuously or not, for the same position and in the same undertaking, through two or more fixed-term contracts, either directly or indirectly through a temporary employment agency, with the same or different kinds of contracts for a given period of time, will become permanent workers. This will not be applied to the use of contracts for training or work experience, or to interim contracts.

In the first three cases the conversion into permanent employment acts a sanction for an illegal contracting practice of the employer; not so in the last two. This last case is a new one, introduced into Spanish legislation in 2006. It differs substantially from the rest of them because it assumes that all contracts are legal.

This mechanism, inspired by some examples in other European countries, was agreed upon by social partners in a national agreement to improve competitiveness and employment, and latter transformed into a legal provision.

There a number of mechanisms to promote the conversion of fixed-term into open-ended contracts, starting with a complete set of economic incentives to do so. Article 15 establishes that employers must inform temporary workers about the availability of any vacant permanent positions; it also states that collective agreements may establish objective criteria or compromises for the conversion of temporary contracts into permanent contracts.

Besides those dealt with by article 15.1, Spanish law still maintains its tradition of offering a wide array of modalities of fixed-term employment contracts, the presence of which is justified by reasons other than the temporary nature of the work to be performed.

To begin with there are the so-called "formative contracts", the limited duration of which is a consequence of their double purpose, as they are intended both to provide employment and training for the workers concerned. There are currently two kinds of formative contracts:

- contracts for training, which are intended for the purpose of acquiring the theoretical and practical training necessary for the proper exercise of a trade or a work requiring a certain degree of qualification.
- contracts for work-experience, the purpose of which is to permit the trainee to obtain the professional experience suitable to the level of the studies undertaken, and that may be signed with those who are in possession of a university degree, or intermediate or higher vocational training qualifications.

Remnants still exist of the old policy of allowing the use of fixed-term contracts for employment policy purposes, although their importance in practice is much reduced. Spanish law allows the use of temporary contracts for unemployed workers in situation of social exclusion, intended to promote employment for these people; their regulation is rather restrictive, as it is only legal for persons whose situation of social exclusion is recognised by the relevant competent social services, and is determined by forming part of one of the following groups:

- Those who receive the minimum income for integration or, any other benefit of the same or similar nature. Also those persons who are not able to access these benefits or those who have terminated the maximum period legally laid down for receiving benefits.
- Young people over eighteen years of age and under thirty, who come from institutions for protecting children, such as orphanages, for example.
- Persons with problems of drug addiction or alcoholism, and who are in the process of rehabilitation or of being reintegrated into society.
- Prison inmates, whose penitentiary situation allows them to have access to employment, like those released on parole and ex-prisoners.
- Minors residing in institutions and included in the implementation field of Organic Law 5/02, which rules the criminal liability of minors, and whose situation allows them to have access to employment, as well as those released on parole and former inmates.

Another example of this use of fixed-term contracts for employment promotion is the replacement contract. There is a common replacement contract, drawn up with a worker who is unemployed or who had drawn up a contract for a fixed period with the company, in order to replace on a part-time basis a worker in the company who accedes to a partial pension. This allowance will be received at the same time as the performance of part-time work in the company. There is also a special replacement contract to replace early-retirement workers, the aim of which is to allow employers to hire workers who are job seekers to replace workers who foresee to retire at the age of 64 instead of 65.

Article 12.2 of the Workers' Statute establishes that part-time contracts may be entered into for an indefinite period of time or for certain duration in the cases where the use of this modality of contract is legally permitted, except in the case of training contracts.

Another form of temporary employment is that performed through a temporary work agency, a kind of atypical employment which does not have a long tradition in Spanish law. Act n. 14/1994 on the Regulation of Temporary Work is the most relevant piece of legislation in this field, completed by a number of lower level regulations. As in most European countries, TEA cannot be used freely by employers, and article 6.2 of Act. n. 14/1994 defines the scope of temporary work in Spain, by defining the situations in which a user undertaking can legally obtain their services. Pursuant to it, user undertakings can use the services of a TEA in the same situations and under the same conditions and requirements than those provided by the Statute of Workers' Rights for fixed-term contracts of employment. This means that all temporary contracts of employment, either direct –with an ordinary undertaking- or indirect – through a TEA- are possible in the very same cases, each undertaking having the possibility of choosing between both alternatives.

In general terms, all of Spanish labour laws currently in force are aimed towards promoting the use of indefinite contracts, while at the same time allowing the use of fixed-term employment in those cases and circumstances where this kind of arrangement is considered justified. The "flexicurity trade-off" is located in this mechanism of rule-exemption, trying to give an adequate response to every specific human resources need by employers.

Spanish employment policies also play a very relevant role in the promotion of permanent employment. According to article 17 of the Statute of Workers' Rights all measures put into practice to promote the placement of workers demanding employment shall have the priority orientation of promoting the stable employment of the unemployed and the conversion of temporary contracts into indefinite contracts. Article 1 of Act n. 56/2003, the Employment Act, defines employment policy as the set of decisions adopted by central government and the Autonomous Regions to develop programmes and measures to achieve, among other objectives, full employment and quality in employment.

The Law on safety and health at work also pays special attention to fixed-term contracts, as a consequence of the need to implement Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship. This attention can be also explained by the general concern regarding the high rate of work-related accidents and diseases among temporary workers. Article 28 of Act n. 31/1995 on the Prevention of Occupational Hazards is devoted to the specific situation of temporary workers, declaring that they are entitled to the same level of protection as any other worker and defining a number of measures to ensure this objective. This article applies equally to "temporary workers, fixed-term contracts and temporary employment agencies".

For workers engaged in fixed-term contracts the regulation is rather poor, and general legislation on safety and health will apply, as article 28.1 expressly declares that "*this Act and its regulations shall be fully applied to the employment relationships mentioned in the previous paragraphs*". On the contrary, workers hired through a temporary employment agency benefit from extensive legal treatment, as articles 12.3 and 16 of Act n. 14/1994 on the Regulation of Temporary Employment Agencies deal with these issues, which are developed in detail in Royal Decree 216/1999, a piece of legislation focussed solely on these matters.

III.8.2 The role of collective bargaining

Even though in Spain the main regulatory instrument in the field of labour relations legislation is enacted by the Parliament, particularly in the regulation of the different kinds of employment contracts, it is also true that collective bargaining is playing a significant role in the situation of these workers. Although some kind of collective agreements were allowed under General Franco's regime, it was article 37 of the Spanish Constitution of 1978 that granted it the status of source of labour law. From that moment on it developed rapidly, creating an extensive network of agreements with circa 5000 of them in force every year, covering somewhere from 60% to 80% of the total Spanish workforce. It is important to point out that, although "collective bargaining" is generally spoken of as a general category, the fact is that there are a number of different kinds of agreements, each one with a different function within the system: generally-binding collective agreements, which are the standard type under Spanish law, and also other agreements applying only to groups of workers, and agreements at the level of the undertaking on specific topics, amongst others.

Starting with social dialogue, it must be noted that social agreements have played a very important role at various moments of the recent evolution of Spanish labour law, although for almost fifteen years, roughly from the mid 1980s to the mid 1990s, no nation-wide agreement could be reached.

In the last ten years, these agreements have pioneered some of the most relevant measures put into practice to reduce the presence of fixed-term contracts in the Spanish economy, as stated earlier: to mention but a couple of these, 1997's Agreement to Promote Stable Employment, and, more recently, 2006's Agreement to Promote Competitiveness and Employment. Moreover, from the year 2000 onwards, there has been a tradition of signing a national agreement on collective bargaining every year or every other year in order to set up general guidelines and rules to be followed by bargaining agents at different levels, and each one of them has included different measures to be included in collective agreements dealing with this issue, with different levels of success.

Social dialogue at regional level, in many cases promoted by regional governments, has also played a role in the development of regional employment policies, all of which have changed their orientation towards the promotion of stable employment.

In the first years of Spanish collective bargaining, labour law did not entrust it with important functions regarding the regulation of fixed-term contracts, which was almost exclusively attributed to statutory law. Only after the far-reaching 1994 labour law reform did the Statute of Workers' Rights expressly recognise a regulatory role of collective agreements regarding certain aspects of these contracts. This attribution was increased in later reforms, and the current situation is one of close collaboration between statutory and collective regulations. Just to give some examples:

- In the case of work-experience contracts, according to article 11.1 of the Statute of Workers' Rights the work posts, groups, levels or professional categories subject to this form of contract may be determined through national collective bargaining agreements in the industry or, in their absence, through industry-wide collective bargaining agreements of lesser scope. Furthermore, and even though the contract's duration may not be less than six months or more than two years, national industry-wide agreements, or, in their absence, industry-wide agreements of lesser scope, may determine the duration of the contract, considering the industry characteristics and the work experience to be performed. Collective agreements may also change the maximum length of the trial period, and set the compensation for these workers.
- In the case of fixed-term contracts to perform a service with its own substance within the activity of the company, national industry-wide agreements and agreements of lesser scope, including agreements at undertaking level, may identify those jobs or tasks with a substance of their own within the normal activity of the company that may be covered by contracts of this nature. All this pursuant to article 15.1 of the Statute of Workers' Rights.
- In the case of fixed-term agreements to face market circumstances, the accumulation of tasks or the excess of orders, the maximum duration of these contracts and the period within which they may be formalized in consideration of the seasonal character of the activity in which such circumstances may arise may be modified by national industry-wide agreements or, in their absence, by agreements of a lesser scope. The activities in which casual workers may be contracted as well as the general criteria on the appropriate proportion between the volume of this contract modality and the total work force of the company may be determined by collective bargaining, according to article 15.1 of the same Act.

The same technique is used for other models of employment contracts. Besides these provisions regarding particular aspects of the regulation of these contracts, paragraph 7, article 15 of the Statute of Workers' Rights states that collective agreements may establish objective criteria or compromises for the conversion of fixed-term or temporary contracts into open-ended contracts. They shall also establish measures to facilitate the effective access of these workers to continuous occupational training so as to improve their qualifications and favour their professional progress and mobility.

The use of collective bargaining as a source of rules for these contracts was, as mentioned earlier, a strategic decision of the 1993-1994 reforms. The idea was not only to allow agreements to regulate these contracts: on the contrary, the objective was to have collective bargaining collaborating with statutory legislation in the control and decrease of fixed-term contracts. As legal rules were considered to be too rigid and unspecific to be effective, the alternative was to have these controls and limits set by collective agreements, which could adapt them to the specific needs of undertakings and industries. Therefore, the performance of the Spanish system of collective bargaining must be analysed under this perspective, whether or not it effectively restricts the use of these contracts by employers.

Generally speaking most, if not all, collective agreements, whatever their level, do contain a number of provisions affecting fixed-term contracts, the evaluation of which is rather controversial. Notwithstanding the fact that Spanish unions have placed the fight for stable employment as their first priority, the practice of collective bargaining offers disappointing and contradictory results.

Besides clauses effectively restricting the use of these contracts –even banning some of them from the undertaking-, and imposing the conversion of fixed-term contracts into open-ended contracts, others agreements can be found that offer employers ample possibilities of using these contracts, in many situations and with remarkable lengths. Even some kinds of contracts that were already erased from the Statute of Workers' Rights have reappeared in some sectors in the form of collective regulations. In fact, case law of Spanish labour courts shows a worrying number of decisions in which provisions of collective agreements are deemed null and void because they were too flexible and permissive with these forms of employment, going beyond the limits set by the statutory framework currently in force.

III.9 Policy recommendations

In this section the following question should be tackled: what should be done in the coming future in order to overcome the negative impact of this phenomenon? However, for a number of reasons, this will not be so. This is in no way an original question, as many politicians, social scientists and academicians have tried to find a useful answer to it. Neither is it hypothetical, as it has to do with the most relevant problems the country is facing at the moment, and a number of answers have been given and implemented. Moreover, some of the proposals have already been studied in section 6 of this paper.

This is undoubtedly the most important debate in current Spanish industrial relations and labour politics, once the levels of unemployment have been substantially reduced. There is an **agreement in all sectors** that something should be done in order to **rebalance the labour market**, increasing the presence of traditional, typical patterns of work, i.e. open-ended contracts. Social partners and political parties have their own positions and ideas about this issue, which do not coincide in all extent, but nonetheless do share some parts of the analysis.

In other words: there is a clear consensus about the need to undertake measures to rebalance the situation of the Spanish labour market, but many differences still exist about how to reach this goal. For unions and most members of labour law academia, a more rigid and stronger legislation is needed, reducing the employers' ability to use these contracts and transforming them into open-ended contracts in case of fraud or abuse. For other sectors a new and ambitious reform is needed in Spanish labour law, affecting most of its core aspects, with the goal of introducing more elements of flexibility so employers would not be forced to use these contracts. The reform of the law on dismissal, a crucial aspect and a clear necessity in order to intervene in the presence of fixed-term contracts in the labour market, is always under discussion, although it is not very likely to take place.

The general consensus on the necessity to address this problem can be seen in the fact that all social agreements in the last ten years have dealt with it, either at a national or regional level. This is no surprise, as for unions the fight against the massive presence of fixed-term contracts is their main priority both in the political arena and in their labour relations practices. All labour law reforms in the last two decades have included measures to increase quality in employment, also.

A number of policy recommendations have been produced by experts, as a large number of studies on this issue have been prepared, largely at the initiative of public authorities. Some of these recommendations have been transformed into new legislation by public authorities, so some of them have already been stated: the reduction in the cost differential for termination for fixed-term and open-ended contracts; the reduction in the number of temporary contracts available to employers; or the collaboration of collective bargaining in the control of these forms of employment.

The current policy of offering substantial economic incentives to employers for the transformation of fixed-term contracts into open-ended contracts was also proposed by a group of experts in 2005.

Other proposals have had less impact: for instance, a group of labour economics experts proposed the substitution of fixed-term contracts for a longer trial period in open-ended contracts, which would allow employers to fire workers freely during the first two years of employment. In the early 1990s there was a proposal to restrain the availability of short-time contracts –under three months in length-, to temporary employment agencies, making ordinary fixed-term contracts possible for employment longer than this. None of these measures went beyond the mere theoretical stage.

Volume III
Labour Market
and Employment Analysis

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I - INTRODUCTION

I.1 Tasks of Labour Market Analysis and Course of Study

The consortium led by Labour Asociados, Madrid, and Universitée du Travail, Paris, was commissioned by the European Parliament to conduct the study "The Impact of New Forms of Labour on Industrial Relations and the Evolution of Labour Law in the European Union" Within the project group ISG is in charge to carry out the labour market and employment analysis. Main tasks of this analysis are in brief:

- In-depth investigation of the **dualism of labour markets** and employment conditions on the one and of the different forms of "**insiders**" and "**outsiders**" on the other hand.
- Analysis of **labour market segmentations**.
- Investigation of **transitions** between the different (new and old) forms of (precarious) employment relationships on the one hand and traditional employment or unemployment on the other hand.
- **Synthesis analysis** on European level based on the country specific results to form both a precise and concise picture of the Member States (MS) in particular of the new MS, including tentative conclusions.

The first work step was discussion, review and refinement of the task and approach of analysis. Simultaneously, the relationship between labour market analysis and the other parts of the overall study were clarified within the project group. Subsequently, research started with the collection and selection of relevant literature, documents, databases and other sources of information.

The main working steps within the project can be summarized as follows:

- Analysis and assessment of literature and documents.
- Collection of data from international organizations such as Eurostat, European Foundation for the Improvement of Living and Working Conditions, and International Labour Organization.
- Development of a tailor-made dataset for empirical investigations and statistical analyses.

Similar to the overall study, labour market and employment analysis faces some challenges. Firstly, there is no common definition of "atypical" work available. This is true for almost all of the above mentioned categories and also for the majority of subcategories within each category, which complicates the situation considerably. In addition, definitions, terminology and categories used in practice vary enormously across countries, research disciplines, and actors. Moreover, the term atypical work is a normative and therefore also a subjective definition.[135] The authors emphasize that in the course of the report the word "atypical" does not contain any normative or subjective interpretation and will only be used for linguistic reasons. Secondly, a considerable number of persons exhibit more than one of the characteristics under investigation, e.g. temporary agency workers holding a fixed-term contract.

[135] This includes, for instance, also the question, if stable jobs are good jobs. E.g. see Auer, P.: In search of optimal labour market institutions. Economic and Labour Market Paper 2007/3, Geneva: ILO, 2007, p. 6f.

And thirdly, there are different opinions regarding relevance and importance of the different phenomena in the field of "atypical" work. These opinions often reflect a lack of empirical evidence or misapprehensions of empirical results. This emphasises the need for clear analyses and proper findings in the area of the new forms of labour.

I.2 Approach of Labour Market and Employment Analysis

In order to achieve the above mentioned tasks, ISG developed an analytical approach which consists of three fields of work including two starting points and the transitions between them. The first starting point of the analyses is the following **categories of employment and work,** respectively:[136]

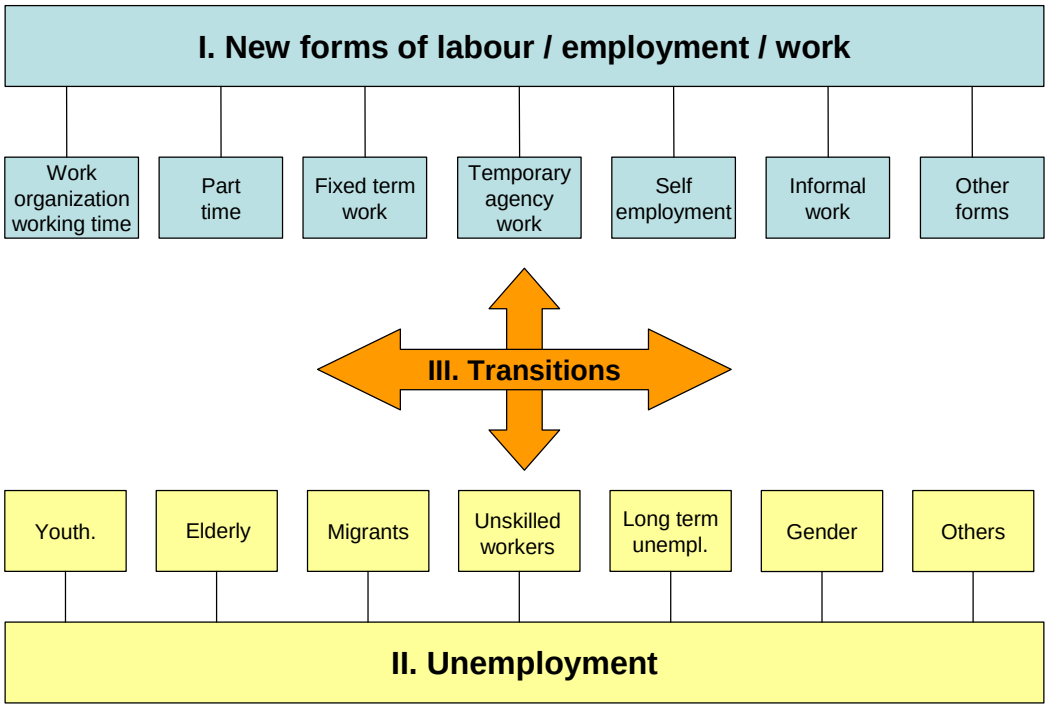
1. Work organization and working time.
2. Part time employment.
3. Fixed term employment and temporary work including flexibility characteristics.
4. Temporary agency work.
5. Self employment.
6. Informal and undeclared work.
7. Other forms of employment (e.g. mini-jobs).

The second point of departure is the different **forms of unemployment**, in particular unemployment of persons with severe obstacles to be re-integrated into the labour market (target groups). This tier of analysis also consists of seven categories. Hence, the development of number and composition of "outsiders" will form one important part of the analysis. In addition attention will be paid to **transitions** within and between these two tiers. These transitions form the third field of work within the analytical approach. The first direction (horizontal transitions) are transitions within the categories of work (e.g. developments in part time work) on the one hand and transitions between the categories, e.g. from employment relationships based on standard full-time contracts towards temporary work. The second direction comprises transitions between these two tiers, such as from long-term unemployment to temporary agency work (vertical transition).

Figure I-1 illustrates the approach of analysis. It is noteworthy that each of the seven categories on both tiers consists of several subcategories, e.g. part-time working elderly holding a fixed-term contract. In particular, the segmentation into subdivisions will be considered in all working steps as well as combinations of two or more categories or subcategories, such as part-time workers holding temporary employment contracts.

[136] These categories are for the purpose of labour market analysis. They are neither juridical definitions nor do they form a final classification.

Figure I-1: Illustration of the approach of labour market and employment analysis



I.3 Structure of Report

This report is organized as follows: The next **chapter II** contains the description of the tier of employment starting with the issue of working time and work organization. The following subsections deal with part-time work, fixed-term work including the topic of individuals working on fixed-term contracts involuntarily, temporary agency work and self-employment. Within the group of self-employed we focus on own-account self-employed without any workers. In general, each subsection starts with a detailed description of the current situation followed by the developments over the last ten years. The next subsection contains an overview on informal and undeclared work. The analysis of undeclared work is limited by the quality of available data. Validity and reliability of several data-sets seem to be doubtful so that we confine the overview to a recent survey by Eurobarometer.

In the last subsection of chapter II two flexibility indexes will be presented. Firstly, a recently published index consisting of four variables, i.e. employees with fixed-term contracts, self-employed without any workers, part-time workers and workers holding a small contract (i.e. with less than 15 working hours per week). Secondly, the composite indicator created by ISG in the context of this analysis. For the ISG-composite indicator several statistical analyses were carried out resulting in the reduction of number of variables and the selection of five variables, i.e. share of part-time workers in the prime age-group (15-59), share of fixed-term contract workers in the prime age-group (15-59), share of involuntary fixed-term contract workers in the prime age-group (15-59), share of involuntary fixed-term contract workers over 50 years (50-59) and share of shift-workers in the prime age-group (15-59). The composite indicator is calculated by using the SMOP-technique (***S**urface **M**easure of **O**verall **P**erformance*) for cross-country comparisons and comparisons of country groups.

Chapter III focuses on the tier of unemployment and the labour market characteristics of the most relevant person groups. After a description of the unemployment situation of young individuals and older workers, the labour market situation of migrants and low-skilled workers is presented.

The next subsection contains an overview on the persistent problem of long-term unemployment. Thereafter, we discuss the role of active labour market policies. And finally, the composite indicator for the tier of unemployment is created using the same approach as for flexible employment. In general, gender issues are explicitly considered in each subsection.

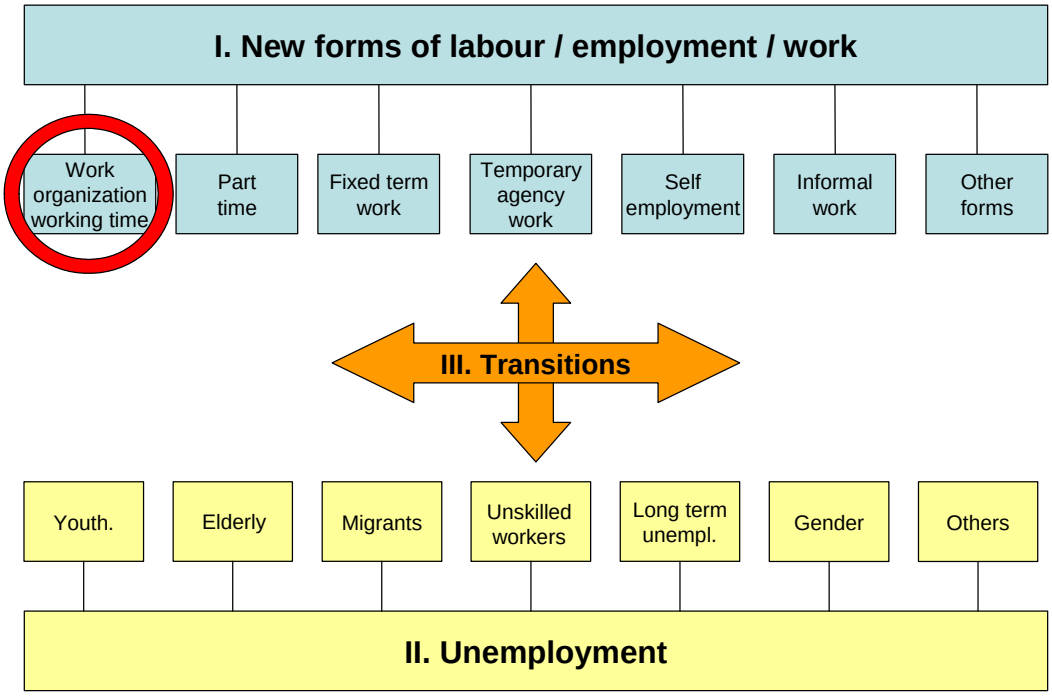
Finally **chapter IV** contains an examination of the relationship between the two ISG-composite indicators as well as the conclusions of the analyses for the overall study.

II - NEW FORMS OF LABOUR, WORK AND EMPLOYMENT

II.1 Work Organization and Working Time

Flexible work organization, in particular flexible working times, is considered to be a key element in the current debate on the future of the European economy and its labour markets. Despite its political relevance, only a handful of studies investigate this issue in a well-balanced way considering both the companies' and the workers' needs. The European Foundation for the Improvement of Living and Working Conditions conducted a large-scale survey in 21 European countries – the Establishment Survey on Working Time and Work-Life Balance (ESWT) – to provide a comparable data source on work organization across countries. Empirical investigations based on this dataset focus on the company level and take into account both working time flexibility (companies' side) and work-life balance. The latter is regarded as a new analytical framework to consider both the perspective of employers and employees.[137] Against this background working time flexibility is to be considered as an important aspect and therefore subcategory for this analysis. **Figure II-1** below exhibits the position of this subcategory within the overall approach.

Figure II-1: Position of working time and work organization in overall approach



[137] See Chung, H.; Kerkhofs, M., Ester, P.: Working time flexibility in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, and further publications of the Foundation. Flexible systems in which flexibility is exclusively imposed by the employer in accordance with the needs of the establishment, such as work on call, are not included in the survey.

II.1.1 Tele- and Homework

Company premises are still the most important place of work in Europe. According to the latest European Survey on Working Conditions, almost 60 % of employees in the EU work all or almost all of the time at company premises. It is interesting to note that a considerable proportion of people never or almost never work at company premises (almost 30 %). Around 15 % of respondents reported to work always or almost always outside the home or company premises.[138]

The proportion of employees working **all or almost all of the time** from home (with or without a personal computer) is extremely low and comprises less than 3 % of the EU working population. On the other hand, around 12 % of European workers report working **at least a quarter of the time** from home without a PC and 8 % with a PC. This suggests that, although telework or working from home is not yet a real alternative to working on company premises, it is used by a substantial proportion of people as a **complement to their normal working arrangements**. On average, the places of work are distributed as follows:

- only in company premises (51 % of EU workers);
- both at company premises and outside (13 %);
- only outside (10 %);
- outside and from home (2 %);
- only from home (2 %);
- at company and from home (5 %);
- a significant amount of time in all locations (4 %);
- not a significant amount of time in any of these categories (13 %).

Furthermore, we observe large variation of work arrangements across different **sectors**. In hotels and restaurants, manufacturing, health, retail, financial intermediation and public administration, the proportion of people working only at company premises is much higher than on average. In all other sectors, a substantial proportion of employees work in places other than company premises. Construction, transport and utilities represent the sectors in which the proportion of people working outside is the highest. The education sector exhibits a high share of employees working from home, which also holds for real estate and agriculture, although to a quantitatively lesser extent.

The fourth wave of the European Working Conditions Survey asks respondents explicitly for working at home *and* with a PC. The overall proportion of people doing telework is very low. On average, it comprises slightly more than 5 % of all workers in the EU. Less than 2 % **regularly** work from home with a PC. The share of employees doing telework is the highest in the **Scandinavian countries** and **The Netherlands;** it is also high in **eastern European** countries. The **southern European countries** display the lowest shares.

[138] See Parent-Thirion, A. et al.: Fourth European Working Conditions Survey, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 41ff.

With respect to economic sectors, we observe a rather unequal distribution. The real estate, financial intermediation and education sectors reveal a considerably higher share of teleworking employees than all the rest of the economy. Furthermore, there seems to be a considerable association between human capital and telework. The higher the formal qualification of employees, the more likely they are to telework at home.

In general, however, the prevalence of telework is rather low. In the year 2000 wave of the EWCS the overwhelming majority of workers (95.2 %) reported that they never or almost never do telework from home with a PC.[139] The proportion of workers, doing telework at least one quarter of the time varies in the Member States between 1.1 % and 9.1 %. Five years later we observe a moderate increase in this proportion. In the 2005 survey on average 9.2 % of employees reported to do telework at home with a PC for at least one quarter of the time, with a variation between 2.3 % to 20.2 % across Member States. However, the proportion of employees doing telework from home with a PC **all the time or almost all of the time** is still very low. It varies from 0.7 % to 7.7 % across Member States with a mean of 2.4 %. Hence, we observe a slightly increasing trend towards telework within the EU, which remains on a rather low level, though.

II.1.2 Organization at Workplace

Autonomy at the workplace, rotation of tasks and teamwork are considered to be key differences between the "traditional" and the "new" forms of work organisation. Results of the fourth European Working Conditions Survey[140] suggest that the levels of functional flexibility and teamwork are quite high in European workplaces. Around 50 % of employees in the EU-27 reported to rotate tasks with their colleagues, i.e. they are **functionally flexible**, and 60 % do part or all of their work in teams. In the latter group, around 50 % of employees decide themselves on the division of tasks, and less than 30 % select the head of their team themselves. Thus, teamwork seems to a prevalent form of work organisation, in which a substantial share of workers reported considerable levels of autonomy and decentralisation of decision-making.

Task rotation and teamwork in different European countries are distributed as follows: Both forms of work organisation are most prevalent in **Slovenia**, **The Netherlands** and some **Nordic countries**, while they are least prevalent in **France**, **Hungary**, **Italy**, **Portugal** and **Spain**. With respect to the extent of different forms of autonomy,[141] "advanced" forms of work organisation are considerably more prevalent in the **northern European** countries and **The Netherlands**, while they are least prevalent in the **southern** and **eastern European** countries, in particular in **Hungary, Portugal, Spain and Poland,** but also in **France**.

Regarding **sectors and occupations**, the health sector displays the largest extent of advanced forms of functional flexibility and teamwork. Other sectors where functional flexibility and teamwork are widespread are electricity, gas and water, education, and construction. By contrast, the two forms of work organisation are rather uncommon in transport and communications, and in a number of service sectors. In terms of occupations, it does not come as a surprise that both forms are most prevalent among professionals, managers and skilled workers, whereas their use among unskilled workers, machine operators and secretarial workers is rather rare.

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[139] Own calculations with data of different European Working Conditions Surveys.

[140] See Parent-Thirion, A. et al.: Fourth European Working Conditions Survey, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 52ff.

[141] For instance, decision-making on the division of tasks, selection of the team head, requirement of different skills etc.

In general, however, the results of the fourth European Working Conditions Survey suggest that there is a wide variation in the use of functional flexibility and teamwork across sectors and occupations.

II.1.3 Flexible Working Time Arrangements

According to ESWT 48 % of the managers in establishments with 10 or more employees reported the existence of some form of flexible working time arrangement, allowing for the adaptation of working hours according to the personal needs of at least part of the workforce.[142] In general, the proportion of establishments reporting the existence of any form of flexible working time is higher in the services sector (50 %) than in industry (43 %). In general, the use of any of the flexible working time arrangements increases with the size of establishment. Approx. 47 % of establishments with 10 to 19 workers offer flexible working time arrangements, while more than 60 % of companies with 500 and wore workers exhibit such arrangements. However, working time flexibility is not just a phenomenon in large establishments, but is also relatively common among small companies.

Furthermore, we observe considerable differences in flexible working time arrangements across countries. While in **Cyprus**, **Portugal** and **Greece** less than one third of establishments offer some form of flexible working time arrangements, about two thirds of all establishments in **Sweden**, **Latvia** and **Finland** do so. Apart from these two groups of countries, the proportion of establishments offering some form of flexible working hours is relatively equal, comprising between 40 % and 55 % of companies in the majority of countries.

The degree of flexibility offered by the working time arrangements varies considerably from country to country. In **Germany** and **Austria**, flexible working times almost always also imply the existence of some kind of working time account, which allows the accumulation of hours and time taken off later. By contrast, in **southern European countries**, the option to compensate for accumulated hours with time off later only exists in less than one half of the establishments offering working time flexibility.

Countries with a low proportion of establishments practicing flexible working time arrangements tend to have smaller shares of employees within these establishments, who are entitled to make use of such arrangements. This is the case, in **Cyprus**, **Greece**, **Hungary** and, to a smaller extent, also in **Portugal**. To the contrary, in **Finland** and **Sweden**, the high proportion of establishments with at least some experience of daily working time flexibility clearly coincides with large shares of employees being entitled to utilize these arrangements. This proportion is with more than two thirds of the workers clearly above average in **Austria**, **Denmark**, **Germany** and **The Netherlands**. Moreover, flexibility arrangements in these countries are usually not just a privilege of a selected group (such as white-collar workers), but are available for the majority of the workforce.

II.1.4 Overtime

Managers in about three quarters of companies reported in the ESWT that at least some of the employees worked overtime during the reference period (beginning of the year). Overtime is common in most countries, ranging from 87 % of establishments in **Ireland** and **Germany** to 44 % in **Hungary** with an average on 75 % in the 21 Member States participating in the survey.

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[142] For this and the following see Riedmann, A.; Bielenski, H.; Szczurowska, T.; Wagner, A.: Working time and work-life balance in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2006, p. 5ff.

There are considerable differences between the countries regarding the compensation for overtime. In the **southern European countries**, as well as in **Ireland**, **Luxembourg** and **the United Kingdom**, and in the new **central Member States**, financial compensation is much more frequently used than time off. The latter, in turn, is by far the most common form of compensation in **Germany**, **Belgium**, **Denmark**, **Sweden** and **The Netherlands**. In the remaining countries, **France**, **Austria** and **Finland** both forms seem to occur to an approximately comparable extent. Overtime work which is neither compensated by money nor by time off is reported at an above average rate in **The Netherlands** (14%), **Ireland** (13 %), **Spain** (7 %) and **the United Kingdom** (6 %).

II.1.5 Non-standard Working Hours

In the ESWT survey other, rather unusual, types of working hours are surveyed. Among them are night work (from 22.00 to 06.00), and work on Saturdays or Sundays.[143] Altogether, some 42 % of the companies employ people who regularly have to work such unusual hours. The most common atypical working time is work on Saturdays, which occurs in 38 % of the establishments EU-wide. Moreover, a considerable proportion (24 %) of establishments exhibits employees working on Sundays, while 19 % of the establishments employ people who regularly work at night. In 58 % of all the establishments, none of these work forms are used on a regular basis.

No particularly clear patterns of work at unusual hours can be detected between the Member States. Instead, the distribution across countries looks rather scattered. The clearest findings are:

- Saturday work is reported as being particularly frequent in establishments in **Latvia** (56 %), **the United Kingdom** (53 %), **Cyprus** (52 %), **Ireland** (51 %) and **France** (49 %); it is less widespread in most Mediterranean countries, such as **Italy**, **Greece**, **Portugal** and **Spain**, where Saturday work occurs in 25 % to 32 % of companies, and also in **Hungary** (27 %) and **Poland** (28 %).
- Sunday work is relatively common in **Latvia** (48 %) and **the United Kingdom** (41 %). In most **southern European countries**, few establishments employ people working on Sundays (8 % in **Portugal**, 15 % in **Italy**, 17 % in **Spain**, and 18 % in **Greece**).
- Night work is observed rather often in establishments in **Latvia** (32 %) and **the United Kingdom** (26 %) and relatively rare in **Italy** (13 %) and **Portugal** (14 %).

II.1.6 Shift Work and Changing Working Hours

Shift work is, in the majority of cases, organised a two-shift pattern (either with alternating morning and afternoon shifts, the so-called ‘continental’ pattern, or day and night shifts, the so-called ‘Anglo-Saxon’pattern), or a three-shift pattern, the latter being organised either in semi-continuous (five days a week) or continuous patterns (seven days a week).

[143] Riedmann, A.; Bielenski, H.; Szczurowska, T.; Wagner, A.: Working time and work-life balance in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2006, p. 31.

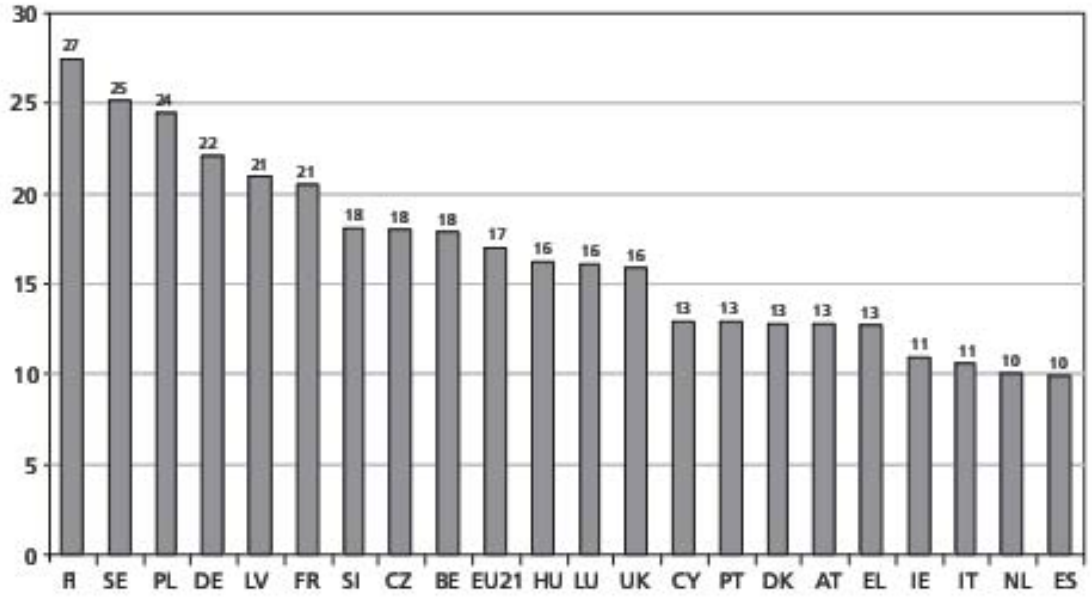
Thus, as soon as shift patterns include the night or the weekend, or parts of these, the decoupling of operating hours from individual working times entails, to a greater or lesser degree, work at unusual hours.[144]

In general, around 17 % of establishments have at least 20 % of their workers regularly exposed to changing working hours (see **Figure II-2**) with considerable variation across the 21 countries surveyed. Managers from **Finland** and **Sweden** report the highest incidence of changing working hours, followed by companies in **Poland**, **Germany**, **Latvia** and **France**. **Spain**, **The Netherlands**, **Italy** and **Ireland** in turn are at the end of the distribution, with a frequency of changing working hours far below the EU-21 average. It should be noted that **the United Kingdom**, the country showing the highest incidence of unusual working hours, ranks below average with respect to changing working hours (as reported in the ESWT survey).

Overall, the incidence of regular work at changing hours is the highest in the following countries, sectors and establishments:

- In **Finland** 27 % of all companies surveyed report that their employees are exposed regularly to changing work hours, followed by **Sweden** (25 %) and **Poland** (24 %);
- Hotels and restaurants, with a proportion of 41 % of establishments indicating regular work at changing hours, followed by health and social work (38 %) as well as transport (32 %);
- Rather large companies with more than 300 employees.

Figure II-2: Regular work at changing hours in European companies, by country (required from at least 20 % of employees, percentage of companies)



Source: Kümmerling, A.; Lehndorff, S.: Extended and unusual working hours in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 14.

[144] Kümmerling, A.; Lehndorff, S.: Extended and unusual working hours in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 13ff.

Shift-work is very common. Almost every fifth worker is a shift worker.[145] The gender difference is very low. The proportion of shift working women amounts to 18.1 % which is only around one percentage point lower than the average. With respect to gender, there are also no significant differences between the old and the new Member States.

In the **old Member States** shift work is steadily increasing. In 1995 the overall proportion of shift workers amounted to 13.3 %, in 2000 to 14.7 % and in 2005 to 15.9 %. In 2005, these shares exhibit a wide variation across the old Member States ranging from 5.0 % in **Denmark** to 25 % in **Sweden** and **Finland**.

In the **new Member States** the proportion of shift workers is higher than in the old Member States. In 2000 the share of shift workers was 20.3 % and in 2005 it increased to 22.8 %. As well as in EU-15 the variation between the countries is remarkable. In 2005, **Cyprus** displays the lowest proportion (9 %) and **Poland** the highest (36 %).

II.1.7 Company-oriented versus Worker-oriented Working Time Arrangements

An investigation of the data provided by ESWT suggests that six types of flexibility profiles for establishments and organisations can be distinguished in Europe.[146] This typology refers to the amount of flexibility as well as the characteristics of the options in use:

- The first two types of companies are characterised by a high degree of flexibility in their working time practices, covering parental leave and other long-term leave arrangements, part-time work, as well as early and stepwise retirement schedules. The first of these types, however, focuses stronger on the preferences of the employees, for instance by providing workers with some discretionary power on the time at which their working day starts and ends. By contrast, the second type of organisation focuses more on flexible working time arrangements that serve the company's operational needs and the preferences of its customers.
- The next three types of organisations utilize flexible working time practices to a lesser extent. The first of these three 'moderately flexible' types of establishments supports a set of working time arrangements that accommodates workers' needs for flexibility over the course of their working life; in the second of these organisational types, working time flexibility increases through the use of part-time work, unusual and flexible working hours. In the third type of moderately flexible organisations, working time flexibility mainly consists of overtime and only rare use of the other arrangements outlined above.
- The sixth and last type of organisation uses low levels of all the flexible working time practices covered by ESWT.

Table II-1 below contains data for the 21 Member States covered by ESWT according to these six types of flexible working time arrangements in establishments. With respect to the 21 Member States four groups of countries can be distinguished (see **Tables II-1** and **II-2**):

- The first group comprises the Nordic countries **Finland** and **Sweden** in which high flexibility is combined with worker oriented working time arrangements.[147]

[145] Source: own calculations with data of different European Working Conditions Surveys.
[146] See Chung, H.; Kerkhofs, M., Ester, P.: Working time flexibility in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 56.
[147] Ibidem, p. 30ff.

- The second group contains central European states in which high or intermediate flexibility is combined with worker oriented arrangements. This group includes **the United Kingdom** along with the countries displaying a large proportion of the life course intermediate-flexibility type of companies, i.e. the **Czech Republic**, **Denmark**, **Latvia**, **The Netherlands** and **Poland**. Interestingly, the new Member States are too heterogeneous to form a separate cluster for this issue.
- The third group comprises three countries with the highest proportion of overtime company type (**Austria**, **Germany** and **Ireland**) together with countries with high shares of the company-oriented high-flexibility company type, i.e. **Belgium, France, Luxembourg** and **Slovenia**.
- In the final group the **southern European countries** and **Hungary** are found. This group is characterized by a relatively high amount of low-flexibility companies.

Table II-1: Distribution of types of companies within EU (percentage)

	Types of working time flexibility						
	High		Intermediate			Low	
	Worker oriented	Company oriented	Life course	Day-to-day	Overtime		
Overall	14	22	18	7	18	21	
Country							
FI	33	26	24	2	8	7	100
SE	32	25	11	7	14	11	100
FR	14	29	16	5	18	19	100
CZ	17	27	26	1	12	16	100
BE	11	26	17	6	14	26	100
UK	17	26	21	12	14	10	100
PL	12	21	35	3	7	22	100
NL	14	24	30	10	11	11	100
LV	13	24	28	5	9	22	100
DK	19	21	23	5	18	14	100
AT	13	13	9	11	32	22	100
IE	12	17	21	10	29	12	100
DE	17	19	15	12	23	13	100
EL	5	17	13	2	13	51	100
HU	7	17	20	3	12	41	100
ES	8	15	15	4	19	40	100
PT	7	24	14	1	15	39	100
IT	11	18	6	5	26	35	100
CY	3	22	15	4	24	33	100
SI	12	23	16	2	22	27	100
LU	13	21	17	4	22	23	100

Source of table: Chung, H.; Kerkhofs, M., Ester, P.: Working time flexibility in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 31.

Finally, it must be noted that working time flexibility is a multidimensional concept and that it does not run from low levels to high levels. European countries and establishments differ remarkably in their flexibility strategies and the application of different elements of working time flexibility.[148]

[148] Chung, H.; Kerkhofs, M., Ester, P.: Working time flexibility in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 59f.

Table II-2: Summary of country profiles

Group	Characteristics	Countries included
Nordic	High flexibility and worker oriented	FI and SE
Central 1	High/intermediate flexibility and worker oriented	CZ, DK, LV, NL, PL and UK
Central 2	Low/intermediate flexibility and company oriented	AT, BE, FR, DE, IE, LU and SI
South	Low flexibility and company oriented	CY, EL, ES, HU, IT and PT

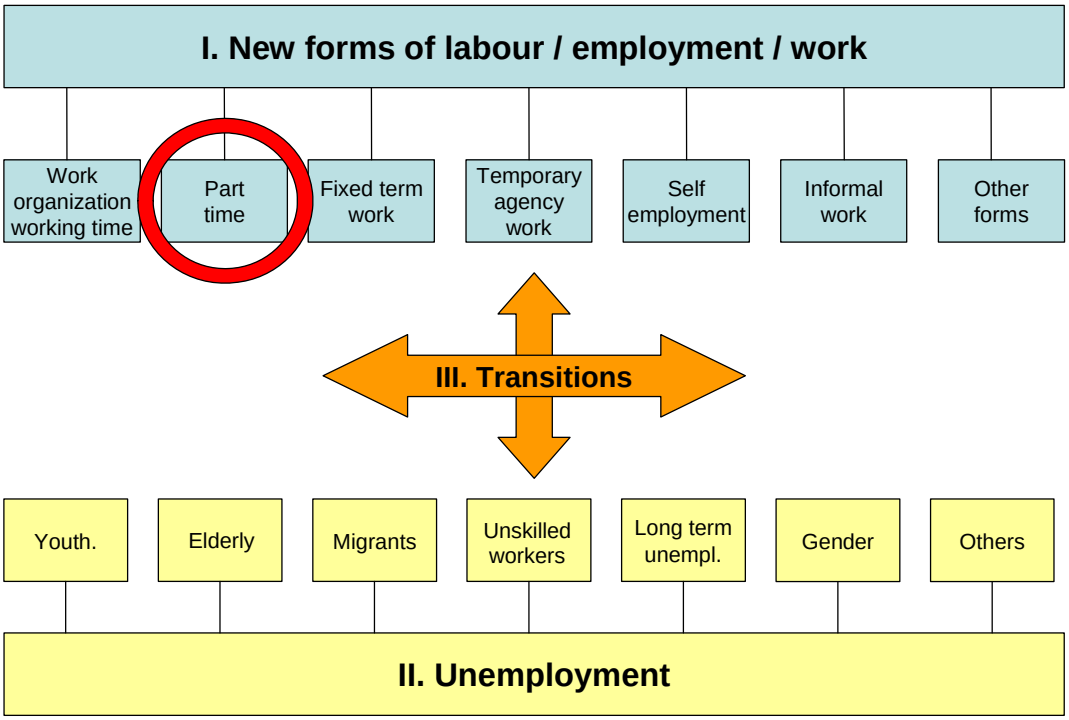
Source of table: Chung, H.; Kerkhofs, M., Ester, P.: Working time flexibility in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 38.

II.2 Part-time Work

II.2.1 Part-time Work in General – an Overview

Part-time work is probably the best-known flexible working time arrangement in Europe. **Figure II-3** illustrates the position of this subcategory in the overall approach.

Figure II-3: Position of part-time working persons in overall approach



The rate of part-time work varies across countries and there exist considerable country differences in the development, the extent as well in the duration and schedule of working hours.[149] In the past decade, the share of part-time workers among the total workforce has increased considerably in most European countries, on average from about 14 % in 1992 to about 18 % in 2002 in the EU15.

[149] See Anxo, D. et al.: Part-time work in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007.

Currently, almost two thirds of all establishments with 10 or more employees employ part-time workers. On average, slightly more than every second establishment (55%) in the smallest size-class (10 to 19 employees) practises part-time work, whereas in the larger establishments (50 employees or more), as many as four in five establishments employ workers on a part-time basis.

From a cross-country perspective, the incidence of part-time employment at the establishment level differs considerably. While in **The Netherlands**, almost nine in 10 establishments have experience with part-time work, in **Greece** and **Portugal** only around two in 10 establishments employ part-time workers. Overall, in the 21 countries covered by the ESWT-survey, three groups of countries can be distinguished according to the extent of part-time work at the establishment level. In the Scandinavian, western European and British Isles countries, part-time work is relatively common. In these countries almost three quarters of establishments with 10 or more employees practise this form of employment. Only two countries in this group, **Luxembourg** and **Finland**, exhibit a somewhat smaller incidence of part-time work (slightly more than 50 % of establishments). By contrast, part-time work at the establishment level remains less prevalent in most Mediterranean countries, where on average around 40 % of establishments employ part-time workers. In **Portugal**, **Greece** and **Cyprus**, in particular, a relatively small proportion of establishments currently employs part-time workers.

Regarding the number of employees working part-time, **The Netherlands** exhibit the highest proportion of part-time workers with 46 % (for details see **Table II-3**). Very low proportions of part-time working employees (below 10 %) can be found in five of the new Member States, i.e. in **Hungary**, **Czech Republic**, **Latvia**, **Slovenia** and **Cyprus**, but also in **Greece**.

Companies in the **services sector** more frequently employ part-time workers compared with companies in industry. One of the reasons for this difference might be the higher proportion of female employees in the services sector than in industry. Differences in the gender composition of the workforce can also help to explain why part-time work is a more common phenomenon in public establishments than in the private sector (75 % of public establishments employ at least one part-time worker). Flexible forms of part-time work are particularly common in the following sub-sectors: hotels and restaurants (50 % of establishments); health and social work (37 %); and transport and communication (35 %).

With respect to the **gender perspective**, we can observe that three quarters of female employees in The Netherlands are part-time workers. However, **The Netherlands** are not the only country in which part-time employment is dominated by women: on average, 32 % of female employees in the EU work part-time, compared with 7 % among men, according to the Labour Force Survey. Furthermore, it is also worth noting that the proportion of part-time working women differs considerably between Member States and that there are also three countries with less than 10 % of employed women working on a part-time basis (**Hungary**, **Czech Republic** and **Greece** – see **Table II-3** below). Regarding individual characteristics, part-time work is especially prevalent among women with care responsibilities, young students, new entrants to the labour market and older workers. Male part-time workers are typically found among the youngest and oldest age groups.

Table II-3: Countries ranked by percentage of employees working part-time (employees aged 15 years and older, 2005, percentage)

	Men and women	Men	Women
NL	46	23	75
UK	25	10	43
DE	24	8	43
SE	24	11	38
BE	22	8	40
DK	22	13	33
AT	21	6	39
EU25	**18**	**7**	**32**
LU*	18	2	40
FR	17	6	30
FI	13	9	17
IE	12	5	22
IT	12	4	25
ES	12	4	23
PL	11	8	15
PT	11	7	16
CY	9	5	14
SI	9	7	11
LV	7	6	10
EL	5	2	9
CZ	5	2	9
HU	4	3	6

** Data for Luxembourg are for 2004.*

Source: Eurostat, Statistics in Focus: Labour Market Trends – 3rd Quarter 2005

Source of table: Anxo, D. et al.: Part-time work in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 6.

II.2.2 Part-time Working Youth

Young employees in the EU are significantly more likely than adults to work in temporary and/or part-time jobs.[150] Around one quarter of this age-group works in part-time jobs compared to around 16 % of the 25-54 years old. While the incidence of part-time work has been rising for adults as well as youth, the increase has been considerably more pronounced for young workers. The gender differences in part-time work outlined above are also pronounced for young employees. Young women work on average almost twice as often part-time as young men. To some extent the higher likelihood of part-time work among the young might be explained by employers' reluctancy to offer a permanent and full-time contract to somebody who is just entering the labour market with little or no previous work experience.[151]

[150] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 46.
[151] The same argument might hild for temporary employment of young workers.

The highest share of young (15 – 24 years) part-time workers can again be found in **The Netherlands** (68.3 % of all employed persons in this age group in 2006).[152] Above average shares can be observed also in **Denmark** (58.4 %), **Sweden** (42.2 %), **Finland** (39.3 %) and **the United Kingdom** (35.1 %). The lowest shares are found in southern and Eastern Europe, in particular in **Bulgaria** (2.9 %), **Slovakia** (3.3 %), **Czech Republic** (3.9 %) and **Hungary** (4.7 %). The proportion of part-time working youth is below 10 % in the two Baltic states of **Latvia** (8.7 %) and **Lithuania** (9.0 %) and also in **Cyprus** (9.5 %).

Comparison with the year 2000 reveals an increase within the EU from 20.2 % to 25.3 % in 2006. However, the temporal development in the different Member States varies remarkably. Relatively high increases are exhibited by **Slovenia** (+ 15.7 percentage points), **Denmark** (+ 12.2 percentage points), **Spain** (+ 8.2 percentage points) and **The Netherlands** (+ 8.1 percentage points). On the other hand, both Baltic states of **Lithuania** and **Latvia** display clear decreases (– 7.4 respectively – 4.5 percentage points).

For further analytical purposes of the study data from the Member States are pooled into five groups. The country groups used in the report are:[153]

- **Continental countries**: Austria, Belgium, Germany, France, Luxembourg.
- **Nordic countries**: Denmark, Finland, Sweden and also The Netherlands which show similarities with the labour market regulations of the Scandinavian countries.
- **Central and eastern countries**: Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Slovenia, Slovakia.
- **Southern countries:** Greece, Italy, Portugal, Spain, and also the new Member States Cyprus and Malta.
- **Anglo-Saxon countries:** Ireland and the United Kingdom.

The **Nordic** countries exhibit the largest share of part-time working young persons (58.3 % in 2006),[154] and the proportion of part-time working youngsters is still growing (+ 7.1 percentage points compared to 2000). This group is followed by the **Continental** countries (without Luxembourg) with 19.7 % which is an increase of 4.6 percentage points. The **southern European** countries display a rate of 17.9 %, i.e. an increase of 7.2 percentage points compared to the year 2000. The lowest proportion is found in the new Member States including **Bulgaria** and **Romania** (12.1 %) which exhibit a rather low increase (+ 2 percentage points).

II.2.3 Part-time Working Elderly

According to Eurostat,[155] the proportion of part-time working elderly amounts to 22.2 % on average for EU-25 in 2005. Interestingly, part-time work is more common in the age group 55-64 than among the 30-49 years old (16.8 %). As expected the share of part-time working older women is higher than that of older men (39.5 % compared to 10.3 %). Furthermore, the proportion of part-time working elderly differs considerably between Member States.

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[152] Source of data: European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 46.

[153] In other publications different compositions of country groups are used. For the purposes of the study this composition seems to be more adequate.

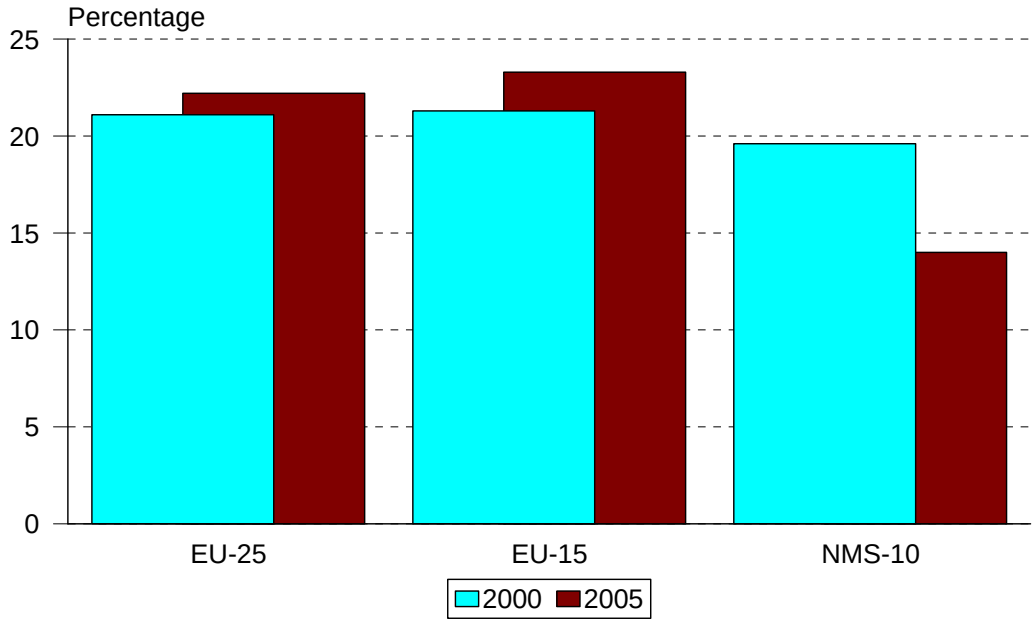
[154] National data are weighted with the number of employees in this age group by own calculations. Data on employment are provided by Eurostat.

[155] Source of data and information: Aliaga, C., Romans, F: The employment of seniors in the European Union. Statistics in focus 15/2006, Luxembourg. Data are not available for Bulgaria and Romania.

The lowest share is displayed by **Slovakia** (7.2 %), the highest is (again) found in The Netherlands (49 %). In the 15 old Member States (EU-15) this share amounts to 23.3 % on average, which is remarkably higher than in the 10 new Member States (NMS-10) with 14.0 %.

Comparison with the year 2000 reveals a **slight increase** in the European Union from 21.1 % to 22.2 %. However, the development between old and new MS was completely different. While in the old MS the share of part-time working elderly increased from 21.3 % to 23.3 %, the new Member States exhibit a remarkable decrease from 19.6 % to 14.0 % (see **Figure II-4** below).

Figure II-4: Proportion of part-time working elderly in 2000 and 2005 EU-25, EU-15 and NMS-10



Source: Eurostat

The development from 2000 to 2005 also reveals considerable differences between MS. On the one hand, there are high increases in **Luxembourg** (+ 9.5 percentage points) and **Austria** (+ 7.3 percentage points). On the other hand, there are considerable decreases in the same period in **Poland** (- 7.3 percentage points) and less pronounced decreases in other new MS such as in the **Czech Republic** and in the **Baltic countries**. For more details see **Table A-1** in the appendix.[156]

In 2005 the **Nordic countries**[157] (including The Netherlands) exhibit the highest average share of older part-time workers (32.4 %).[158] In the **United Kingdom** the proportion of older part-time workers amounts to 31.7 %. The **continental countries** display a share of 24.7 %. In **southern Europe** the average proportion is much lower (11.0 %) and lies below that of **central and eastern countries** (13.1 %). There is a remarkable difference between Nordic and continental countries on the one and southern and central/eastern Europe on the other hand.

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[156] Table A-1 in the appendix reports the number of part-time workers (men and women) aged 55-64 and 30-49 for the years 2000 and 2005 in the EU-25 in % of total employment.
[157] For definition of country groups see chapter 2.2.
[158] National data are weighted with the number of employees in this age group by own calculations. Data on employment are provided by Eurostat.

Compared with the year 2000, the country groups show **different developments** up to 2005. The share of part-time workers in **Nordic countries** remained relatively stable (+ 1.4 percentage points). In **continental and southern Europe** almost similar increases can be found with + 2.4 percentage points for continental countries and + 2.7 percentage points for southern countries. In **central and eastern Europe** the proportion of elderly in part-time jobs decreased remarkably during this period (– 4.0 percentage points).

II.2.4 Long-term Developments and Involuntary Part-time Work

According to data provided by Eurostat, the share of part-time workers is steadily increasing in EU-15. In the **old Member States**, the following developments over time can be observed:[159]

- In 1995, the share of part-time workers amounted to 14.7 % ranging from 4.2 % in **Greece** to 36.8 % in **The Netherlands**. Proportions below average can be found in the other southern European countries such as **Portugal** (5.9 %), **Italy** (6.4 %) and **Spain** (7.2 %). The share of part-time working women was considerably higher than that for men. In the EU-15, 27.5 % of female workers were on a part-time job. The highest proportion of part-time working women was found in **The Netherlands**, where two out of three women were employed on a part-time basis. The lowest shares can be observed the southern European countries **Greece** (7.6 %) and **Portugal** (10 %).
- In 2000, the share of part-time workers amounted to 17.3 % which is an increase of 2.6 percentage points compared to the situation five years ago. In southern Europe part-time work was less common and the lowest proportions were found in **Greece** (4.3 %), **Portugal** (7.1 %), **Spain** (7.9 %) and Italy (8.7 %). **The Netherlands** still exhibited the highest share among the old Member States (40.8 %) followed by **Belgium** (32.6 %). Again, the share of part-time working women (30.7 %) exceeds that of men considerably. Above average proportions of part-time working women were found in **The Netherlands** (70.3 %), **Belgium** (47.6 %) and **the United Kingdom** (43 %). Below average rates were reported from Southern Europe, in particular from **Greece** (7.4 %) and **Portugal** (12.3 %).
- In 2005, the share of part-time workers increases again and amounts to 23.0 %. The highest proportions are displayed by **Ireland** and **The Netherlands**, the lowest rates are found in southern Europe, in particular in **Greece** and **Portugal**. The share of female part-time workers also increased (36.7 %). The highest rates of part-time working women are recorded in **Ireland** and **The Netherlands**, the lowest in **Greece** and **Portugal**.

In general, among the old Member States the southern European countries exhibit considerable differences to the continental and northern European Member States. Their shares of part-time workers both female and male are clearly lower than that of the continental and Nordic countries in each year. In the **new Member States**[160] part-time work is in general not very common. In 2000, the average share of part-time workers amounted to 8.4 % and the share of part-time working women was slightly above average (10.4 %). The total share ranged from 5 % in **Slovenia** to 13 % in **Romania** and the share of part-time working women from 6.5 % (**Slovenia**) to 14.6 % (**Romania**).

[159] Source: own calculations with Eurostat data.
[160] Including (former) candidate countries. For 2000, no data available for Bulgaria.

Five years later, the overall share decreased to 6.5 % in the new Member States. The proportion of female part-time workers also decreased and is currently below 10 %. The lowest overall shares are displayed by **Slovakia** (2.2 %), **Hungary** (3.5 %) and the **Czech Republic** (3.9 %). The highest proportions of part-time workers are found in **Poland** (9.3 %), **Malta** (9.1 %) and **Romania** (8.6 %). The lowest shares of female part-time workers are exhibited by **Slovakia** (3.6 %), **Hungary** (5.2 %) and **Bulgaria** (5.4 %); the highest by **Malta** (20.7 %) and **Poland** (12.7 %).

However, while the proportion of part-time workers has been increasing in most EU countries over the last 15 years, the proportion of **involuntary part-time workers** has also increased. The latter group refers to employees who report in surveys that they work part-time because they can not find a full-time job and that they prefer to work longer. At EU level, the share of involuntary part-time employment has been rising since the 1990s, reflecting a strong increase especially in the **Czech Republic**, **France** and **Germany**.[161] Involuntary part-time employment has risen both among men and women. In general, the rate of involuntary part-time work is higher for male part-time workers but women account for the majority of involuntary part-time workers.

It is interesting to note that in the two Member States with the highest proportion of part-time work among the youth, **Denmark** and **The Netherlands**, the incidence of involuntary part time working in relation to overall part-time work is very low.[162] **Sweden**, **France** and **Italy**, on the other hand, show a high incidence of involuntary part-time work among the young.

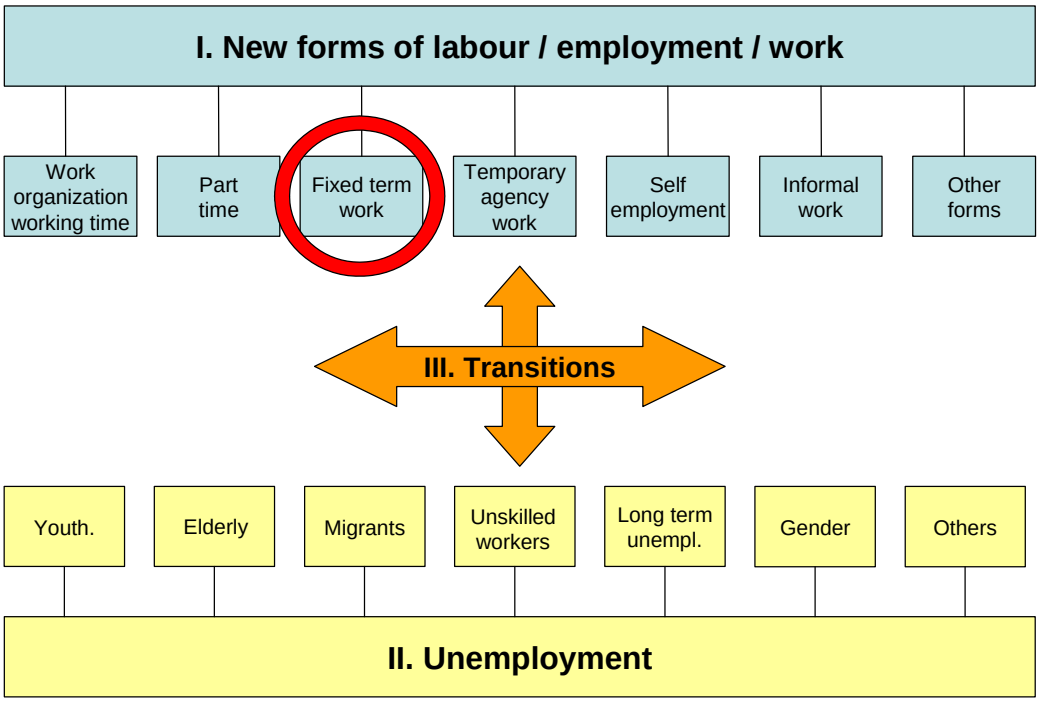
II.3 Fixed-term Work

II.3.1 Fixed-term Work in the European Union in General

Working on a temporary basis holding a fixed-term contract is an increasing phenomenon in the European Union. A remarkable share of these persons works involuntarily in a fixed-term employment relationship, i.e. they want to work on a permanent basis but can not find such a job. **Figure II-5** shows the position of fixed-term workers including the subcategory of those working involuntarily in the overall approach of the study.

[161] According to Eurostat. See: Anxo, D. et al.: Part-time work in European companies, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2007, p. 6.
[162] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 47.

Figure II-5: Position of temporary job contracts in the overall approach



Starting with the overall picture it must be noted that in the EU-25, 15 % of female and 14 % of male employees hold fixed-term contracts in 2005.[163] The proportion of women and men employed in fixed-term jobs varies remarkably across the EU. In **Spain**, the proportion of women working on a temporary basis amounts to more than 35 %. A similarly high share of workers with fixed-term contracts is also found in **Poland** with approximately 25% for both female and male employees. Regarding the female part of the workforce, **Portugal** and **Finland** display above-average proportions (over 20 %). On the other hand, a number of Member States exhibit shares which are remarkably below EU-average, e.g. less than 6 % in **Malta, Slovakia** and the **United Kingdom** and even below 4 % in **Ireland** and **Romania**. In **Lithuania**, the share of men employed on a fixed-term basis was more than twice as high as that of women. This is one of four countries in the EU where the share of male fixed-term workers is larger than that of women. The others being **Latvia, Hungary** and **Poland**, i.e. this phenomenon is restricted to new MS in Central and Eastern Europe.

II.3.2 Youth in Fixed-term Work Relationships

In 2006, around 41 % of young employees (15-24 years) work on a temporary basis.[164] Compared with 2000 this is a remarkable increase of 7 percentage points. Significantly above-average shares are found in **Poland** (67.3 %), **Spain** (66.1 %), **Slovenia** (64.2 %) and **Germany** (57.6 %). The lowest proportions are exhibited by **Romania** (5.0 %), the anglo-saxon countries (Ireland: 10.5 %; the United Kingdom: 12.9 %) and also the **Baltic Countries** ranging from 7.3 % to 14.4 %.

[163] Source of data is Eurostat. See Hardarson, O.: Men and women employed on fixed-term contracts involuntarily. Statistics in focus 98/2007, Luxembourg.
[164] Source of data: European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 46.

With respect to the above defined five country groups the highest rates are found in **Southern European** Countries with an average share of 52.3 % and the **continental European** countries (52.2 %).[165] The **Nordic countries** also display a high rate of youth working on a fixed-term basis (43.1 %). In **Eastern Europe** around one out of three young persons are employed temporarily. The lowest proportion is found in the anglo-saxon countries (12.7 %).

Comparison with the year 2000 reveals different developments over time between the country groups:

- The **new Member States** (including Bulgaria and Romania) exhibit the highest increase with 22.7 percentage points.
- The **Nordic** as well as the **southern European** countries display rather moderate increases (+ 6.2 and + 6.9 percentage points, respectively).
- Practically no change can be observed in the **continental countries** (+ 1.5 percentage points) and in the **anglo-saxon** countries (- 1.6 percentage points).

Hence, the new Member States with the exception of the Baltic countries seem to converge to the levels of the other Member States (without Ireland and the United Kingdom) with respect to fixed-term employment among the young.

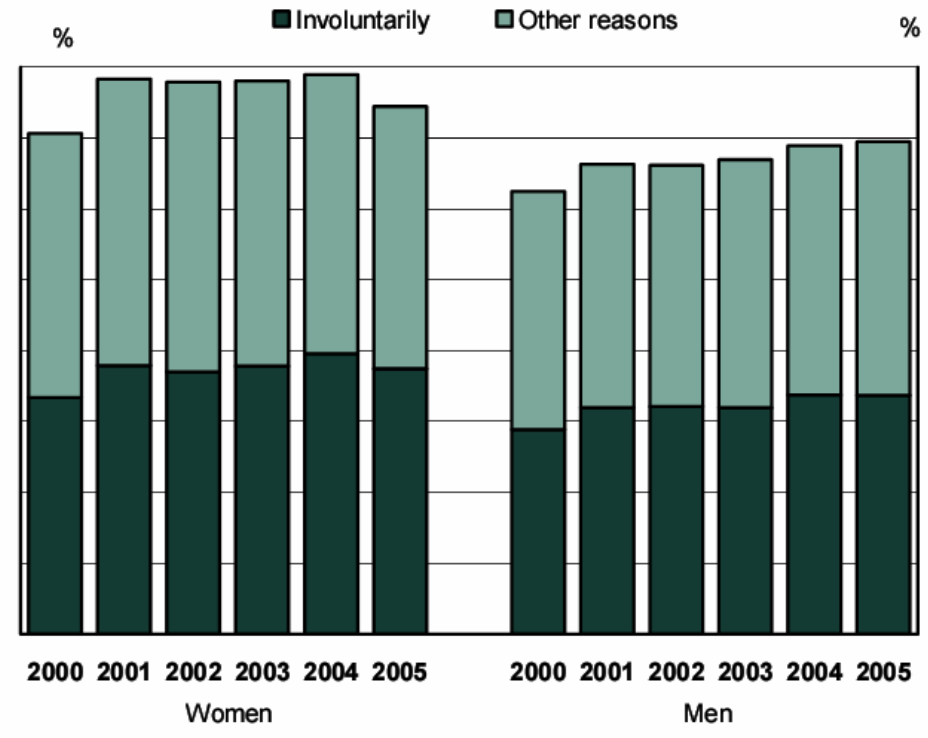
II.3.3 Workers in Fixed-term Contracts Involuntarily

There are a number of reasons why persons work on the basis of fixed-term contracts. One important reason is that they cannot find a permanent job. Employees who in principle want to work on a permanent basis but are unable to find such a job are considered to work on fixed-term contracts **involuntarily**.[166] In the EU as a whole, men and women holding fixed-term contracts involuntarily amount to around one half of all workers with time limited employment relationships (see figure II-6). Women working involuntarily in fixed-term jobs represent 7.5 % of all female employees, while for men the proportion is 6.7 % (2005).

[165] National data are weighted with the number of employees in this age group by own calculations. Data on employment are provided by Eurostat.

[166] The EU Labour Force Survey includes information on the inability of finding a permanent job as one of the reasons for people holding a fixed-term contract.

Figure II-6: Men and women employed with fixed-term contracts in EU-25, 2000 to 2005 involuntarily and for other reasons (percentage of all female/male employees)[167]



Source: EU Labour Force Survey

The proportion of workers employed in fixed-term contracts varies considerably across Member States. For instance, in **Spain** 24 % of all female and 22 % of all male workers are employed in fixed-term jobs involuntarily in 2005. Corresponding numbers for women are also high in **Cyprus** (19 % of all female workers), in **Finland** (15 %), and **Portugal** (14 %). To the contrary, in **Cyprus** and **Finland** the share of men working in such jobs is substantially lower and in **Portugal** the proportion of male workers in fixed-term work involuntarily is slightly lower than for women. On the other hand, there are several countries with very low shares in 2005. The proportion of female employees working involuntarily on a fixed-term basis is only around 2 % or less in **Austria, Germany, Ireland, Latvia, Luxembourg, Romania** and the **United Kingdom**. The corresponding numbers for men are very similar in all these countries except in **Latvia**, where it is remarkably higher than for women.

The development between 2000 and 2005 exhibits a slight increase of involuntary fixed-term work. Over these five years the relative number of women in fixed-term jobs increased from 14.1 % of all female employees to 14.9 % and for male employees from 12.5 % to 13.9 %.

The development of shares for men and women **varies between Member States**. From 2000 to 2005 the most important developments are reported below. For details see **Table A-2** in the appendix. The most important findings are:

[167] Source of figure: Hardarson, O.: Men and women employed on fixed-term contracts involuntarily. Statistics in focus 98/2007, Luxembourg, p.1.

- The share of men employed on fixed-term contracts involuntarily also increased in all of the countries (EU-25) in which the share of women rose. This suggests common underlying factors.
- The increase was especially high (more than 2 percentage points) for both men and women in the **Czech Republic, Cyprus, Poland, Portugal,** and **Slovenia**.
- In some Member States the share of women in such jobs declined, although only slightly. This is the case for **Austria, France, Greece, Ireland, Latvia, Romania, Spain**, and the **United Kingdom**.

A differentiated look at **age-groups** reveals that almost one third of all employees under 30 hold fixed-term contracts in 2005 (EU-25). This is significantly higher than the average of 14 %. In the age-group under 30 the proportion of persons working in a fixed-term job involuntarily amounts to around 40 %. This proportion is particularly high for both young women and men in **Spain, Poland**, and **Portugal**. The share is also high in **Cyprus, Finland** and **Sweden**. Very low shares (under 2 %) can be found in **Austria** and the **United Kingdom**.

In **Spain, Poland, Sweden, Portugal, France, Belgium** or **Greece**, for example, a majority of temporarily employed youth want to work in a permanent job, but cannot find one. In **Slovenia, Germany, Finland, Italy, The Netherlands, Denmark** or **Austria**, on the other hand, a majority of those in temporary employment do not want to have a permanent job (or were still in their probationary period or in training).

Regarding **sectors of industries** the proportion of employees with involuntary fixed-term contracts is the highest in agriculture followed by private households and hotels and restaurants. However, the number of persons working in these sectors is relatively low, especially in agriculture and private households. Considering also the number of employees in the different sectors, over 30 % of all women employed involuntarily in fixed-term jobs are in the sector "education and health" (2005, EU-25). On the other hand, only 14 % of women in this situation were employed in manufacturing, which comprises 46 % of men working involuntarily on a temporary basis.

A large number of persons working in fixed-term jobs involuntarily hold **very short employment contracts**. In 2005, 43 % of women and 48 % of men in such employment relationships hold contracts with duration of less than six months. Another 35 % of women in involuntary fixed-term jobs and around 29% of men had contracts of more than 6 but less than 12 months. In general, more than three quarter of all employees in such positions hold contracts of less than one year.

In **Spain**, where the proportion on fixed-term contracts is larger than anywhere else in the European Union, 64 % of all women employed in such jobs involuntarily in 2005 had contracts of less than 6 months, while the proportion of men was only slightly smaller (62 %). A further 29 % of women had longer contracts but still less than one year, so that overall only 7 % of women in this position had contracts of a year or more. The latter number was slightly larger for men (around 12 %).

On the other hand, less than 30 % of women employed in fixed-term jobs involuntarily hold contracts with a duration of up to 6 months in the **Czech Republic, Germany, Greece, Cyprus, Portugal, Finland and Romania.** In all these countries, this was smaller than the proportion of men with such contracts, especially in **Greece** and **Finland**, where the figure for men was around 40 %. At the same time, however, in three of these countries – **Germany**, **Greece** and **Romania** – a relatively large number of women and men had contracts of over 6 months but less than 12 months. Finally, it is worth noting that **low skilled employees** exhibit higher rates of working on fixed-term basis involuntarily than well skilled employees.

II.3.4 Development of Fixed-term Work since 1995

In the **old Member States**, the share of workers with a fixed-term employment relationship slightly increased over the past ten years. In 1995, the share of fixed-term workers amounted to 9.8 %, in 2000 it was 10.8 % and in 2005 11.2 %. In each year, the share of women working on a fixed-term basis exceeds the average rates slightly (by approx. 2 percentage points). However, the proportions of fixed-term workers differ remarkably across EU-15:

- In 1995,[168] the share of fixed-term workers ranged from 5.2 % (**Austria**) to 27.2 % (**Spain**); the proportion of female fixed-term workers in both countries from 5.6 % to 30.5 %, respectively. The share of women on fixed-term contracts was below average also in **Belgium** (6.3 %) and **Greece** (6.7 %) and above average also in **Finland** (17.7 %).
- In 2000, the lowest share was recorded in **the United Kingdom** (5.8 %), the highest in **Spain** (26.6 %). The rates for women were the lowest in **Ireland** (6.1 %), **the United Kingdom** (7 %) and **Austria** (7.5 %). The highest rates of women working on a fixed-term contract can be observed in **Spain** (29.5 %). Above average rates of female fixed-term workers were also found in **Finland** (19.4 %), **Sweden** (15.9 %) and **The Netherlands** (15.3 %).
- In 2005, **Ireland** (3.1 %) and **Luxembourg** (4.9 %) display the lowest shares of workers on fixed-term contracts. Remarkably above average rate lies **Spain** (28 %) which also exhibits the highest proportion of women working on fixed-term basis (31.1 %) followed by **Finland** (18.9 %) and **Sweden** (17.4 %). The lowest shares of female fixed-term workers can be found in **Ireland** (4 %), **Luxembourg** (5.4 %), **the United Kingdom** (5.6 %) and **Austria** (7.9 %).

For the old Member States, it is worth noting that **Spain** exhibits the highest numbers in each year, both for the overall share as well as the share of women on fixed-term contracts. The Scandinavian countries **Finland** and **Sweden** display also above average rates for women in each year.

In the **new Member States**, the share of workers on fixed-term contracts is lower than in EU-15 with an increasing tendency. In 2000, this share amounted to 4.9 % and increased to 7.3 % five years later. The shares for women working on fixed-term basis are slightly higher with 5.7 % in 2000 and 7.9 % in 2005. Currently, the highest shares of female fixed-term workers can be found in **Poland** (19.4 %), **Slovenia** (17.1 %) and **Cyprus** (17 %). The lowest proportions were recorded in **Estonia** (2.6 %), **Latvia** (3.1 %) and **Slovakia** (4.1 %). In contrast to the old Member States, we observe no clear picture for the new Member States.

II.4 Temporary Agency Work

Employment in temporary agency work (TAW) in the EU has increased rapidly during the last fifteen years, especially in the mid- and late 1990s. Temporary agency work is often seen as the typical form of atypical work, in particular by trade unions and employee interest groups. **Figure II-7** illustrates the position of temporary agency work in the overall approach of this labour market and employment analysis.

[168] For 1995, no data is available for Luxembourg.

Unfortunately statistical records often exhibit data gaps[169] According to a study commissioned by the European Foundation for the Improvement of Living and Working Conditions some 2.5 to 3 million (full-time equivalent) employees are working in temporary work agencies (2004).[170] This accounts for 1-2 % of overall employment for most of the old Member States.[171]

Figure II-7: Position of temporary agency work in the overall approach

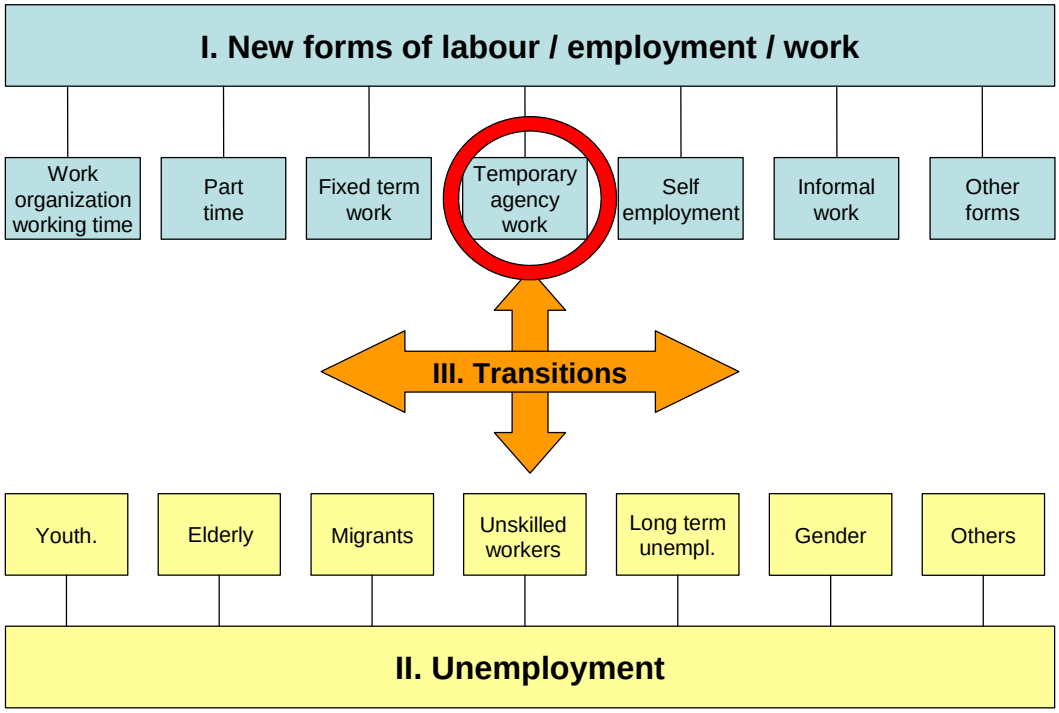


Table II-4 below reveals that in the EU-15 an above-average proportion of total workforce employed in TAW can be found in **the United Kingdom**, **The Netherlands**, **Belgium** and **France**. Interestingly the United Kingdom is on top of the list irrespectively of the source of data. In the **new Member States** relevant data are very limited, since TAW is in its infancy there and, in some cases, only recently became legal (e.g. Czech Republic in October 2004).[172]

Some countries were able to indicate the **sector location of user companies** (cf. **Table II-4**). These can be divided into three groups: those where TAW is most commonly a phenomenon in manufacturing (**Austria, France, The Netherlands** and **Portugal**); those where it is more likely to be found in the service sectors (**Spain, Sweden** and **the United Kingdom**[173]).

[169] See e.g. Storrie, D.: Temporary agency work in the European Union, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2002. This author discusses also the problem of TAW to be a catch-all term as well as to illegal work (ibidem, p. 29).
[170] Arrowsmith, J.: Temporary agency work in an enlarged European Union, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2006, p. 5f.
[171] Own calculations with data of the fourth European Working Conditions Survey come to a share of around 1.3 %.
[172] Ibidem, p. 11f.
[173] For United Kingdom according to official Labour Force Statistics (LFS).

And those where the sectoral profile is more or less mixed (**Belgium, Denmark, Finland, Italy** and **The Netherlands**). Significant public sector users of TAW are found in a minority cluster of northern European countries **Denmark, The Netherlands** and **the United Kingdom**.[174]

Table II-4: TAW employment and number of companies in 2004[175]

	No. of employees	Proportion of total workforce (%)	No. of companies	Assignments by main sectors
Austria	44,125	1.4	380	48 % manufacturing, 32% craft, trade and services
Belgium	75,131	2.2	127	45 % manufacturing, 43 % services
Denmark	6,341	0.3	-	35 % manufacturing, 37 % public sector
Finland	14,000	0.6	-	-
France	569,314	2,1	1,000	48 % manufacturing, 32 % services, 19 % construction
Germany	399,789	1.2	4,526	
Greece	3,503		-	-
Hungary	52,684	1.35	-	58 % manufacturing, 14 % cultural and other services
Ireland	25,000		366	-
Italy	153,000	0.6	75	Metalworking and services (commerce)
Luxembourg	7,135	1.6	40	-
Netherlands	157,000	2.5	1,250	31 % manufacturing, 18 % trade, hotel and catering, 13 % services, 12 % transport
Poland	167,644	0.4	-	-
Portugal	45,000	0.9	247	40 % manufacturing, 13 % commerce, 12 % services for companies
Slovakia	10,828	0.5	-	Manufacturing
Slovenia	3,695	0.5	-	-
Spain	150,000	0.8	341	59 % services, 33 % manufacturing
Sweden	35,000	1.0	550	74 % services, 22 % manufacturing
United Kingdom	(a) 600,000* (b) 1,434,098	(a) 2.6 (b) 5.1	6,500	(a) 86 % service sector (including 43 % government) (b) 23 % other industrial/ blue collar, 18 % secretarial/ clerical, 14 % technical/ engineering

Note: direct comparability is limited, as several entries may refer to absolute numbers, but sometimes are expressed in terms of full-time equivalents. Also, usually numbers do not distinguish whether workers are working solely, primarily or otherwise on a temporary agency basis. For further details see source of table.

* = For United Kingdom data are provided by trade union (a) and employer organisation (b).

Considering **placements by occupation and skill characteristics** the possibilities for an overall assessment and comparisons are also limited. A significant proportion of TAW appears to be located in lower-skilled work in the service sector or manufacturing, and in secretarial and administrative occupations.

[174] See Arrowsmith, J.: Temporary agency work in an enlarged European Union, edited by the European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2006, p. 7.
[175] Source of data: ibidem, p. 6, 11f.

However, a number of countries also substantially use skilled technical and engineering professionals, e.g. **France, Germany, Italy, the United Kingdom**; and public service and other professionals, e.g. **Denmark**, **the United Kingdom**.[176]

The **duration of placements** is a decisive issue in political discussion. Based on information provided by national social partners to the European Foundation for the Improvement of Living and Working Conditions, countries may be divided into two groups: those where TAW appear to be used primarily for relatively short assignments, and those with a considerable proportion of longer assignments:[177]

- Countries with the shortest average TAW assignments seem to be **France**, with an average of 9.5 days; **Spain**, where nearly a third of assignments are for less than a week; and the service sector in **Finland**, with a 19-day average. The average for **Luxembourg** is approximately just over one month. In **Italy**, most assignments appear to be shorter than one month and, in **Germany**, a significant proportion (15 %) last only for a few days or so, with the majority less than three months.
- The second set of countries exhibits a considerable proportion of long-term as well as short-term TAW. These include **Ireland**, where a fifth of assignments are for less than a month but a similar figure last more than five months, and **Belgium**, where a third of placements are for less than one month, but nearly a quarter last longer than six months. **Portugal** displays average contract durations of up to four months. Similarly, TAW in **The Netherlands**, where the average is around five months. In **the United Kingdom** more than a third of assignments last less than three months, one in five between six months and a year, and a quarter one year or more. However, it appears that the longest assignments can be found in **Austria**, where almost half of all white-collar assignments are for a year or more. Blue-collar work seems to be more equally distributed, although more than a quarter of such assignments last longer than six months and 15% are for more than a year.

Regarding the **socio-demographic profile** of TA workers, the majority of countries exhibits a more or less balanced gender distribution, but in some countries the proportion of men is considerably higher than that of women (**Austria, Germany, France, Luxembourg**). In **Belgium**, **The Netherlands** and **Spain** almost half of TA workers are younger than 25 years, whereas in all other countries it is around one third. In some selected countries such as **France, Germany, Portugal** and **the United Kingdom** a relatively high number of older workers can be found among TAW.

One main **reason for workers to engage in TAW** is to find a permanent job outside this sector. Other aspects, such as diversity of work and achieving a work-life balance, are typically attributed a lower priority. More than half of the temporary agency workers reported the reason that there was no permanent job for them (54.8 %) and that TAW provided an opportunity to maintain freedom and independence (53.3 %). For some employees TAW provides a possibility of temporarily gaining extra income (43.7 %), while approximately a quarter of the agency workers chose TAW because it facilitates the combination of care and work (27.2 %). Over three quarters of the temporary agency workers reported that they chose TAW voluntarily with age and work experience being important factors. For some of the temporary agency workers, age seems to be an obstacle in finding a permanent position.

[176] Ibidem, p. 8.
[177] Ibidem, p.8f, 12.

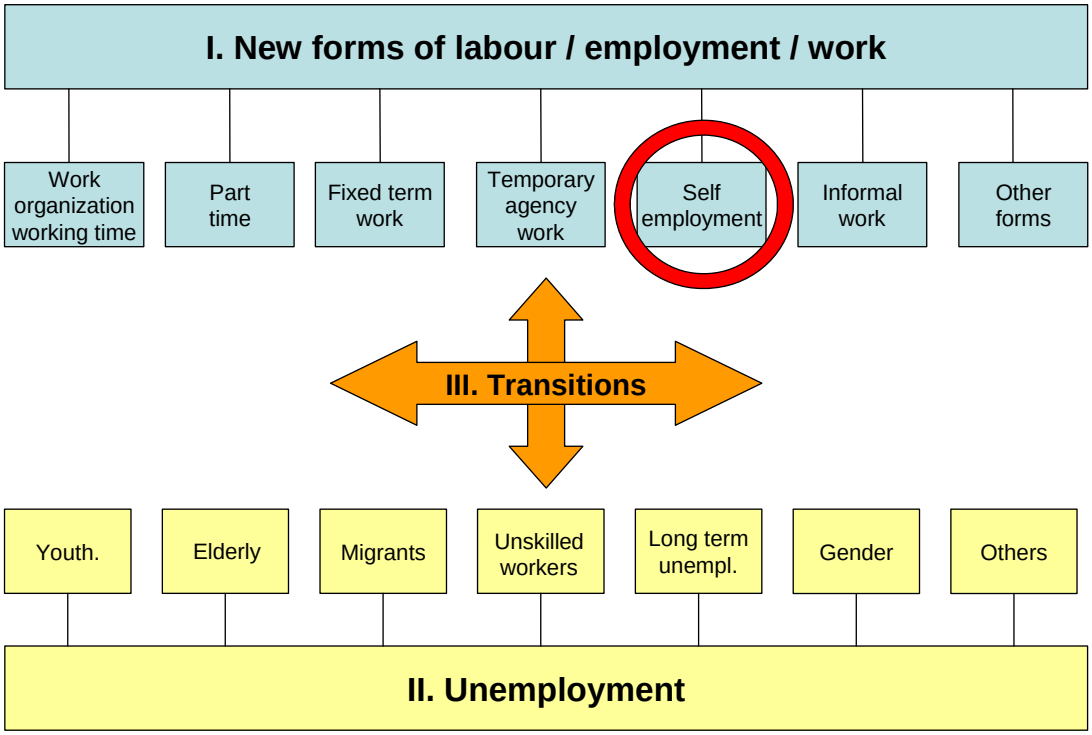
Some of the younger women in childbearing age reported that getting a job is difficult. Others stress that lack of experience as an obstacle for a permanent job. Unfortunately, there is no substantive and clear evidence whether temporary agency work can serve as a stepping stone towards a permanent job for individual workers.

II.5 Self-employment

II.5.1 Overview on the Development of Self-employment

Over the last years self-employment increased in the European Union remarkably. As part of this trend, the share of self-employed workers who are operating their enterprises without the support of dependent employees is growing particularly as well. Members of this category of self-employed are also known as "own-account workers" or "solo-self-employed". However, working as self-employed without any workers does not necessarily mean to work "atypically" or even "precarious". In addition, individual preferences should be taken into account. But working predominantly for one commissioning company means to be dependent (e.g. in terms of income) from this company.[178] In particular the group of more or less economically dependent own-account workers is in the centre of attention of this chapter. **Figure II-8** below illustrates the position of this group of persons in the overall approach of the study.

Figure II-8: Position of self-employment in the overall approach



The "renaissance" of self-employment in most of the Member States is associated with a change in structure of this type of employment. Overall, self-employment has become more diverse and dynamic. Additionally, special labour market schemes in many countries created self-employment opportunities for unemployed persons.

[178] This group of persons is also called semi-independent worker.

The increase of self-employment in Europe was accompanied by a noticeable increase of own-account workers. In Europe as a whole, no less than two thirds of all self-employed are own-account workers.[179]

According to Eurostat there are approx. **22.7 million self-employed** persons (without workers) in the EU-27, of which around 7.4 million are women, i.e. 32.7 % (2006). Comparison with the year 2000 shows an increase of around 2 million persons being self-employed. Moreover, the number of self-employed women increased by around 800,000, that is, the share of women in self-employment increased by 0.9 percentage points. Despite the increase expressed in total numbers, the share of self-employed relative to total employment decreased from 16.6 % in 1997 to 15.6 % in 2005 and the prevalence of self-employment as a proportion of total employment varies substantially across Member States, ranging from 5 % in **Sweden** to 44 % in **Romania**.[180]

With respect to **age-groups** we observe relatively high proportions of self-employed in the age-group 55-64, which is also higher than that among the 30-49 years old in all countries except **Slovakia**. In 2005, 15.4 % of employed persons aged between 30 and 49 are self-employed in the EU-25compared to 23 % in the population aged 55-64.[181] For women, the percentage of self-employed among workers was 10.4 % in the age group 30-49 and 15.6 % in the age-group 55-64. For men, the difference in the percentage of self-employed workers between the two age-groups was even higher: 19.3 % among the 30-49 and 28.1 % among the 55-64 years old (for further details see also table A-3 in appendix).

For both women and men, the difference in the share of self-employed workers between these two age-groups was the highest in **Greece** and **Portugal**, i.e. in countries where the level of self-employment is also the highest within the EU. This difference is least significant in **Latvia**.

The overwhelming majority of **young people** with a job are dependent employees. In the EU-27 on average only around 4 % of the young (15-24 years) and 9 % of those aged 25 to 29 years are self-employed compared to around 16 % of people aged 30 to 54.[182] These proportions for the young have not changed significantly since the beginning of the decade. The economic sectors with the largest average share of young self-employed are wholesale and retail trade as well as the hotel and restaurant business.

II.5.2 Transitions between Status of Employment and Mobility Patterns in four MS

It seems that own-account work becomes more attractive as a **transition phase during working life** for a growing number of people. In the area of own-account work it is important that robust bridges should be built in both directions, both into self-employment and dependent employment. The mobility created in this way also increases the opportunities for **"**outsiders" to regain "regular" employment. An in-depth analysis of four European countries (Germany, Italy, The Netherlands and the United Kingdom) suggests the following results on mobility into and out of self-employment:[183]

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[179] See Schulze Buschoff, K.; Schmidt, C.: Own-Account Workers in Europe – Flexible, mobile, and often inadequately insured. Discussion paper SP I 200 –122, Berlin 2006.

[180] BUSINESSEUROPE et al.: Key challenges facing European Labour Markets: A joint analysis of European Social Partners, Brussels 2007, p. 10f.

[181] See Aliaga, C., Romans, F: The employment of seniors in the European Union. Statistics in focus 15/2006, Luxembourg, p.10 and table A-3 in annex.

[182] See European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 44.

[183] See Schulze Buschoff, K.; Schmidt, C.: Own-Account Workers in Europe – Flexible, mobile, and often inadequately insured, discussion paper SP I 2006 – 122, Berlin 2006, p. 3ff.

- The mobility rates in the area of own-account work suggest that this is a very dynamic segment of the labour market, i.e. flows into and out of own-account work are relatively high. Furthermore, it seems that a considerably higher share of workers experiences a period of own-account work over time than is reflected by the self-employment rates for a specific point in time. For instance, in 2001 of all persons in working age (16-64 years), **5 % in Germany, 6 % in The Netherlands** and **8 % in Italy** engaged in own-account self-employment at least once during the past 8 years (1994-2001). The highest share of 12 % was found in **the United Kingdom**.
- The **mobility rates** of own-account workers are significantly higher than those of dependent employees. In the comparison between men and women it seems that in almost every year women in all countries have higher mobility rates than men. In particular**,** transitions from non-employment are much more frequent among women than among men.
- Over time and in all countries, considerably more individuals have the status of own-account workers than is revealed by the aggregate data for individual years. The share of people who were own-account self-employed at least once during the period 1994–2001 is around twice as high as the share of own-account workers in 2001 (with the exception of **The Netherlands**). Yet between two thirds (**Germany**) and four fifths (**Italy**) of those who were own-account workers during this period were long-term own-account workers and had been self-employed on their own account for at least three years.
- **Germany** displays the highest mobility rates for own-account workers since 1996. However compared to the other countries it (still) exhibits the lowest share of own-account workers compared to total employment. Furthermore, with almost one third in 2001, the share of persons who are short-term own-account workers (for less than three years) is the highest in Germany. Compared to the other countries, the shares of transitions between dependent employment and own-account work are the highest in Germany as well. Exits from own-account work leading to dependent employment are also on an upward trend – and more so among women than men.
- **The United Kingdom** differs from the other countries by displaying the highest share of own-account workers compared to all self-employed. In 2003, no less than three quarters of all self-employed were running their own business without employees. Compared to total employment in the country, own-account workers account for a relatively high share of 9 %, which is exceeded only in Italy (11 %). Additionally, the United Kingdom has the second-highest mobility rate (after Germany) for own-account workers. Finally, the share of repeated short-term phases of own-account work was the highest in the United Kingdom.
- In **The Netherlands,** 7 % of all employed are own-account workers and the latter account for two thirds of all self-employed. Compared to the other countries, the share of transitions from own-account work into non-employment is by far the highest in The Netherlands. By contrast to the other countries, very few exits from own-account work lead into dependent employment. Instead, almost 90 % lead into non-employment.

- **Italy** has by far the highest share of self-employed compared to the other four countries. In 2002, 23 % of all employed individuals were self-employed. Similar to Germany, in Italy around half of all self-employed are own-account workers, i.e. 11 %. Italy is also outstanding for the low mobility rate of its own-account workers compared to the other countries. In addition, the share of long-term (over three years) own-account workers was the highest with 81 %.

Finally, it must be emphasised that transitions from and into self-employment have to be considered within the flexicurity debate. Self-employment can form an attractive alternative to dependent employment and to unemployment in particular.

II.6 Informal Work

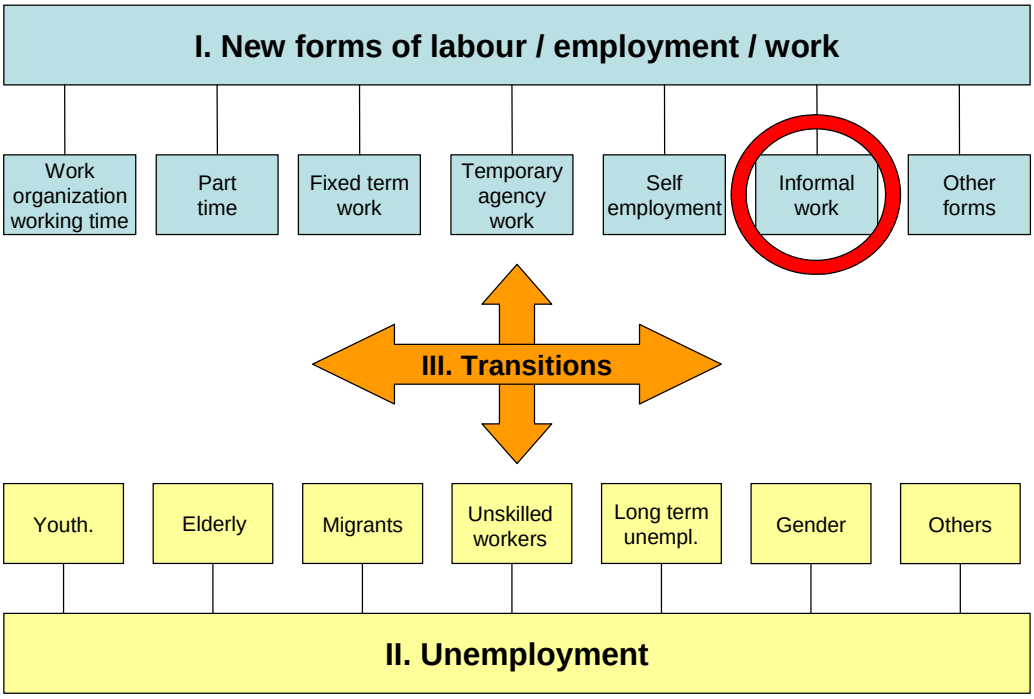
II.6.1 Introduction

The phenomenon of 'undeclared work' is known under a broad variety of names such like "black work", "informal economy", or "shadow economy". Details and exact numbers are obviously difficult to find, since the phenomenon is hardly measurable. Nevertheless undeclared work seems to play an important role and is not negligible. The European Employment Observatory Review indicates that the prevalence of undeclared work ranges from 1.5 % to 30 % of the Gross Domestic Product, with the greatest prevalence in the new Member States.[184] There are no signs that undeclared work has noticeably decreased in recent years in general.

Following an analysis commission by the European Commission undeclared work is defined as "*any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States*"[185]. This definition links undeclared work with tax and/or social security fraud and covers diverse activities ranging from informal household services to clandestine work by illegal residents, but excludes (other) criminal activities such as organized crime. **Figure II-9** exhibits the position of undeclared or informal work in the overall approach of the study.

[184] European Commission (ed.): European Employment Observatory Review: Spring 2007, Luxemburg 2007, p.6.
[185] European Commission (ed): Undeclared Work in the European Union. Special Eurobarometer 284, Brussels 2007, p. 3.

Figure II-9: Position of undeclared work in the overall approach



II.6.2 Empirical Evidence at EU Level and Measurement Problems

The fact that undeclared work is neither observed nor registered and defined differently in national legislation makes it difficult to obtain reliable estimates of its extent across Member States.[186] Since the so called indirect methods of estimating the size of undeclared work have several deficiencies[187] in this study we refer to a recently published survey based analysis (direct method of measurement) commissioned by the European Commission.[188]

The extent and characteristics of undeclared work appeared to differ widely in the Member States, with up to 20 % of GDP or more in some southern and eastern European countries. A recent stocktaking by experts of the European Employment Observatory network indicates that undeclared work is still on the rise in several Member States. It is remarkable that in a number of new Member States strong job creation in recent years and the emergence of labour market shortages has led to a decline of shadow economy. The specific relationship between migration on the one and undeclared work on the other hand will be addressed in chapter III.4 below.

[186] European Commission: Stepping up the fight against undeclared work, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2007) 628 final, Brussels 2007, p. 4 f.
[187] The essence of indirect methods is that they interpret observable phenomena as signs of the invisible part of the economy, e.g. the interpretation of discrepancies between labour force surveys and business statistics. This practice encounters serious methodological concerns.
[188] European Commission (ed): Undeclared Work in the European Union. Special Eurobarometer 284, Brussels 2007.

II.6.3 Participation and Focused Groups of Undeclared Work

The multi-faceted nature of undeclared work, from occasional baby-sitting work in the neighbourhood to the construction of entire buildings with organised networks of undeclared workers, involves almost a quarter of the population. The level of direct participation in undeclared work is yet relatively low: 11 % of the EU-27 population admitted to having bought goods or services that involved undeclared work and 5 % of citizens reported to have done undeclared work themselves within the past 12 months.[189]

There are considerable differences between countries regarding the share of the population admitting to having engaged in undeclared work during the past 12 months. They are the highest in **Denmark** (18 %), **Latvia** (15 %) and **The Netherlands** (13 %). Also high rates are exhibited by **Estonia** (11 %) and **Sweden** (10 %). By contrast, very low rates are reported by individuals in all **Southern European** countries (ranging from 1 % to 4 %)[190] as well as in **Germany** (3 %) and **the United Kingdom** (2 %).

In the countries with the highest share of individuals working undeclared – namely **Denmark, The Netherlands** and **Sweden** – the average number of hours worked per undeclared person is far below the average. To the contrary, in many **Eastern** and **Central European** countries as well as in practically all **Southern European** countries the reported participation rates are low yet the average number of hours worked in the undeclared economy is well above the average.

This might be interpreted as an indication for the instance that undeclared work tends to provide only a side income for many of the people concerned in **Continental European and Nordic countries**, but is of a more substantial nature in most of the Eastern and Central European and the Southern European countries. Overall however, only a small share of undeclared workers invests a substantial number of hours in such activities, the majority does not work more than a few hours per week undeclared. The majority of undeclared transactions occur between private persons or households, but in a number of countries, also firms seem to be involved to a notable degree in the provision of goods or services that involve undeclared work.[191]

In several **Eastern and Central European** countries, "envelope wages", or cash-in-hand payments without contributions to tax and social security authorities, appear to be relatively widespread in some sectors of the economy.[192] Employees who receive a large share of their remuneration this way stated particularly often that they would prefer a regular salary instead.

Shadow workers can be found among the unemployed, the self-employed and (illegal) immigrants in particular. Young people seem to be over-represented as a group in the provision of undeclared services or goods. Survey results indicate that they receive the lowest wages on the undeclared labour market, which might be a reflection of rather low qualified undeclared work in this group. Both their above average involvement in undeclared activities and the comparatively low payment might be interpreted as an indication of their relatively weak position in the regular labour market.

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[189] Ibidem, p. 9ff.
[190] In particular these low rates indicate some methodological problems of measurement. Source of data: ibidem, p. 19.
[191] Ibidem, p. 19f.
[192] Ibidem, p. 29ff.

In practically all countries, **men seem to work undeclared more often than women**. Comparable to the regular labour market, women tend to receive lower wages than men. Clients of undeclared work appear to be concentrated among occupational groups with above average incomes, such as white collar workers, and the self-employed, maybe due to more flexible chances of hiring persons on that basis and managing the tax implications of illegal work

II.7 Other Forms of New Labour

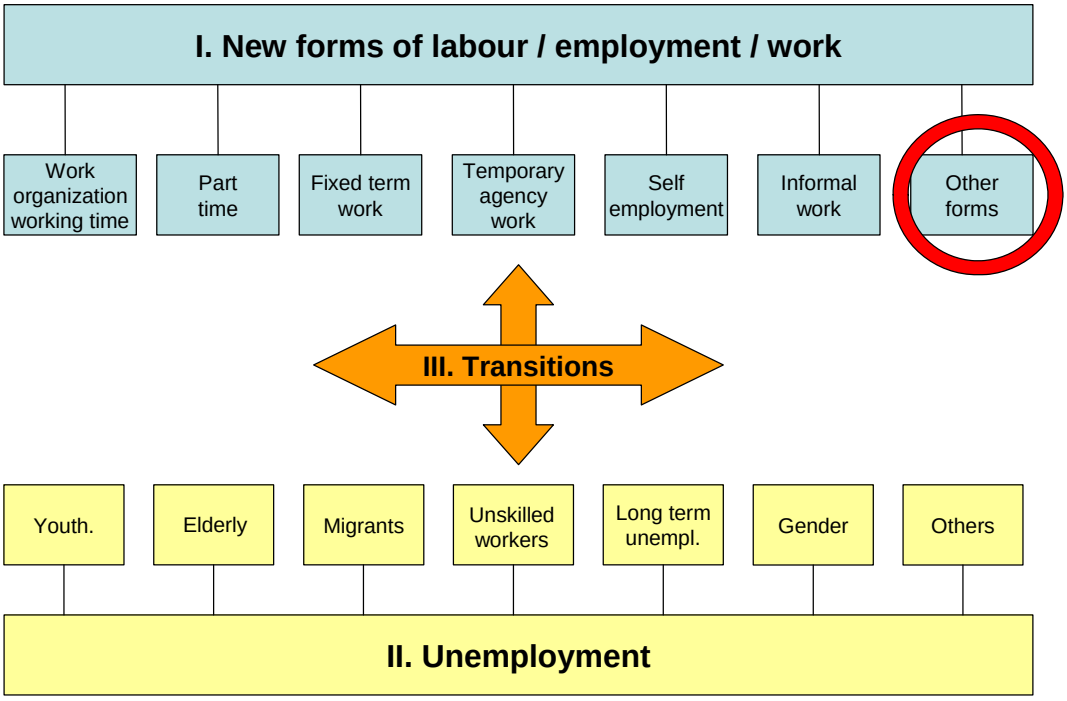
Structural and technological change creates new forms of work with a broad variety. It is a controversial point, whether and to which extent such new forms of labour should be deemed as atypical and/or precarious. The lack of adequate and comparable data across countries implies a lack of empirical evidence which renders an informed and rational assessment of the extent and potential consequences on such forms of work difficult. The discussion on unpaid internship may serve as an example in this context.

In this section we focus on two rather new forms of labour which are somehow interrelated. Firstly, we look at small employment relationships which received their own legal framework in some Member States such as Germany and Austria. The definition of small in this case refers to working hours and/or salary. Secondly, we examine the increasing phenomenon of workers with more than one job. The indicator, "employed persons with a second job" refers only to persons with more than one job at the same time. That is, workers which have changed their job during the reference week are not considered. The interrelation between these two forms of work is provided by individuals holding a second job which often seems to be a small employment relationship as a complement to their main working contract. **Figure II-10** displays the positions of these new forms of work in the overall approach.

Recently, some Member States enacted specific legal provisions for **"small" employment relationships**. In **Germany** the so-called mini-jobs typically denote employment relationships with a salary up to 400 € per month.[193] Mini-jobs can be done in addition to regular part-time or full-time jobs. In September 2007, more than 6.4 million individuals are registered as holding a mini-job. Due to the exempt from social security contributions and tax payments for the individual worker, such jobs are especially attractive for full-time working employees and women with a full-time working spouse. For both groups the mini-job serves an additional source of household income. Moreover, for women mini-jobs often also serve as a first step for (re-) entry into labour market, in particular after parental leave. However, existing empirical evidence suggests that potential of mini-jobs to act as a bridge into "normal" employment is rather limited.

[193] Alternatively, mini-jobs comprise employment relationships which last no longer than two months or 50 working days per year. Individuals with such jobs are entitled to all labour rights of "normal" employees. However, there are differences in social insurance contributions and tax payments. For more details see national report for Germany developed in the frame of the study.

Figure II-10: Position of "mini-jobs" and "second jobs" in the overall approach



In **Austria**, minimum income workers are considered those employees whose annual income does not exceed 341.16 Euros per month (2007).[194] In 2007 an annual average of more than 245,000 persons working on a marginal basis was registered.[195] The majority of marginal part-time workers are female (170,000). Those jobs are quite popular as a complement to regular employment relationships with the exception of self-employment.[196] Comparable to the case of Germany individuals working on a marginal basis rarely seem to succeed in getting a regular (full-time) job.

The new Member States **Czech Republic** and **Slovenia** also enacted regulations for small employment relationships.[197] However, according to the national report for the Czech Republic the mini-jobs, which comprise very small workloads, are rarely utilized. No information is available on the prevalence of the Slovenian mini-job model.

According to the Labour Force Survey of Eurostat in the EU-27 around 8 million persons hold a **second job** in 2006. Having a second job is not only very common in the large old Member States **Germany** (1.4 million persons) and **the United Kingdom** (1 million), but also in **Poland** (1.1 million). Poland stands for the majority of second jobs in the twelve new Member States which amount in total for 1.8 million persons, i.e. 22.7 % of all second jobs in EU-27.

Compared with the year 2000 the EU-27 exhibits a slight increase of 1.5 percentage points. The majority of the old Member States shows increases during this period resulting in an overall increase of 6.8 percentage points. One notable exception is **the United Kingdom** with a decrease of 13.1 percentage points.

[194] The maximum amount is adapted annually. See the national report for Austria in the context of this project.
[195] Source: Austrian Social Insurance Statistics.
[196] For more details see national report in the frame of this study.
[197] For further details see national reports for both countries developed in the context of this study.

On the other hand, significant increases are reported for **Spain** (+ 88.9 percentage points), **Germany** with its labour law reform (+ 61.1 percentage points) and **Ireland** (+ 55.2 percentage points).

In comparison with the year 2000 some **new Member States** display remarkable decreases, e.g. **Bulgaria** and **Romania** (- 66.2 and - 55.6 percentage points, respectively). However, we also observe a number of new Member States with increases such as **Slovenia, Slovakia** and **Latvia**, which are quantitatively smaller. Hence, altogether the decrease amounts to 22.2 percentage points for the new Member States.

II.8 Multiple Characteristics of Atypical Work

II.8.1 Composite Indicator Consisting of Four Flexibility Characteristics

As already mentioned, a large number of persons exhibit several atypical work characteristics in their employment relationship at the same time. Consequently, the categories of the analytical approach show overlaps and intersections. Thus, it seems to be a necessary to consider a **composite indicator** as well.

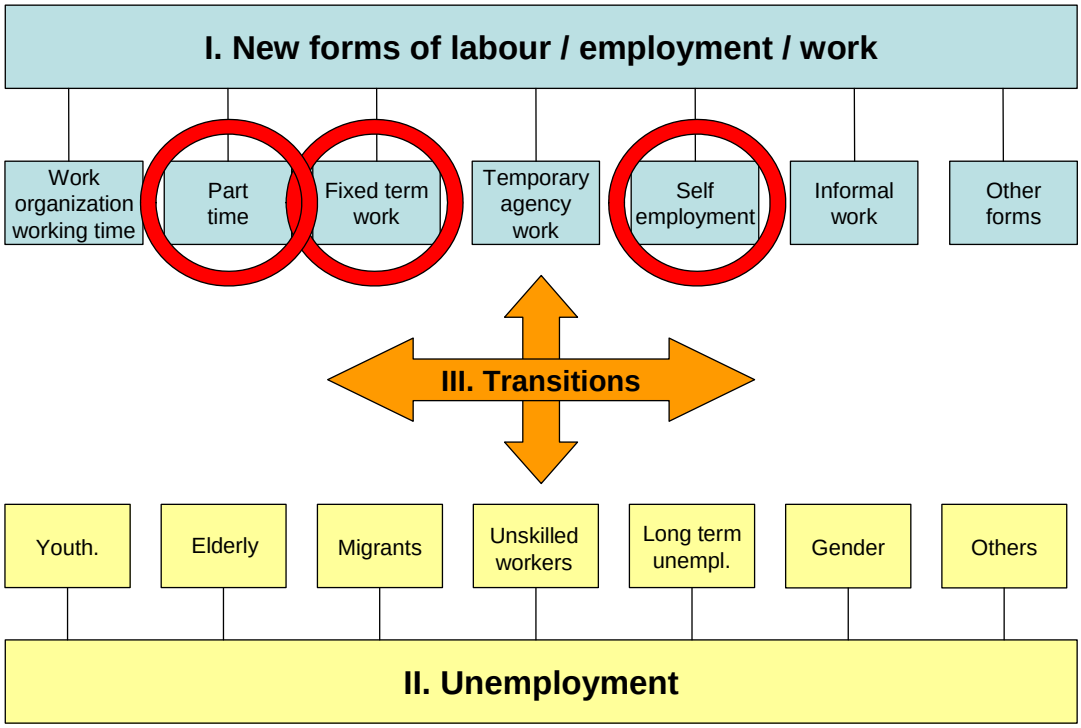
The Social Science Research Centre Berlin (Wissenschaftszentrum Berlin – WZB) developed a composite indicator for "atypical work" which consists of the following four components:[198]

- Employees with fixed-term contracts.
- Self-employed without any workers employed (also called solo-self-employed).
- Part-time workers (including solo-self-employed).
- Small contracts, i.e. with less than 15 working hours per week.

With this composite indicator three categories of ISG-approach are covered (see **Figure II-11**).

[198] See Schulze Buschoff, K.; Protsch, P.: Die soziale Sicherung von (a-)typisch Beschäftigten im europäischen Vergleich. Discussion paper SP I 2007-105 of the Social Science Research Center Berlin, 2007.

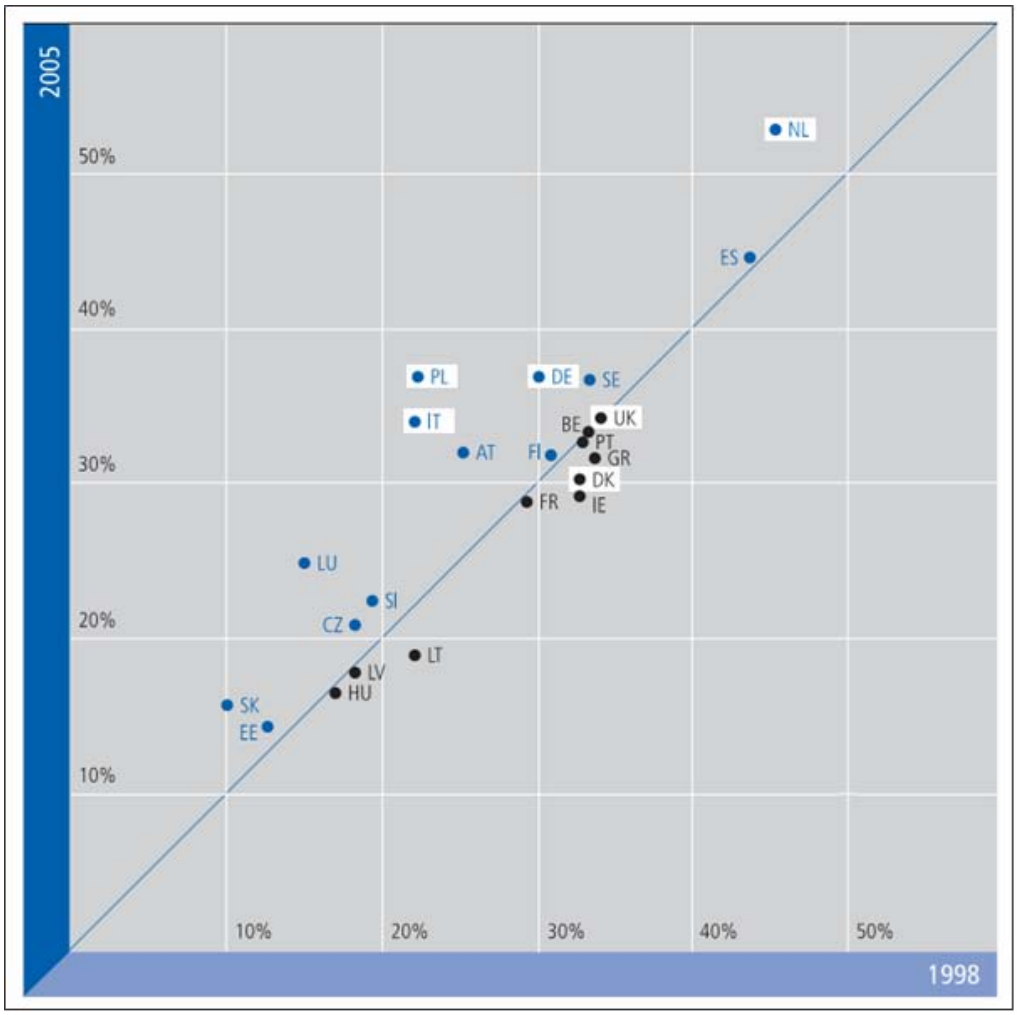
Figure II-11: Position of composite indicator "atypical work" in overall approach



In most of the European countries (EU-25) the proportion of persons working "atypical" increased over the last years. In **Figure II-12** these states can be found on the left side of the line marking 45 degrees. But there are also some countries with opposite developments. For the period from 1998 to 2005 a clear decrease can be observed only for **Lithuania, Ireland, Denmark,** and **Greece** (right side of the line marking 45 degrees in **Figure II-12**). The share remains relatively unchanged in **Hungary, Latvia, France, Portugal, Belgium,** the **United Kingdom,** and **Spain**.

Figure II-12 also illustrates that the proportion of atypical work is very high in The Netherlands (53 % in 2005) and in **Spain**. The rest of the old Member States together with **Poland** is located in the range from approx. 25 % to less than 40 %. The rest of the new Member States exhibit values below 25 %.

Figure II-12: Proportion of "atypical" workers 1998 and 2005 in EU-25* in percent[199]



* Without Cyprus and Malta.
Source of data: Eurostat, Labour Force Survey and calculations of WZB.

Furthermore, Social Science Research Center Berlin carried out an in-depth analysis for six Member States, i.e. **Denmark, Germany, Italy,** The Netherlands**, Poland,** and the **United Kingdom** for three years 1997, 2000, and 2005. The overall findings can be summarized as follows:[200]

- The **Netherlands** show the highest proportion of atypical work in each year.
- In **Germany, Italy, Poland** and the **United Kingdom** the corresponding share is around one third (2005), in **Denmark** it is slightly lower (approx. 30 %).

[199] Figure originally published in: Schulze Buschoff, K.; Protsch, P.: Auf dem Weg zur Flexicurity – soziale Sicherung atypischer Arbeitsverhältnisse im Europa-Vergleich. In: WZB-Mitteilungen Nr. 117, Berlin 2007, S. 32.
[200] Ibidem and Schulze Buschoff, K.; Protsch, P.: Die soziale Sicherung von (a-)typisch Beschäftigten im europäischen Vergleich. Discussion paper SP I 2007-105 of the Social Science Research Center Berlin, 2007.

- Comparing the prevalence of atypical work over the three years reveals that it is relatively stable in **Denmark** and in the **United Kingdom**, but increasing in **Germany, Italy,** The Netherlands and **Poland**.
- **Germany, Italy** and The Netherlands also display increases in all four components of the composite indicator.

With respect to **individual characteristics** in-depth analyses suggest the following:

- Women can be found more frequently in atypical work than men. This is due to their high rates of part-time employment relationships. This result holds for five of the analysed MS but **not for Poland**.
- Persons with low qualifications work more frequently in atypical work relationships in all MS **except Italy**.
- Young Workers (15-29 years) can be found more often in atypical work than other age groups. This group is followed by the age group of older workers (55 – 65). The **United Kingdom** forms an exception because in this MS elderly exhibit the highest proportion of atypical work.

Finally, it is worth noting, that there are variations in the composition of atypical work over the Member States. The same is true regarding groups of persons, sectors of activity etc.

II.9 Composite Indicator of ISG (SMOP)

In this section we present the results of our own empirical application aiming at the construction of an indicator for flexible employment in Europe. A corresponding composite indicator for unemployment is described in section III-8 below. Before presenting the results of our composite indicator we provide a brief overview on the methodology of our approach.

II.9.1 Overview

The first step comprises the identification of relevant indicators measuring the phenomenon under study, i.e. flexible employment on the one hand and unemployment on the other hand. In principle, a very large set of indicators might be able to represent flexible employment or unemployment. However, the concrete choice is limited by data availability and has to take into account that different indicators are interrelated, i.e. measure very similar aspects of the respective phenomenon or carry almost the same amount of information. In technical terms, these indicators are highly correlated. Thus, in a preliminary step, we conduct different *factor analyses* to identify interdependencies between potential indicators and to reduce the number of variables for index construction without losing too much information.

In general, the idea of factor analysis goes back to the work of Spearman (1904) (for an introduction see Harman (1976) or Rencher (1998)). The principal objective is to find a small number q of common factors that linearly reconstruct the p original variables (i.e. $p>>q$). More formally, the aim of factor analysis is to estimate the following linear model

$$(1) \quad y_{ij} = z_{i1}b_{1j} + z_{i2}b_{2j} + ... + z_{iq}b_{qj} + e_{ij}$$

where y_{ij} denotes the value of the ith ($i=1,..,n$) observation on the jth variable ($j=1,\ldots,p$), z_{ik} is the ith observation on the kth common factor $(k=1,\ldots q)$, b_{kj} denotes a set of linear coefficients called the *factor loadings*, and e_{ij} is similar to a residual called the jth *unique factor*. Everything except the left-hand-side variable has to be estimated.

Each chosen indicator will then be standardized to the interval [0, 1] in a so-called radar-chart, in which the largest (lowest) observable value in the sample forms as the upper (lower) bound (sometimes also called the "benchmark") for each indicator. The standardized indicators can be represented graphically by a polygon, for which each indicator constitutes one axis of the polygon. The surface area of the polygon can be calculated an interpreted as an additive composite indicator for the respective phenomenon under study, in which each single indictor has the same weight. This composite indicator is known as the SMOP (***S**urface **M**easure of **O**verall **P**erformance*) which can be easily calculated[201]. The SMOP can then be analyzed in detail to investigate patters over time and/or across countries.

II.9.2 Preliminary Step: Reducing the Number of Indicators by Factor Analysis

The following paragraphs summarize the results of the *factor analysis* for flexible employment indicators. In our empirical application, we started by considering the following set of variables:

- Share of part-time workers in the prime age-group (i.e. 15-59)
- Share of female part-time workers in the prime age-group (i.e. 15-59)
- Share of fixed-term contract workers in the prime age-group (i.e. 15-59)
- Share of female fixed-term contract workers in the prime age-group (i.e. 15-59)
- Share of fixed-term contract workers under 25 years (i.e. 15-24)
- Share of fixed-term contract workers over 50 years (i.e. 50-59)
- Share of involuntary fixed-term contract workers in the prime age-group (i.e. 15-59)
- Share of involuntary female fixed-term contract workers in the prime age-group (i.e. 15-59)
- Share of involuntary fixed-term contract workers under 25 years (i.e. 15-24)
- Share of involuntary fixed-term contract workers over 50 years (i.e. 50-59)
- Share of shift-workers in the prime age-group (i.e. 15-59)
- Share of female shift-workers in the prime age-group (i.e. 15-59)
- Share of own-account workers in the prime age-group (i.e. 15-59)
- Share of female own-account workers in the prime age-group (i.e. 15-59)

Due to data restrictions, i.e. some variables are only available for some selected years or a small set of countries, and high correlations between some of these indicators, the overall number of variables have to be reduced. The different steps of the factor analyses enables us to confine the indicator set above to a rather small subset of variables which is manageable and carries the majority of information contained in all variables.

The results of the last estimation procedure are reported in **Table II-5**. One observes a pronounced drop in the *Eigenvalue* of the fourth compared with that of the third factor (cf. column "difference").

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[201] Denote the value of the standardized indicator $j \in [1, n]$ by I_j and assume that all indicators receive the same weight. Then the SMOP can be calculated by:

$$\text{SMOP}=0.5 \cdot (I_1 \cdot I_2 + I_2 \cdot I_3 + \cdots + I_{n-1} \cdot I_n + I_n \cdot I_1) \cdot \sin(360/n) .$$

According to the commonly used Kaiser-Guttman-Criterion only factors with an *Eigenvalue* greater then 1.0 were extracted. Hence, we retained three factors which explain almost 90 % of the overall variance observable in the data (cf. columns "proportion" which reports the share of variance in the original data resembled by each factor and the column "cumulative" which sums up these shares).

Table II-5: Results of factor analysis for EU-Countries

Factor	Eigenvalue	Difference	Proportion	Cumulative
Factor1	4.28	0.89	0.38	0.38
Factor2	3.39	1.16	0.30	0.68
Factor3	2.23	1.33	0.20	0.88
Factor4	0.90	0.58	0.08	0.96
Factor5	0.32	0.15	0.03	0.99
Factor6	0.16	0.13	0.01	1.00

The results of the estimation of factor loadings for the three retained factors are reported in **Table II-6**. *Uniqueness* is the proportion of variance for the respective variable which is *not* explained by the factor. These coefficients are estimated using the squared-multiple correlation coefficients and provide an assessment of the unique factor e_{ij} in equation (1). This variable could be either pure measurement error or it could represent something which is measured accurately in the particular variable but not by any other of the variables. As a commonly used rule of thumb, values over 0.6 are not very good, values over 0.8 are unacceptable. Thus, in the case at hand all original variables seem to be represented very well by the three factors.

Table II-6: Estimated factor loadings for EU-Countries

Variable	Factor1	Factor2	Factor3	Uniqueness
Share part-time workers 15-59	-0.648	0.396	-0.315	0.324
Share part-time workers females 15-59	-0.662	0.427	-0.350	0.257
Share fixed-term contracts 15-59	0.399	0.903	0.080	0.018
Share fixed-term contracts fem. 15-59	0.390	0.893	0.006	0.050
Share fixed-term contracts U25	0.103	0.901	0.206	0.136
Share fixed-term contracts 50+	0.462	0.673	0.120	0.319
Share involuntary fixed-term 15-59	0.897	-0.219	-0.283	0.067
Share involuntary fixed-term fem. 15-59	0.895	-0.155	-0.322	0.072
Share involuntary fixed-term U25	0.828	-0.259	-0.247	0.187
Share involuntary fixed-term 50+	0.703	0.048	-0.302	0.413
Share shift-workers 15-59	0.217	-0.166	0.906	0.104
Share shift-workers females 15-59	0.244	-0.092	0.889	0.142

The results from **Table II-6** suggest that the first factor loads strongly on the four variables concerning involuntary fixed-term employment and (in absolute value) also on both part-time work indicators. The second factor is characterized by high factor loadings of the share of fixed-term contract workers across different age-groups, whereas the third factor loads heavily on both shift-work indicators. Hence, all four groups of variables, i.e. part-time work, fixed-term work, involuntary fixed-term work and shift-work should be considered in the overall index construction.

Within each of these four groups the correlation between the single variables are quite high[202] which is also reflected by the quite similar factor loadings. For instance, the correlation coefficient for the share of part-time workers in the prime age-group and the share of female part-time workers within this age group is 0.97. The corresponding value for the share of fixed-term contract workers in the age-group 15-59 and those under 15 years of age is 0.88. The only variable displaying a rather low correlation with the other indicators is the share of involuntarily fixed-term employees over 50 years. Thus, based on the factor loadings above and the correlation coefficients between the variables we decided to utilize the following five variables for the composite indicator of flexible employment:

- Share of part-time workers in the prime age-group (15-59)
- Share of fixed-term contract workers in the prime age-group (15-59)
- Share of involuntary fixed-term contract workers in the prime age-group (15-59)
- Share of involuntary fixed-term contract workers over 50 years (50-59)
- Share of shift-workers in the prime age-group (15-59)

These five variables will be summarized to one composite index of flexible employment forms using a radar chart approach. This is explained in detail in the next paragraphs.

II.9.3 Index Construction by Radar Chart Analysis

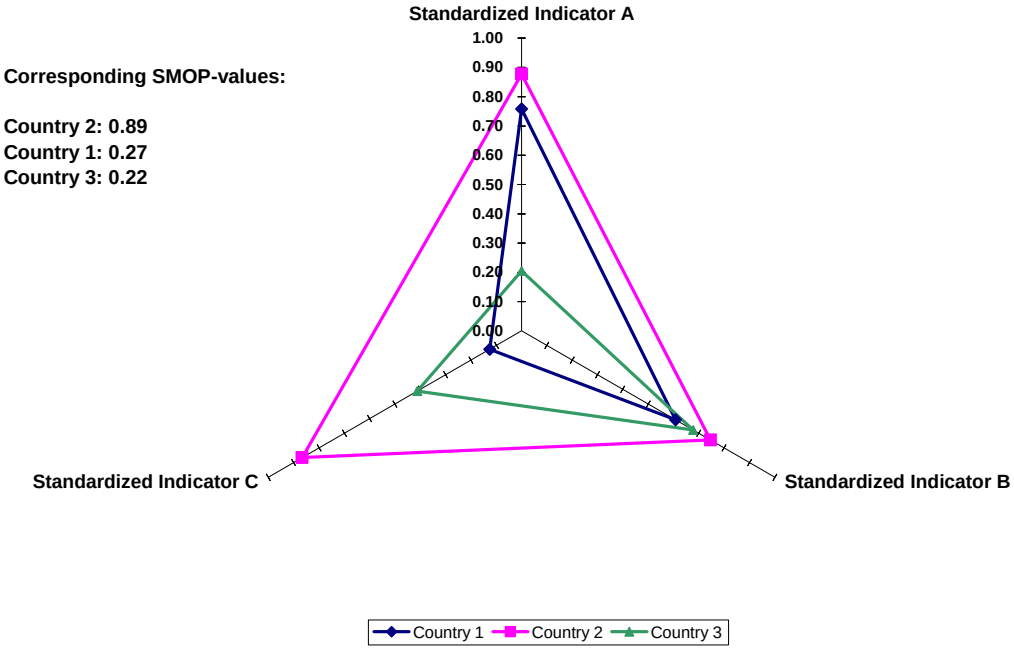
In a next step, the chosen indicators have to be standardized. In this endeavor, the highest observable values in each year serves as the upper bound, i.e. receives the value of 1, and the lowest observable values in sample forms the lower bound, i.e. zero. With these standardized indicators we then calculate the SMOP for each country in every year. Graphically, the SMOP is the area of the polygon which is spanned by all indicators. To illustrate this, **Figure II-13** provides an example for the case of three indicators and one year with three[203] hypothetical countries.

From this figure it becomes transparent, that country 2 exhibits the highest values in sample for all indicators and, thus, displays the highest SMOP (0.89). Consequently, country 2 receives the highest value of the flexibility indicator in this year. Countries 1 and 3 differ with respect to their position on the three indicators. While country 3 displays higher values for indictors B and C than country 1, the opposite holds for indicator A. Since all indicators receive the same weight in the calculation of the SMOP, country 1 exhibits a higher value of the flexibility indicator than country 3. Hence, the considerably higher value for indicator A in country 1 overcompensates the slightly lower values for indicators B and C.

[202] The complete correlation matrix can be obtained from the authors upon request.

[203] Three instead of five indicators are used for expositional purposes only. In our empirical application we use the five indicators outlined above.

Figure II-13: Example for a radar chart with three indicators and one year



In our empirical application of this approach, we calculate the SMOP for all countries in sample with observations on the five indicators outlined above in each and every year (1995-2006). By ordering the calculated SMOP-values in each year, we receive a first ranking of the countries with respect to the flexibility indicator. This ranking is summarized in **Table II-7**.

This table indicates that there is a substantial amount of variation across countries over time. For instance, **the United Kingdom** moves from a rather high value of flexibility during the 1990s towards a relatively low position compared to the other European countries at the end of the observation period. However, we can also observe some countries which remain rather stable over time. **Spain**, **Finland**, and with the exception of two single years also **Sweden**, display labour markets with a comparatively high value of flexibility. In interpreting these rankings one should bear in mind that the differences in the value of the flexibility indicator between the positions can be very small. Hence, differences of one or two positions should not be overvalued.

Table II-7: Ranking of countries with respect to the flexibility indictor

Country	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
BE	7	8	5	4	4	4	6	12	4	7	8	9
BG	.	.	.	.	.	.	.	.	.	14	.	15
CZ	.	.	.	.	.	.	14	14	12	10	12	14
DK	8	11	11	10	9	11	17	17	18	18	19	21
DE	12	12	13	12	12	12	16	18	17	20	18	11
IE	6	10	12	11	13	14	19	19	20	23	14	22
GR	10	5	10	8	5	5	5	6	9	5	6	6
ES	3	3	3	3	3	3	1	1	1	1	1	1
FR	.	.	.	.	.	.	.	.	13	16	17	17
IT	5	7	8	9	8	7	12	13	15	13	10	10
CY	.	.	.	.	10	8	11	9	8	8	9	8
LV	.	.	.	.	.	.	.	8	6	6	.	12
LT	.	.	.	.	.	.	9	7	7	15	15	16
HU	.	.	4	5	6	6	10	10	10	19	16	19
NL	11	6	9	7	11	10	18	20	22	22	20	18
AT	13	13	14	14	15	15	21	21	23	24	22	24
PL	.	.	.	.	.	.	13	5	5	2	2	2
PT	9	9	7	13	14	16	3	2	2	3	3	5
RO	.	.	.	.	.	.	7	.	21	11	11	13
SI	.	.	.	.	.	13	20	15	19	12	7	7
SK	.	.	.	.	.	.	8	11	14	17	13	20
FI	2	2	2	2	2	2	2	3	3	4	4	4
SE	1	1	1	1	1	1	4	4	11	9	5	3
United Kingdom	4	4	6	6	7	9	15	16	16	21	21	23

To shed some more light on the differences of the flexibility indicator across countries and over time, we investigate the SMOP-values in more detail within a regression model. Such models allow the consideration of several potential explanatory variables simultaneously and provide information on the significance of observable differences in SMOP-values.

Specifically, we investigate whether and to which extent differences in labour market flexibility exist across our country groups (see section 2.2). Furthermore, we consider a time trend to examine if we can pin down a robust temporal variation in SMOP-values. Finally, we analyze if observable flexibility is associated with past changes in overall economic activity by taking into account the one year lag of GDP per capita growth. The results are summarized in **Table II-8**.

Table II-8: Results of regression model for SMOP-values as dependent variable

Variable	Coefficient	t-value	Coefficient	t-value
	MODEL 1		MODEL 2	
Nordic countries	0.2623	5.46	0.2206	4.35
Central and Eastern European countries	0.1314	2.72	0.1146	2.04
Southern countries	0.2644	5.69	0.2657	5.47
Anglo-Saxon countries	-0.0049	-0.08	-0.0377	-0.59
Time trend	0.0059	1.25	0.0084	1.44
Lagged growth rate of GDP p.c. (in %)	-	-	0.0005	0.06
Constant	0.2333	4.84	0.2252	3.67
Number of observations	220		194	

The table entries in column 1 report the differences in flexibility between the reference group "Continental countries" and each other group. That is, the value 0.2623 for Nordic countries can be interpreted as a positive deviation of around 0.3 (on average) in the value of the flexibility indicator in the Nordic compared to continental countries. Along the same lines, central and eastern European countries exhibit a higher flexibility value of, on average, 0.13 compared to continental Europe. The second column provides an indication of the statistical significance of these deviations. More precisely, t-values which are larger than 2 (in absolute value) suggest that observable differences are systematic and not simply random.

Hence, in both models all observable between the continental country group and all other country groups are significant except the difference with the Anglo-Saxon countries. Furthermore, the difference between the Nordic and the southern European countries is also statistically insignificant. In other words, on average the Nordic country group and the southern European countries exhibit significantly higher values of our flexibility indicator than the central and eastern European countries, which in turn display larger values than the continental countries group and the Anglo-Saxon countries.

Since the estimated coefficients for the time trend as well as for GDP growth are statistically insignificant in both models, we can neither observe a robust development in the flexibility indicator over time nor a significant association of flexibility with overall economic activity. This suggests that different labour market institutions and regulations together with individual preferences seem to play an important role in explaining cross-country differences in the considered flexibility characteristics.

III - LABOUR MARKET SITUATION AND UNEMPLOYMENT

III.1 Introduction: General Trends in Unemployment

In 2006, the EU experienced its most substantial decline in unemployment since the end of the last decade.[204] The EU's average unemployment rate decreased from 8.7 % in 2005 to 7.9 % in 2006. The strongest reduction displayed the new Member States **Estonia**, **Latvia**, **Lithuania**, **Poland** and **Slovakia**, although the latter two countries still have the highest unemployment rates with 13.8 % and 13.4 % respectively. In **Bulgaria** and **Germany** unemployment rates declined by a slightly more than one percentage point, most of the other Member States recorded smaller reductions.

Rates went up in only seven Member States, although only marginally in most cases. The highest increase in 2006 was recorded in **the United Kingdom**, where unemployment rose by 0.5 percentage points. But **the United Kingdom** continues to have by far the lowest unemployment rate among the large Member States and one of the lowest in the overall ranking. The lowest rates in 2006 were observed in **Denmark** and **The Netherlands** (3.9 % each) and **Cyprus**, **Ireland** and **Luxembourg** also exhibit rates below 5 %.

Gender differences in the average EU unemployment rate continued to decrease to 1.6 percentage points in 2006, with unemployment rates at 7.2 % for men and 8.8 % for women. Nevertheless, in several countries the unemployment gender gap remains large, especially in **Greece**, **Italy** and **Spain**. However, in a few Member States, especially **Estonia, Latvia, Lithuania, Ireland, Romania** and **the United Kingdom**, unemployment rates for women are actually lower than those for men. The drop in the overall unemployment rate is also reflected by a further fall in the **long-term unemployment** rate (see section III-6 below).

The increase in employment between 2000 and 2005 has not been uniform with respect to gender, age and type of employment.[205] There are considerable differences in labour market performance across different groups. The most important developments can be summarized as:

- Increasing female participation;
- Increasing participation of older people (aged 55-64);
- Declining youth employment;
- Rising shares of part-time and fixed-term employment (see sections II.2 and II.3);
- Improved skill structure of the labour force.

In the following sections, unemployment will be described in detail for relevant person groups, i.e. youth, elderly, migrants, low-skilled workers and the long-term unemployed.

III.2 Unemployment of the Young

III.2.1 Introduction: Structure and Development of Youth Unemployment

The integration of young workers into the labour market is a major policy objective for the Union. Despite the overall positive labour market developments this specific group faces considerable integration problems in many Member States.

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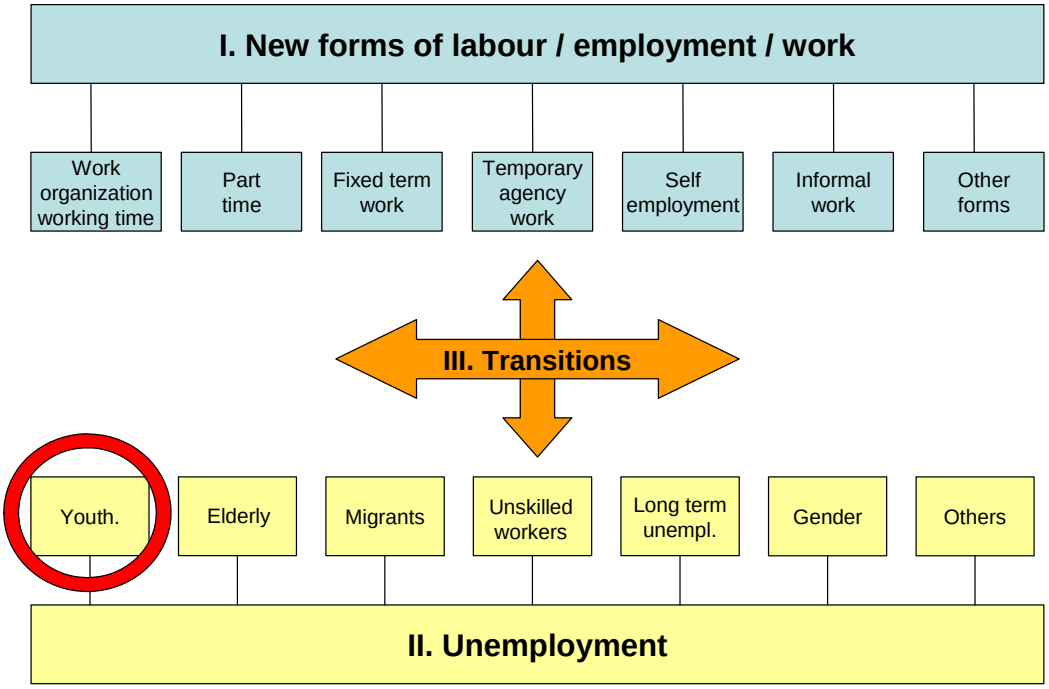
[204] European Commission (ed.): Employment in Europe 2006, Luxembourg 2006, p. 24, 35f, European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 29.

[205] See European Commission (ed.): Employment in Europe 2006, Luxembourg 2006, p. 38ff.

Moreover, many of those who have gained a foothold in the labour market often have unstable and even precarious jobs.[206] **Figure III-1** shows the position of youth unemployment in the overall approach.

Figure III-1: Position of youth unemployment in the overall approach



The overall development may be characterized as follows: in absolute numbers, both youth[207] unemployment and youth employment have decreased in recent years for the EU-27. Between 2000 and 2006, the total number of unemployed young workers decreased from slightly over 5 million (18.5 %) to 4.6 million (17.4 %). During the same period, youth employment in the EU-27 dropped from around 22.6 million to about 22 million. According to the Labour Force Survey the number of young people who do not actively participate in the labour market increased slightly from 33.2 million to 33.8 million. This means a decrease in the youth activity rate from 45.6 % to 44 % in the same period. However, youth unemployment remains twice as high as overall unemployment.[208]

The labour market situation of the young in the EU-27 has somewhat improved since the beginning of the decade. To a large extent, the positive development of youth unemployment is probably due to a higher share of young people in education and training.

Regarding the different Member States, **Denmark** and **The Netherlands** display the lowest shares of unemployed youth relative to the youth labour force (7.7 % and 6.6 % respectively). Youth unemployment rates below 10 % are also recorded in **Austria**, **Ireland** and **Lithuania**. On the other hand, several Member States exhibit youth unemployment rates of 20 % and more, among them are **Belgium, France, Greece, Italy, Poland, Romania, Slovakia** and **Sweden**.

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[206] See e.g. European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 29ff.
[207] In general, youth are young persons aged 15- 24.
[208] BUSINESSEUROPE et al.: Key challenges facing European Labour Markets: A joint analysis of European Social Partners, Brussels 2007, p. 11.

Furthermore, unemployment rates for young women are higher than for young men. However, the gender gap in the unemployment rates has been narrowing between 2000 and 2006:[209] In 2000, the unemployment rate for young women was 19.4 % compared to 17.8 % for men. Six years later, the unemployment rate for young women declined to 17.8 % and that for men to 17.1 %. On balance, the difference between both genders decreased from 1.6 to 0.7 percentage points.

There are a number of differences between Member States. On the one hand, there are several countries displaying only small differences between male and female unemployment, especially **Denmark**, **Lithuania**, **Austria**, **Slovakia** and **Sweden**. On the other hand, some countries exhibit remarkable gender gaps in youth unemployment. The most noticeable case is **Greece**, where the female youth unemployment rate is 34.7 % and, thus, almost twice as high as for young males. **Spain** and **Italy** display also particularly large youth unemployment gender gaps, although these gaps decreased substantially since the year 2000. In almost all Member States men exhibit a significantly higher activity rate than their female counterparts, which might be explained by higher shares of young women in education.

Furthermore, the youth unemployment rate is on average 2.4 times higher than the prime-age adult unemployment rate. A further indicator, the youth unemployment to youth population ratio, i.e. the relative unemployment ratio,[210] is also higher than the comparable ration for prime-age adults (1.3 times higher). Both indicators have not changed significantly since 2000, indicating that the average employment situation of youth compared to adults has not improved over time.

In general, youth unemployment ratios seem to correspond to adult unemployment ratios. But there are remarkable differences between the Member States. In **Poland** and **Slovakia** and, to a lesser degree, in **France, Greece** and **Spain**, both the percentage of unemployed youth and unemployed adults is relatively high. On the other hand, **Finland**, **Sweden**, and to a lesser extent, **Malta** and **the United Kingdom** have a considerably higher unemployment ratio among the young than among prime-age adults.[211]

III.2.2 Development of Youth Unemployment since 1995

In the 1990s, youth unemployment was a challenging problem in EU-15 with an average youth unemployment rate of 20.5 % (1995). However, there was also a large variation across the old Member States, ranging from 5.9 % in **Austria** to 41.2 % in **Finland** and 41.9 % in **Spain**. In 2000, the average unemployment rate for youth decreased to 14.6 % in EU-15 with still a large variation across single countries. The lowest proportions were recorded in **The Netherlands (5.3 %), Austria** (6.3 %), **Luxembourg** (6.4 %) and Ireland (6.5 %), the highest rates in **Italy** (31.5 %), **Greece** (29.2 %), **Finland** (28.4 %) and **Spain** (25.3 %). Five years later, the unemployment rate of youth increased again, now up to 16.5 %. In 2005, the lowest rates can be found in **The Netherlands** (8.2 %) and **Denmark** (8.6 %); the highest in **Sweden** (22.8 %) and **Belgium** (21.5 %).

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[209] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 33, 38.

[210] We also examine the relative youth unemployment ratio since the youth unemployment rate maybe biased. The unemployment rate is the number of unemployed young as a percentage of the labour force in this age-group, i.e. those young persons who are active in the labour market. However, the activity rate of youth differs considerably between Member States, e.g. due to different rates of youth in education or different rates of young women taking care of home and family. hence, it seems reasonable to additionally investigate the share of unemployed young relative to the total population in this age-group.

[211] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 33f.

Youth unemployment appears to be a serious problem also in the new Member States.[212] In 2000, the unemployment rate in this age group (under 25) was 22.1 %. However, also in these countries rates vary enormously from 10.2 % in **Cyprus** to 36.9 % in **Slovakia** and 35.7 % in **Poland**. Five years later, the labour market situation of the young has slightly improved. In 2005, the average unemployment rate is 20 %, ranging from **Latvia** (13.6 %) and **Cyprus** (13.9 %) on the lower end, up to **Poland** (36.9 %) and **Slovakia** (30.1 %) at the upper end of the distribution. Thus, youth unemployment is a serious and persistent problem in most of the new Member States, in particular in Poland and Slovakia.

III.2.3 Labour Market Transitions of the Young

On average, almost two thirds of young individuals who leave education in the EU hold a job one year after leaving school, although the school-to-work transition seems to work better in some countries than in others. In **Austria, Ireland, Latvia, Finland, Estonia** and **the United Kingdom**, close to 75 % or more of young people have a job one year after having left the educational system. In **Denmark** and **The Netherlands** this rate even exceeds 80 % while **Bulgaria, Greece, Italy** and **Romania** are at the other end of the scale with less than the half of young non-students being employed one year after leaving permanent education.[213]

Education seems to play an important role for successful school-to-work transitions. On average, less than 4 out of 10 school leavers with low educational attainment find a job one year after having finished their education, compared to almost two-thirds of those with a medium level of education and more than three-quarters of those with a high level of schooling. Furthermore, dual systems of combined work and vocational training or apprenticeships, which are found in countries such as **Austria**, **Denmark** and **Germany**, seem to improve the transitions into the labour market and, in general, employment prospects of young individuals.[214]

Looking at overall labour dynamics, young people tend to move into and out of jobs more frequently than prime-age workers. In 2006, an average of 25 % of young workers left their job, compared to 11 % of prime-age workers (aged 30-54). On the other hand, the proportion of young people moving into a new job was also much higher, with almost 17 % of young workers being hired for a new job, compared to 7 % in the prime-age group. Hence, labour turnover for young people is considerably higher as for prime-age adults.

However, youth labour turnover rates differ considerably between Member States and are correlated with those of the prime-age population. **Denmark, Finland, Latvia, Spain** and **the United Kingdom** are the countries, in which labour turnover for both age groups is higher than the European average. **France** has a higher than average turnover rate for young people but a lower than average turnover for the prime-age group. For **Finland, Spain** and **France**, the high degree of turnover seems to be associated, at least to some extent, with a high share of young people being employed with temporary contracts.[215] In **Denmark, Latvia** and **the United Kingdom**, on the other hand, high labour turnover among young people does not exhibit a systematic association with the incidence of fixed-term contracts.

[212] Including the (former) candidate countries.
[213] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 41.
[214] Ibidem, p. 42.
[215] In case of Spain and France most of youth works on a fixed-term basis involuntarily.

Countries with a high dynamic labour market also tend to have significantly fewer young individuals in **long-term unemployment** than countries with a low labour turnover. Despite signs of some overall improvements, there is evidence of persisting problems in a number of Member States and for certain disadvantaged groups of the young. On the positive side, average labour market performance of young workers in the EU has improved somewhat compared to the beginning of the decade. Youth unemployment is slightly lower and the share of long-term unemployed young has decreased substantially during this period. However, young people with a low educational attainment are much more likely to be affected by (long-term) unemployment, inactivity or difficult school-to-work transitions than youth with upper secondary or university education. Hence, the fact that still almost one out of seven young individuals in the EU drops out of school early without any relevant qualification is especially alarming. In practically all Member States, young men are more likely to drop out of school early[216] and less likely to complete upper secondary education than young women.

Finally, it must also be noted that high formal education does not always seem to work as an insurance against difficult transitions into the labour market, joblessness or precarious employment. In several Member States, young university graduates are actually more likely to be unemployed or inactive than their peers with only medium or low educational attainment.

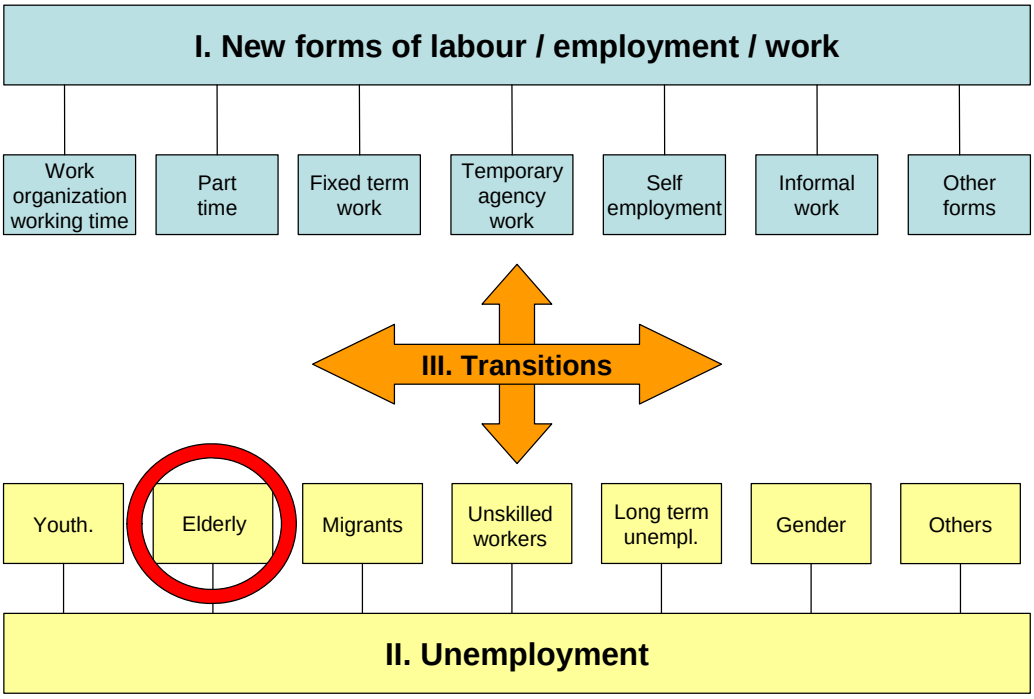
III.3 Unemployment of the Elderly

III.3.1 Introduction and Elderly Willing to Work

Population ageing due to demographic change is one of the main challenges of societies in Europe.[217] One likely consequence of the aging workforce might be that participation levels as well as the size of the labour force is more and more influenced by the activity patterns of the older generations. On the other hand, unemployed elderly still face higher difficulties to be reintegrated into labour market than prime-age workers. **Figure III-2** shows the position of this issue becoming more and more important.

[216] The exception being Austria. European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 43.
[217] See European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 53ff.

Figure III-2: Position of unemployment of the elderly in overall approach



According to the Labour Force Survey, employment status of the 56.6 million persons aged 55-64 in the EU-27 can be summarized as follows (2006):[218]

- 24.6 million are in employment;
- 1.6 million are unemployed;
- 30.4 million are inactive.

Many older people might consider themselves effectively trapped outside the labour market due to barriers – real or perceived – even though they are willing to work. Overcoming these obstacles to participation requires addressing the barriers to employment (including the attitudes of employers to older workers), facilitating integration into the labour market and increasing the rewards from work as compared to inactivity.

According to the Labour Force Survey, in 2005 around 7 % of the inactive population aged 55-64 in the EU-27 were willing to work, with a higher willingness among men than women.[219] This "labour force reserve" of older workers corresponds to 1 million men and 1.1 million women. Among the inactive elderly willing to work, the self-reported main obstacle to labour force participation is "own illness or disability". Looking at this from another perspective, of those inactive 55 – 64 year olds who are willing to work, a quarter are prevented from doing so by constraints related to their own illness or disability, and close to one in five due to the belief that no work is available or due to retirement.

Based on the situation in 2005, if all those inactive older individuals who are willing to work enter the labour force, then the activity rate for older workers in the EU will increase by 4 percentage points.

[218] See European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 60. Additionally there are 3.5 million persons aged 65 and over who are in employment.
[219] Ibidem, p. 76.

At the same time in 2005 there were around 1.6 million unemployed older workers aged 55-64, who were actively seeking employment and immediately available for work. If these groups (amounting to almost 4 million) are both employment, this will result in an increase in the employment rate for older workers of 7 percentage points.

III.3.2 Unemployment of the Elderly

While the European Commission usually defines older workers as individuals being 55-64 years old, labour market problems which are associated with age typically concern also individuals aged 50 and older. Furthermore, a substantial share of individuals over 60 years is inactive and/or already retired (for transitions into retirement see also chapter 3.3 below). Hence, it seems reasonable to concentrate the investigation of unemployment problems of older workers to individuals aged 50-59. The unemployment rate for this age-group in the EU-15 was 7.4 % in 1995 and decreased to 5.7 % in 2000. Five years later a further (slight) decrease to 5.2 % can be observed.[220] In the new Member States the unemployment rate of workers aged 50-59 is higher and amounted to on average 9.1 % in 2000 and 7.9 % in 2005.

In general, the EU-27 exhibits an unemployment rate of older workers (50-59) of 7.2 % in 2000 and of 6.4 % five years later. However, the unemployment rates for this age group vary remarkably between Member States:

- In 1995, the shares in the old Member States (EU-15) ranged from 4.3 % (**Greece**) to 13.3 % (**Spain**) with an average rate of 7.4 %. Below the 5 % line were also **Austria**, **Italy, The Netherlands** and **Portugal**. Considerably above average was also **Germany** with 10.3 %.
- In 2000, the rates in EU-15 range from 2.0 % (**The Netherlands**) to 11.5 % (**Germany**) with an average rate of 5.7 %. In the new Member States the lowest unemployment rate for older workers is 3.3 % (**Romania**), the highest 14.0 % (**Bulgaria**). The average unemployment of elderly was 9.1 % in the new Member States.
- In 2005, in the EU-15 the unemployment rates of elderly range from 2.9 % (**the United Kingdom**) to 12.2 % (**Germany**) and from 3.8 % (**Cyprus**) to 14.2 % (**Poland**) in the new Member States. The average rates are 5.2 % for the old and 7.9% for the new Member States.

Furthermore, for this age-group gender gaps are visible but relatively small. In each of the three analysed years the difference between the overall unemployment rate for older workers (50-59) and the unemployment rate for older women does on average not exceed 1 percentage point. However, it must be noted, that there are strong gender differences in the employment rates of elderly. Older women show significant lower employment and activity rates compared to older men.[221] The gender difference in activity rates, for instance for the 55-64 group is close to 20 percentage points. Unemployment rates are lower for older worker aged 55-64 than for younger age groups (in 2006 the unemployment rate in the EU averaged 6.2 % for those aged 55-64, compared to 8.3 % for the working-age population as a whole).[222]

[220] Source: own calculations with data provided by Eurostat.
[221] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 60f, 73.
[222] Ibidem, p. 78.

III.3.3 Labour Market Transitions of Older People

It is important to examine the transitions between economic statuses (employment, unemployment and inactivity) for older workers, since increasing labour market participation and employment rates for older individuals requires both reducing the flows into inactivity (by delaying their exit from employment and the labour market) and raising the outflows from inactivity and unemployment into employment. Statistics from the Labour Force Survey for transitions between 2005 and 2006 indicate the following within the EU: For the working-age population as a whole, the transition rates from work into unemployment (2.5 %) or inactivity (2.9 %) are broadly similar. By contrast, for those aged 55-64 the risk of moving from employment into unemployment is lower (1.5 %), but there is a much higher chance of moving from work into inactivity (8.2 %).[223]

The main reason for leaving employment into inactivity for this age group is retirement. For people aged 55-64, the flows into work are much lower than for other age groups. Less than 3 % of inactive individuals aged 55-64 enter work within one year. Furthermore, unemployed workers aged 55-64 are substantially less likely to find work (only around 13 %, compared to 32 % of those of prime working age and 39 % of young unemployed). Older workers, thus, face much higher difficulties to get back into work if they lose their job. The older unemployed are twice as likely as other age groups to drop out of the labour force altogether. Around half of the unemployed older individuals exit the labour market within a year, compared to only one in five of the prime working age.

Beyond this overall situation at the EU level, transition rates for older workers display considerable variation across Member States:[224]

- Exit rates out of employment range from over 15 % in the **Czech Republic, France** and **Luxembourg** to less than half of this in **Cyprus, Greece, Latvia, Portugal**, **Romania** and **the United Kingdom**.
- In several countries (**Finland, France, Germany, Greece** and **Poland**), only about 10 % of older people who were unemployed one year earlier reported to being employed again at the time of the interview. This share is even lower in **Belgium** (less than 2 %) and **Slovenia** (around 7 %) and with around 30 % and more remarkably higher in **Cyprus, Estonia, Latvia** and **the United Kingdom**.
- At the same time, in all Member States, there seem to be very rare returns to the labour market following exit into inactivity. In most countries less than 2 % of inactive individuals aged 55-64 manage to return to employment. This rate is considerably higher than the EU average in **Austria**, the **Czech Republic**, **Finland, Latvia, Romania, Slovakia** and **the United Kingdom**.

Around 63 % of the unemployed in this age-group experience periods of unemployment with a duration of 12 months or more. This is a substantially higher share than the average for the working-age population as a whole (46 %). These comparisons of transition rates between statuses suggest that in countries where employment rates among older people are particularly low, the labour market does not seem to be highly dynamic for older workers which implies that older individuals find it hard to stay employed and even harder to get back into employment after job loss (e.g. **Austria, Belgium, France, Luxembourg, Poland** and **Slovenia**).

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[223] Except in Germany, ibidem, p. 76f.
[224] Ibidem, p. 77f.

The labour market for older workers in countries such as **Cyprus, Denmark, Estonia, Latvia** and **the United Kingdom** appears to be more dynamic and receptive, with older workers being more likely to remain in employment, and displaying relatively high chances to return to work after unemployment spells.

In **Luxembourg** and **The Netherlands**, more than 80 % of inactive individuals aged 55-64 who left their job in the previous 12 months reported to having done so for reasons of retirement, while this applies to less than 40 % in **Finland, Portugal and Spain**, even though the official retirement age is 65 for both men and women in all these Member States. In some Member States, especially **Estonia, Finland, Spain and Sweden,** a relatively high share (around 30 % or more) of recent job leavers moving into inactivity reported dismissal or the expiry of a limited duration job as the primary reason for leaving their last job. In **Finland, Germany, Malta, Ireland, Portugal** and **the United Kingdom**, around one in five reported that illness or disability was the main reason for leaving their last job.

Finally it seems worth mentioning, that the high share of older job leavers moving into retirement well before the official retirement age might be the manifestation of a variety of early retirement schemes. Finally, job separation among older inactive individuals for reasons of personal or family responsibilities appears to be relatively rare in most Member States, but seems to be a much more important reason in **Cyprus, Ireland, Latvia, Sweden** and **the United Kingdom**, where the respective shares range from 5 % to 11 %, and are, thus, considerably larger than the EU average of around 2 %.[225]

III.4 Labour Market Situation of Migrants

III.4.1 Introduction and Patterns of Migration Flows

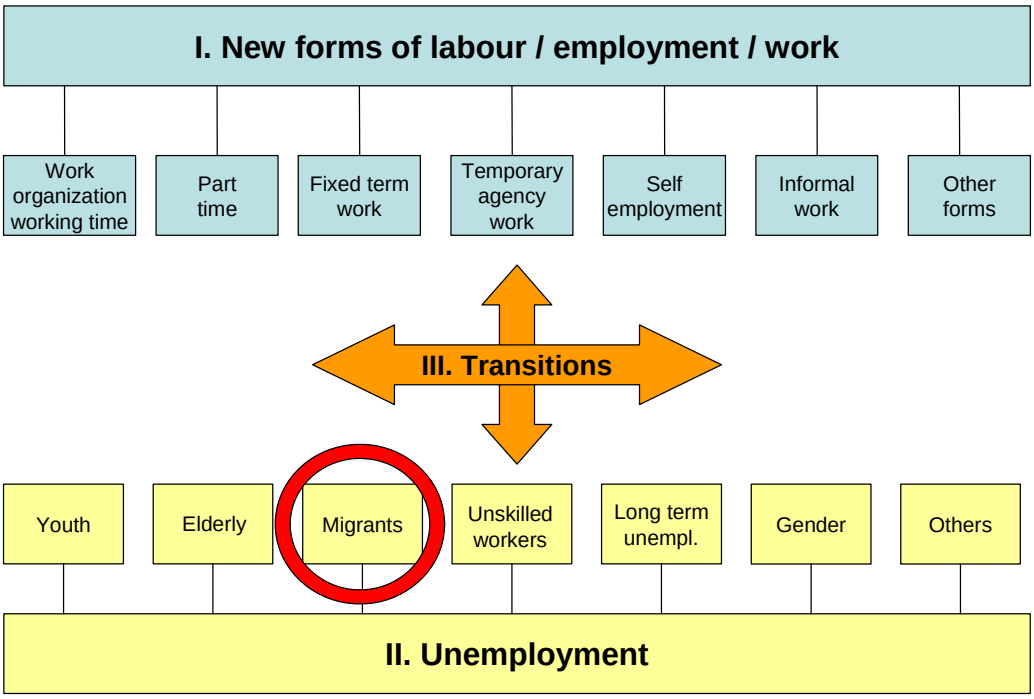
Integration in labour market of migrants faces several problems. Due to the disadvantageous opportunities for getting a job, this person group is considered within the analysis. The following **Figure III-3** shows the position of employment and labour market situation of migrants in the overall approach of the study.

The European Foundation for the Improvement of Living and Working Conditions distinguishes the following four different basic country group models of migration flow: [226]

- **New Member States**, in which the levels of immigration are still very low and non-national workers display low labour market participation rates, but they are generally employed in skilled jobs. In some of these countries, such as **Poland** and **Romania**, many national workers are attracted to move to the former Member States (EU-15) and tend to emigrate;
- **Southern European countries** – also with the inclusion of **Ireland** – which, in the last two to three decades, have changed their status from 'outward migration' countries to 'inward migration' countries. Migrant workers who move to these countries usually show high employment rates but are often segregated in unskilled jobs. At the same time, illegal immigration into these countries is increasing;

[225] Ibidem, p. 80.
[226] See European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 4.

Figure III-3: Position of labour market situation of migrants in overall approach



- **Western continental European countries**, where the presence of migrants has a long tradition, even though migration inflow has declined in recent years. The migrant population is generally heterogeneous in terms of age, level of education and occupation. Usually, the unemployment rate of migrants is higher than that of native workers;
- **Scandinavian countries**, in which immigration is limited and migrant workers are often employed in skilled jobs.

The **United Kingdom** is a particular case, which lies between the second (important inflows in the last decade), the third (long tradition) and the fourth model (skilled migrants) as it shows some features of all.

The overall increasing trend in immigration masks significant differences between countries. **Austria, the Czech Republic, France, Ireland, Italy, Poland, Spain** and **the United Kingdom** have experienced a remarkable growth of inflows. In other countries, the upward trend is less pronounced, and in the case of **Denmark, Germany** and **The Netherlands** a declining trend can be observed.[227] More generally, the following developments can be summarized:[228]

- all **Mediterranean countries** display increasing levels of immigration, albeit to a varying extent;
- in richer **eastern European countries** – namely, the **Czech Republic**, **Hungary** and **Poland** – immigration has grown, yet still remains rather low in absolute terms;

[227] This trend is attributed to restrictive migration policies in these countries in recent years. See: European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 5.

[228] For net-migration flows see also BUSINESSEUROPE et al.: Key challenges facing European Labour Markets: A joint analysis of European Social Partners, Brussels 2007, p. 15.

- **Scandinavian countries** host a limited number of immigrants, and in the case of Denmark the number of foreign individuals is declining over time;
- a mixed picture emerges for **western continental Europe**, with some cases of growth in immigration, such as **Austria**, **Belgium** and **Luxembourg**, and others of decline, such as **Germany** and **The Netherlands**.

III.4.2 Employment and Unemployment of Migrants

Eurostat data referring to the first quarter of 2006[229] (except for Luxembourg, for which data refers to the year 2005) documents a substantial share of non-nationals living in EU countries. In particular, **Luxembourg** shows the highest proportion of foreigners as part of the total population (39.4 %), which is most likely due to the small size of the country and the international character of its economy. In **Austria, Cyprus, Estonia, Germany** and **Spain**, the percentage of foreigners within the total population is relatively high and ranges between 8.7 % (**Germany** and **Spain**) and 16.2 % (**Estonia**). To the contrary, the countries with the lowest percentages are **eastern European** countries: **Slovakia**, **Bulgaria**, **Poland**, **Lithuania**, **Hungary**, **Slovenia**, the **Czech Republic** and **Latvia** which all exhibit proportions of 1 % or less. For more details see **Table III-1** below.

According to Eurostat data, non-nationals represented 5.2 % of the total labour force in the EU-25 in the first quarter of 2006. **Eastern European countries** benefit from the contribution of migrant workers to a lower extent, while in certain western European countries – especially **Austria, Belgium, Germany** and **Spain** – migrant workers represent around 10 % of the labour force (see **Table III-1)**. Of the other Member States, only **Cyprus** displays a comparatively high percentage of non-nationals in the labour force, at 14 %, which is the highest among the EU-25, with the exception of the very specific case of **Luxembourg**, where non-nationals provide 45 % of the total labour force.

[229] European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 6.

Table III-1: Economically active population, first quarter 2006 (thousands)[230]

	Total	Non-nationals from EU25	Non-EU25 citizens	% of non-nationals in total labour force
EU 27**	231,020.5	3,939.1	8,083.3	5.2
Austria	4,041.8	137.0	280.1	10.3
Belgium	4,605.6	279.1	115.7	8.6
Bulgaria	3,255.7	n.a.	6.0	n.a.
Cyprus	372.6	21.8	30.6	14.1
Czech Republic	5,199.6	21.6	26.5	0.9
Denmark	2,898.5	30.3	61.4	3.2
Estonia	678.4	n.a.	119.4	n.a.
Finland	2,599.5	19.5	23.8	1.7
France	27,138.9	560.4	822.9	5.1
Germany	41,222.7	1,407.6	2,343	9.1
Greece	4,873.1	23.6	284.6	6.3
Hungary	4,208.6	6.4	21.1	0.7
Ireland	2,085.9	n.a.	n.a.	n.a.
Italy	24,621.9	n.a.	n.a.	n.a.
Latvia	1,145.8	n.a.	11.9	n.a.
Lithunia	1,586.0	n.a.	9.0	n.a.
Luxembourg**	202.7	85.2	6.5	45.2
Malta	164.3	2.2	2.8	3.0
Netherlands	8,552.1	143.8	161	3.6
Poland	16,799.7	8.4	24.8	0.2
Portugal	5,556.6	21.1	173.7	3.5
Romania	9,763.8	n.a.	n.a.	n.a.
Slovakia	2,656.7	3.0	n.a.	n.a.
Slovenia	1,015.8	n.a.	4.1	n.a.
Spain	21,335.9	300.9	2,321.8	12.3
Sweden	4,677.5	112.3	102.5	4.6
United Kingdom	29,760.7	749.1	1,129	6.3

* EU-27 totals are based on the available country data.
** For Luxembourg, Eurostat provides data for the whole reference year only. Data refer to 2005, since 2006 data are not yet available.
Source: Eurostat, first quarter 2006.

The analyses conducted by the European Foundation for the Improvement Living and Working Conditions indicate a rather disadvantageous situation for immigrants on European labour markets.[231] Unemployment rates vary considerably between Member States (for more details see also **Table III-2** below): In **Austria**, the unemployment rate of immigrants amounted to 10 % in 2004, which was 3.3 percentage points higher than the corresponding value for Austrians.

[230] Table originally published in European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p.10f.
[231] See European Commission (ed.): Employment in Europe 2006, Luxembourg 2006, p. 72ff, European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 17ff.

A similar situation can be found in **Estonia**, where the unemployment rate of natives was 5.5 % and that of non-Estonians 13.1 %.[232] In **Finland,** foreigners face unemployment more often, but the situation varies greatly depending on their country of origin. For instance, in 2004 the unemployment rate was between 55 % and 66 % among people from Iraq, Iran and Somalia, while it was around 45 % among foreigners from Vietnam. At the same time the unemployment rate fluctuated between 10 % and 17 % among citizens of western European countries. The reference value for the total population in Finland was 12 % at that time.

Table III-2: Unemployment rates (percentage)[233]

	Total unemployment rate	Nationals' unemployment rate within total national population	Unemployment rate of non-nationals from EU25 within their total sub-group	Unemployment rate of non-EU25 citizens within their total sub-group
EU-27**	8.9	8.8	10.0	17.6
Austria	5.5	4.6	8.5	15.8
Belgium	8.7	7.9	11.0	29.9
Bulgaria	9.7	9.6	n.a.	n.a.
Cyprus	5.9	5.7	7.5	7.0
Czech Republic	8.0	8.0	6.5	5.2
Denmark	4.5	4.3	n.a.	11.8
Estonia	6.4	5.3	n.a.	11.8
Finland	8.4	8.2	11.6	23.6
France	9.6	9.1	8.7	25.7
Germany	11.3	10.3	14.3	24.5
Greece	9.7	9.8	n.a.	9.0
Hungary	7.7	7.7	n.a.	n.a.
Ireland	4.2	n.a.	n.a.	n.a.
Italy	7.6	n.a.	n.a.	n.a.
Latvia	7.8	7.7	n.a.	n.a.
Lithunia	6.4	6.4	n.a.	n.a.
Luxembourg**	4.5	3.3	5.5	12.0
Malta	7.8	8.0	n.a.	n.a.
Netherlands	4.5	4.3	5.5	14.9
Poland	16.1	16.1	n.a.	n.a.
Portugal	7.7	7.5	n.a.	14.1
Romania	7.8	n.a.	n.a.	n.a.
Slovakia	15.0	15.0	n.a.	n.a.
Slovenia	6.9	6.8	n.a.	n.a.
Spain	9.1	8.6	8.2	12.9
Sweden	7.9	7.6	7.7	21.2
United Kingdom	5.1	4.9	5.8	10.6

* EU27 totals are based on the available country data.
** For Luxembourg, Eurostat provides data for the whole reference year only. Data refer to 2005.
Source: Eurostat, first quarter 2006.

[232] I.e. self-declared non-Estians.
[233] Table originally published in European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 20f.

In **France**, non-nationals also experience unemployment more often than natives: in 2003, their unemployment rate was almost twice as high as that of individuals of French origin. In **Sweden**, non-nationals seem to be more exposed to the risk of losing a job during downward business cycles. However, the situation of immigrants is not completely adverse in all countries and some important **gender differences** should also be noted. In **Germany**, for instance, male migrants are more often unemployed than their national counterparts, while female migrants are unemployed less often, although in both cases the differences are not very pronounced. Conversely, in **Greece** average unemployment rates among male migrants are lower, but they are higher among female immigrants. In **Spain**, foreigners' exposure to unemployment is relatively similar to that of nationals; however, considerable gender differences can be observed: foreign men display an unemployment rate which is 2.2 percentage points higher than that of Spanish natives, while it is 3.5 percentage points lower in the case of foreign women. In **Portugal**, in 2001, only 4 % of migrants were unemployed, compared with 6.8 % of the total population.

These exemplary observations may be summarised as follows: in the vast majority of EU countries foreigners face a higher risk of unemployment, but considerable differences arise among them according to gender, country of origin and duration of stay in the host country. Furthermore, Eurostat data reveal that migrants usually exhibit worse employment prospects than natives. This is particularly true for non-EU-25 citizens, for which almost always higher unemployment rates than nationals are recorded, with the only exceptions of **the Czech Republic and Greece**. Differences between non-EU-25 nationals and natives can be as high as 22 percentage points in **Belgium** and is around 15 percentage points in **France, Finland** and **Germany**. Non-nationals from EU-25 countries experience a similar detrimental situation in the labour market, although the difference compared with nationals is considerably lower than that of non-EU-25 citizens.

Additionally, the unemployment rates of **young migrants** (age-group 15-24 years) document differences between EU countries in terms of labour market opportunities for migrants. According to OECD data young foreign-born individuals tend to experience unemployment more often than natives do in all countries with the exception of **the Czech Republic, Greece, Italy** and **Spain**. Specifically, remarkable unemployment differentials can be found among young people in all **Scandinavian countries** and also in **The Netherlands**.

Migrant women represent another group with rather dull labour market prospects since they experience relatively high unemployment rates in many European countries, particularly in **Finland, France, Greece, Poland**, **Slovakia and Spain**. Hence, especially in southern Europe migrant women share a high risk of unemployment with their native-born peers.

III.4.3 Illegal Immigration and Undeclared Work

Unsurprisingly, illegal immigration is rarely taken into account in the statistics above, since it is extremely difficult to measure.[234] The extent of illegal immigration seems to vary considerably from country to country. The estimates based on national data sources are not easily comparable. Yet it is interesting to note that, in **the United Kingdom**, illegal immigrants account for only 0.7 % of the total population; in the **Czech Republic**, only 2,033 illegal foreigners were recorded in 2005 and, in **Estonia**, only 400 illegal foreigners were discovered in 2005.

[234] Ibidem, p. 8.

In **Finland**, 1,400 people were reported to be living in the country illegally. By contrast, the problem seems to be more sizeable in **Cyprus, France, Germany, Italy, Malta** and **Spain**, and also appears to be prevalent in **Greece, The Netherlands, Poland** and **Romania**.

It is also difficult to take into account the existence of **undeclared work**[235] among migrants, although this is known to be relatively widespread in some EU countries. According to the European Foundation for the Improvement of Living and Working Conditions, the available data and estimates for some Member States display the following picture:[236]

- For **Austria** it is estimated that 109,000 migrant workers were employed full time in undeclared jobs in 2002, particularly in the areas of agriculture, construction, catering, tourism, household services and cleaning.
- In **Belgium**, public authority inspections have discovered a sizeable proportion of immigrants in undeclared work, particularly in the hotels and restaurants and construction sectors.
- In the **Czech Republic**, significant numbers of migrants seem to be illegally employed as unskilled building workers, cleaners, dish washers, packers, sawmill workers, woodcutters or warehouse workers.
- In **France**, a correlation is found between recruitment difficulties in specific sectors, such as construction, hotels and restaurants, retail and agriculture, and the illegal employment of foreigners.
- In **Italy**, within the active migrant population, 55.3 % of men are estimated to work as employees in regular employment and 14.4 % in undeclared employment. The corresponding values for women are 59.7 % and 19.7 % respectively.

Overall one can conclude that in several countries foreigners face exposure to undeclared employment, which is associated with low or even bad working conditions.

III.5 Unskilled and Low-skilled Workers at the Labour Market

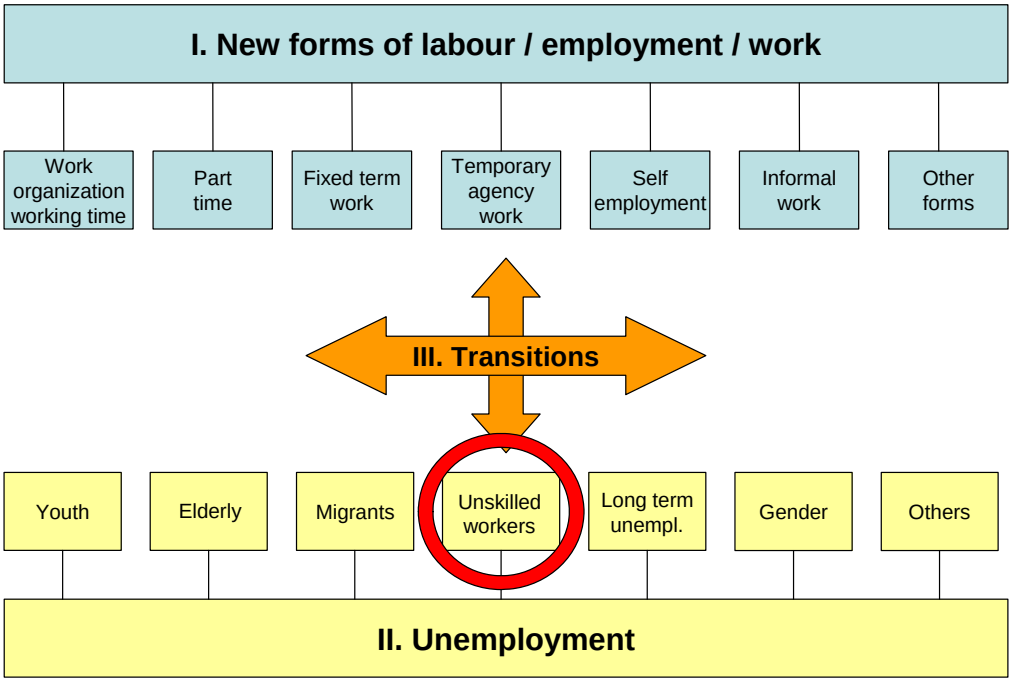
III.5.1 Introduction: Disadvantaged Employment Situation of the Low-skilled

For unskilled or low-skilled workers the risk to become unemployed and to remain in unemployment for a rather long time is significantly higher than for medium- or high-skilled workers. For this reason specific attention is paid to the employment situation of un- and low skilled workers. **Figure III-4** shows the position of this subcategory in the overall approach.

[235] Although there is probably a strong relationship between illegal immigration on the one and undeclared work of migrants on the other hand, it is not necessarily the case, that illegal migrants are working undeclared and that all migrants working undeclared are illegally staying in the Member State.

[236] European Foundation for the Improvement of Living and Working Conditions (ed.): Employment and working conditions of migrant workers, Dublin 2007, p. 16.

Figure III-4: Position of labour market situation of un- and low skilled workers in overall approach



With respect to the structure of employment the variation in employment rates across the Member States is the largest among the low-skilled and remarkably less pronounced among the medium- and high-skilled.[237] Employment rates of the low-skilled vary from 25 percentage points above the EU average in **Portugal** the country with the highest population share of low-skilled. More than 10 percentage points above the average of the EU exhibit **Denmark** and **Sweden**. More than 20 percentage points below the EU average is recorded in the **Czech Republic, Poland** and the **Slovak Republic**. **Belgium** and **Germany** also exhibit employment rates of the low-skilled well below the EU average. Comparatively high employment rates of unskilled workers are observed in the **Baltic Member States, Cyprus, Denmark, Portugal, Spain** and **the United Kingdom**.

In all EU Member States, except **Estonia**, employment growth of the high-skilled was positive over the 1998-2003 period, with growth rates of 5 % and more in **Austria, Italy, Portugal** and **Spain**. Over the same period, employment of the low-skilled declined in most Member States, with the exception of **France**, **Latvia, The Netherlands, Portugal** and **Spain**. The divergent trends in employment growth between skill-groups is particularly pronounced in **Austria** and in a number of **new Member States**, including the **Czech Republic, Poland**, the **Slovak Republic**, and **Slovenia**.

[237] See European Commission (ed.): Employment in Europe 2004, Luxembourg 2004, p. 110ff.

III.5.2 Labour Market Development for Low-skilled Workers since 1995

Despite the declining employment in the 1998-2003 period the labour market for low-skilled workers[238] shows an improving tendency compared with the situation ten years ago. However there are considerable differences between Member States around the average rate of 13.1 % (1995). A differentiated look at person groups exhibits for the old Member States the following picture:[239]

- In 1995, the share of low-skilled young unemployed individuals relative to all unemployed workers under 25 years was 24.1 %. These shares vary from 8.5 % in **Luxembourg** to 55.9 % in **Finland**. While some more Member States display shares of 10 % and less (**Austria, Germany, Denmark**) in several further countries the rates exceeded 30 %, e.g. in **Spain, France, Belgium, Italy** and **Ireland**.
- The corresponding shares for low-skilled unemployed workers aged 50 years and more are relatively low ranging from 5.1 % in **Portugal** to 15.6 % in **Finland** with an average of 9.3 %. Above average rates are recorded in particular in **Germany, Spain** and **Ireland**.
- Finally, the prime age-group 15-59 exhibits shares of low-skilled unemployed from 3.7 % in **Luxembourg** to 24.2 % in **Finland** and 24.6 % in **Spain**. Shares less than 10 % were also recorded from **Austria, Greece** and **Portugal**. In most Member States the respective proportions for women are considerably higher than for men. The lowest proportions for low-skilled women were found in **Luxembourg** (4.7 %), **Austria** (7 %), **Portugal** and **the United Kingdom** (both 8.7 %). The latter country is an exception since the share for low-skilled women is lower than the overall share (11.5 %). On the other end of the distribution are **Spain**, **Ireland** and **Finland**.

In 2000, unemployment situation of low-skilled workers improved in EU-15. On average, the share of low-skilled among the unemployed decreased to 10 %. Across the old Member States the following details can be observed:

- For low-skilled young workers (under 25) shares of 10 % or less can be found in **Denmark** (6.2 %), **The Netherlands** (7.4 %), **Portugal** (8.2 %), **Austria** (8.3 %), **Luxembourg** (9.3 %) and **Germany** (9.6 %). By contrast, very high proportions are recorded in **Finland** (43.4 %), **Italy** (31.7 %) and **France** (31 %). The average for the old Member States is 18.3 % in this age-group.
- Low-skilled older workers (50 plus) experienced considerably lower exposure to unemployment than the low-skilled young. The proportions range from 2.9 % in **The Netherlands** to 16.2 % in **Germany** with an average of 5.7 %.
- For low-skilled prime-age workers the unemployment rates are relatively low in **Luxembourg** (3.7 %), **Portugal** (4.1 %), **The Netherlands** (4.5 %) and **Denmark** (6.4 %). Above average rates can be found in **Finland** (19.6 %), **France** and **Spain** (15.6 % both). In general, low-skilled women in this age group exhibit higher rates than men, varying between 4.1 % (**Luxembourg**) to 24.2 % (**Spain**).

[238] Low skilled correspond to level 0 to 2 of the International Standard Classification of Education (ISCED).
[239] Source: own calculations with data provided by Eurostat. No data available for The Netherlands and partly also for Luxembourg.

In 2005, the labour market situation for low-skilled workers is slightly worse than in 2000. The average share of low-skilled among all unemployed is 11 % compared with 10 % in 2000. However, we again observe a quite large variation between old Member States and age groups:

- Less than 10 % rates for low-skilled youth (under 25) were only reported from **Denmark** (9.2 %). Above the average of 21 % and shares of more than 30 % are found in **Belgium**, **France** and **Sweden**.
- Older low-skilled workers (50+) are relatively less affected by unemployment experiences in **Sweden** (4.2 %), **The Netherlands** (4.4 %) and **Ireland** (4.6 %) with an EU-average of 7.1 %. A very high share is exhibited by **Germany** (18.5 %).
- Low-skilled prime-age workers (15-59) display shares varying between 6.4 % **Luxembourg** and 19.2 % in **Germany**. In most Member States women are more frequently found among the unemployed than men. Female low-skilled unemployment rates range from 7.9 % (**Luxembourg**) to more than 17 % in **Belgium, Germany** and **Sweden**. Only in a few Member States the shares for women are below the overall average, particularly in **Austria, Germany** and **the United Kingdom**.

In general, within the old Member States unemployment of low-skilled workers is a persisting problem, which is especially pronounced in Germany. However, it does not apply to the old Member State. The majority of the new Member States has to deal with high unemployment among low-skilled individuals as well. In more detail we observe the following:[240]

- For low-skilled young workers (under 25) unemployment shares vary between 12.7 % in **Malta** and 77.2 % in **Slovakia** with an average of 33.4 %. Very high shares can also be found in **Bulgaria** (44.7 %), **Czech Republic** (44.2 %) and **Estonia** (41.4 %).
- Old low-skilled workers (50+) are less strongly affected by unemployment. The shares[241] range from 2 % (**Romania**) and 5 % (**Cyprus**) on the one to 31.8 % (**Slovakia**) on the other hand (average share: 13.5 %).
- In the prime-age group (15-59) the proportion of low-skilled unemployed among all unemployed varies between 6.9 % (**Cyprus**) to 40.7 % (**Slovakia**). By contrast to the old Member States the majority of the New Member States exhibit lower proportions for low-skilled women than men, especially in **Czech Republic, Estonia, Hungary, Lithuania, Latvia, Romania, Slovenia** and **Slovakia**.

Compared with the year 2000 the labour market situation slightly improved five years later in the new Member States. The share of low-skilled workers among the unemployed decreased to 19.3 %. However, there is substantial variation between the new Member States:[242]

- For low-skilled young the situation is substantially worse with shares ranging from 13.6 % (**Cyprus**) to 76.8 % (**Slovakia**) and an average of 33.4 %. Again, very high shares are recorded in **Poland** (41.2 %) and **Bulgaria** (39.8 %).
- Low-skilled elderly (50 plus) are relatively better off now. Their unemployment shares take on values between 5.2 % (**Slovenia**) and 34.6 % (**Slovakia**) with an average rate of 13.5 %.

[240] For 2000 this group includes the (former) candidate countries.
[241] No data available for Malta.
[242] No data available for Estonia and partly also not for Lithuania.

- In the prime-age group (15-59) the share of low-skilled unemployed ranges from 6.5 % (**Cyprus**) to 53.8% (**Slovakia**). Above average shares are recorded in **Poland** (30.2 %) and the **Czech Republic** (27.5 %). By contrast to the year 2000, the number of new Member States with below average proportions for women decreased, so that five years later only three of them reported lower rates for women than for men. These countries are the **Czech Republic, Hungary** and **Romania**.

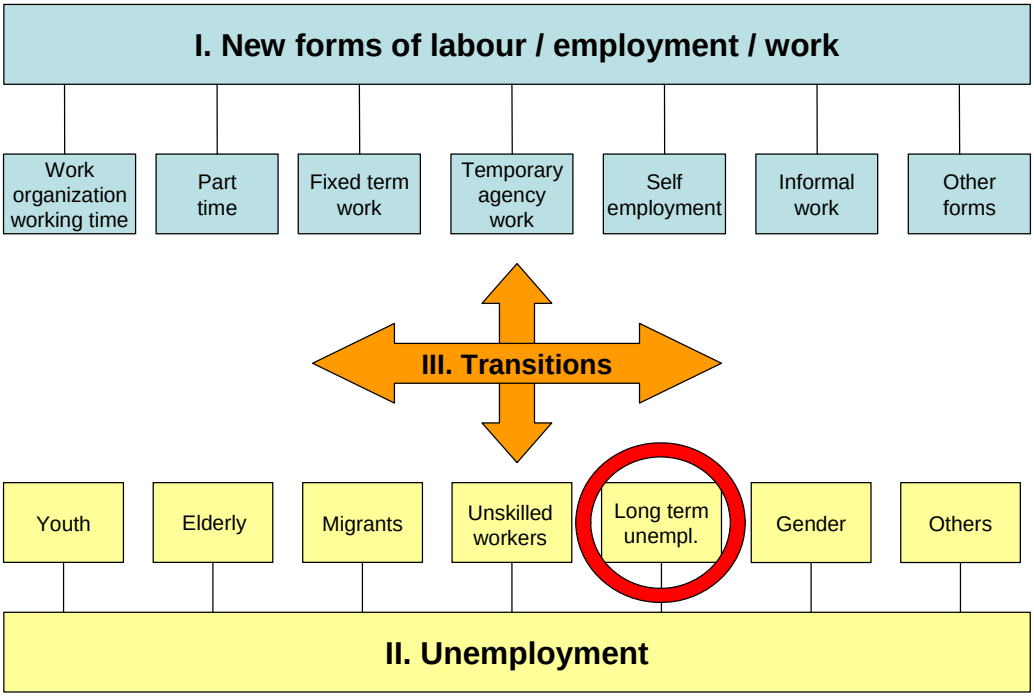
Hence, for the new Member States unemployment of low-skilled workers is vital problem as well. This observation holds in particular for **Slovakia** which displays rates up to 75 % and more for some person groups, e.g. the young. The situation of low-skilled is similarly problematic in **Poland** and **Bulgaria**, though to a quantitatively lower degree.

III.6 Long-term Unemployment

III.6.1 Introduction: Long-term Unemployment as a Persistent Problem in the EU

Long-term unemployment is of particular concern for the EES since long-term unemployment is associated with to a number of problems like social exclusion, poverty and low productivity growth (or poverty traps). Typically, individuals with rather long unemployment experiences exhibit multiple handicaps for re-integration into employment. **Figure III-5** displays the position of this subcategory of unemployed persons in the overall approach.

Figure III-5: Position of long-term unemployment in overall approach



The decline in the overall unemployment rate which is described above is associated with a fall in the long-term unemployment rate. After a peak of 4.2 % in 2004 and 4 % in 2005, it came down to 3.6 % in 2006, the lowest rate in the period 2000 to 2006.[243]

[243]European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 29 and BUSINESSEUROPE et al.: Key challenges facing European Labour Markets: A joint analysis of European Social Partners, Brussels 2007, p. 11.

Among the Member States, some have been particularly successful in reducing long-term unemployment by more than 2 percentage points until 2005, notably **Spain, Ireland, Italy, Lithuania, Hungary**, and **Finland**.[244] In some Member States, notably **Slovakia** and **Poland**, the long-term unemployment rate is above 10 % and has increased since 1999. Corresponding numbers are also above the EU-25 average in **Germany, Estonia, Greece, Latvia** and **Lithuania**. Despite a considerable reduction, **Poland** and **Slovakia** still display the highest long-term unemployment rates in the Union (7.8 % and 10.2 %, respectively).[245] At close to 5 % it also remains high in **Germany, Greece and Bulgaria**.

Similar to overall unemployment rates, women are relatively more affected by long-term unemployment than men in the majority of Member States, with the largest **gender differences** being found in the **Czech Republic**, **Italy**, **Poland, Slovakia, Spain** and, above all, **Greece**.

With respect to long-term unemployment, **young individuals** are, on average, less affected than prime-age adults, due to their higher hiring and job separation rates. Although still high, overall long-term unemployment of young people also has, on average, decreased since 2000. In 2006, 30 % of unemployed youth were long-term unemployed, down from almost 34 % in 2000. By comparison, the share of long-term unemployed among unemployed adults aged 30-54 was at almost 52 % (2006) and has increased since the beginning of the decade.[246]

Older workers experience considerable difficulties if they lose their job, which is manifested in their relatively high long-term unemployment experiences. However, with the exception of Germany, unemployment rates are lower for older workers (aged 55-64) than for younger age groups. This partly reflects the higher probability of older workers to leave the labour market when losing their job.

III.6.2 Development of Long-term Unemployment During the Last Ten Years

In the last ten years, the overall long-term unemployment rates exhibit a decreasing trend. In 1995, the long-term unemployment rate expressed in percentage of labour force was 4.9 % in EU-15 (see **Table III-3**). Until 2005, this rate declined almost steadily to 3.3 %.

[244] European Commission (ed.): Employment in Europe 2005, Luxembourg 2005, p. 124f.
[245] European Commission (ed.): Employment in Europe 2007, Luxembourg 2007, p. 29.
[246] Ibidem, p. 31.

Table III-3: Long-term unemployment rates in EU-15 since 1995 (% of labour force)

Country	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
AT	1.0	1.2	1.3	1.3	1.2	1.0	0.9	0.9	1.1	1.3	1.3
BE	5.8	5.6	5.4	5.5	4.9	3.7	3.2	3.5	3.7	4.1	4.4
DK	2.0	1.8	1.5	1.3	1.0	1.0	0.8	0.9	1.1	1.2	1.1
FI	-	-	4.9	4.1	3.0	2.8	2.5	2.3	2.3	2.1	2.2
FR	4.5	4.6	4.8	4.6	4.2	3.6	3.0	3.0	3.4	3.9	4.0
DE	3.9	4.2	4.9	4.7	4.3	3.9	3.8	4.1	4.6	5.4	5.0
EL	4.7	5.2	5.3	5.8	6.4	6.0	5.4	5.1	5.1	5.6	5.1
IE	8.0	7.4	6.0	3.9	2.6	1.6	1.2	1.3	1.5	1.6	1.5
IT	7.3	7.5	7.5	7.0	6.8	6.4	5.8	5.3	4.9	4.0	3.9
LU	0.7	0.8	0.9	0.9	0.7	0.6	0.6	0.7	0.8	1.1	1.2
NL	3.1	3.0	2.3	1.5	1.2	0.8	0.7	0.7	1.0	1.6	1.9
PT	3.3	3.4	3.3	2.2	1.8	1.7	1.5	1.8	2.2	3.0	3.7
ES	10.5	9.7	8.9	7.6	5.9	4.7	3.9	3.9	3.9	3.4	2.2
SE	2.3	2.8	3.1	2.6	1.9	1.4	1.0	1.0	1.0	1.2	1.2
United Kingdom	3.6	3.1	2.5	1.9	1.7	1.5	1.3	1.1	1.1	1.0	1.0
EU-15	4.9	4.9	4.9	4.4	4.0	3.5	3.1	3.1	3.3	3.4	3.3

Source: Eurostat, Labour Force Survey.

However, we again observe different developments across the old Member States in this period. In some Member States, the long-term unemployment rate increased since 1995, e.g. in **Germany** and to a lesser extent also in **Austria, Luxembourg** and **Portugal**. Remarkable decreases are recorded in **Spain** (- 8.3 percentage points), **Ireland** (- 6.5 percentage points) and **Italy** (- 3.4 percentage points).

In the majority of the new Member States[247] the long-term unemployment rates are explicitly higher than in the old Member States. In 2005, **Slovakia** (11.7 %) and **Poland** (10.2 %) display the highest rates, **Cyprus** (1.2 %) the lowest one (for details see **Table III-4**).

[247] Including (former) candidate countries.

Table III-4: Long-term unemployment rates in NMS since 2000 (% of labour force)

Country	2000	2001	2002	2003	2004	2005
BG	9,3	11,9	11,7	8,9	7,2	6,0
CY	1,3	0,9	0,8	1,1	1,2	1,2
CZ	4,2	4,1	3,7	3,8	4,2	4,2
EE	-	-	-	-	5,0	4,2
HU	3,0	2,5	2,4	2,4	2,7	3,2
LV	7,9	7,2	5,7	4,3	4,6	4,1
LT	7,6	9,1	7,3	6,1	5,8	4,3
MT	4,6	3,2	3,2	-	3,4	3,4
PL	7,6	9,3	10,8	10,7	10,3	10,2
RO	3,5	3,3	4,0	4,1	4,5	4,4
SK	10,1	11,4	12,2	11,1	11,8	11,7
SI	4,1	3,5	3,4	3,4	3,2	3,1

Source: Eurostat, Labour Force Survey.

Despite the relatively small rates of long-term unemployment in relation to the overall labour force, the problem of long-term unemployment appears to be persistent. With respect to the share of long-term unemployment among all unemployed, 4 of 10 unemployed persons are currently 12 months or longer without a job (EU-27). In the **old Member States** (EU-15) this share decreased remarkably since 1995. Ten years ago, the share of long-term unemployed amounted to on average 46.6 %, decreased to 42.2 % in 2000 and further on to 35 % in 2005.[248] However, the temporal development varies considerably across Member States:

- In 1995,[249] the respective shares ranged from 27 % in **Austria** to 62 % in **Belgium**.
- In 2000[250] from 28.2 % in **Austria** to 60.6 % in **Italy**. **Belgium** displayed a decrease down to 56 % which is still considerably above average.
- In 2005, the share of long-term unemployment is the lowest in **Sweden** (7.9 %), followed by **Denmark, Spain, Austria** and **Finland** which all display rates of approx. 25 %. The highest shares are reported from **Greece** (52.1 %), **Germany** (51.9 %) and **Belgium** (51.3 %).

While in 1995, the share of long-term unemployed women amounted to 45.4 %, which was slightly below the average, the corresponding numbers exceeded the overall average in the following periods: slightly in 2000 with 42.8 % and considerably in 2005 with 40.3 %. In 2005 the share of long-term unemployed women is more than 5 percentage points higher than the average share.

In the **new Member States** the share of long-term unemployed amounted to 51.9 % in 2000 and remained stable in 2005 with 51.8 %. Compared with 2000, the development in the new Member States can be summarized as follows:

- In 2000,[251] the lowest shares are displayed by **Poland** (44.4 %), **Estonia** and **Hungary** (44.9 % for both), the highest by **Slovenia** (62.8 %) and **Bulgaria** (58.3 %).

[248] Source: own calculations with Eurostat data.
[249] No data for 1995 available for Denmark, Sweden and Luxembourg.
[250] No data for 2000 available for Denmark, Sweden, The Netherlands and Luxembourg

- In 2005,[252] **Slovakia** exhibits the highest share of long-term unemployed (71.9 %). Above average rates are also recorded in **Bulgaria, Romania** and **Poland**.

III.7 The Role of Active Labour Market Policies

The effectiveness of active labour market policies is broadly discussed and to some extent rather controversial issue.[253] Several overviews on results of evaluations and meta-evaluations have been recently published. Before depicting the most important findings of these studies, it is necessary to define the object of this chapter. Labour market policies are essentially public interventions in the labour market that are targeted towards particular groups.[254] The objective of evaluations of active labour market policies is to identify the effects of participation in the programme on participants. This includes the identification of the difference between the outcome from programme participation on the one, and the outcome that participants would have achieved had they not participated in the programme on the other hand. This is the counterfactual question which is decisive for measuring net-effects of public interventions.

A comprehensive meta-analysis was carried out by Kluve et al. assessing effectiveness of European labour market policies.[255] The study aims at answering the question "what program works for what target group under what (economic and institutional) circumstances?" The basic idea of the meta-analysis is to build a dataset in which each observation represents the qualitative outcome of each programme evaluation. For each observation in this dataset, the outcome of interest is an indicator of whether programme evaluation found a positive, zero or negative effect. The goal of the meta-analysis is to relate this qualitative information to the quantitative information concerning program implementation, including the institutional framework, the economic environment and the methodology used in programme evaluation. The data set comprises 137 program evaluation studies from 19 countries.

The empirical results of the meta-analysis of Kluve et al. are surprisingly clear-cut:[256] Rather than contextual factors such as labour market institutions or the business cycle, it is almost exclusively the program type that matters for program effectiveness. While direct employment programs in the public sector appear to have a detrimental impact on employment chances, wage subsidies and “Services and Sanctions“ can be effective in increasing participants’ employment probability. Training programs – the most commonly implemented type of active policy – show modestly positive effects.

A further meta-evaluation was carried out by de Koning and Peers. This study aims at answering the question:[257] “How big is the net effect of reintegration measures?” The results of this analysis suggest that on average the net impact of reintegration measure is fairly small, i.e. job entry chances are probably not increased by more than 3 percentage points on average. The case is most convincing for training and counselling with average net effects ranging from 5.7 to 9.7 percentage points. The positive results for training are surprising.

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[251] No data available for Cyprus, Malta and Slovakia.
[252] No data available for Estonia, Latvia and Malta.
[253] E.g. European Commission (ed.): Employment in Europe 2006, Luxembourg 2006, p. 119 – 172.
[254] In this respect, labour market policies differ from general employment policies, which are not targeted at any particular group. Therefore certain policies, such as lowering labour costs, are not considered as labour market policy.
[255] Kluve, J. et al.: Study on the effectiveness of ALMPs, RWI Essen, Research project for the European Commission, DG Employment, Social Affairs and Equal Opportunities, Essen 2005, findings presented in European Commission (ed.): Employment in Europe 2006, Luxembourg 2006, p. 141f.
[256] Kluve, J.: The Effectiveness of European Active Labour Market Policy. IZA-discussion paper, Bonn 2007.
[257] Koning, J.; Peers, Y.: Evaluating Active Labour Market Policies Evaluations. Discussion Paper of Social Science Research Center Berlin SP I 2007-112, Berlin 2007.

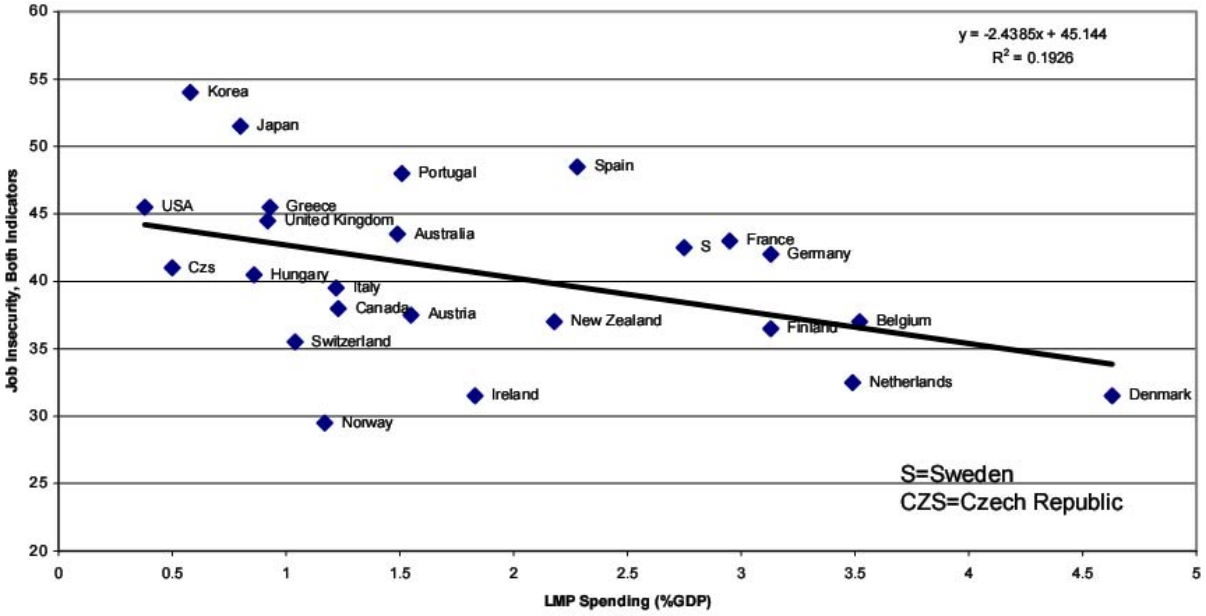
However, the sample of studies taken into account hardly contains experimental evaluations of training, which are usually seen as the most reliable evaluation exercises. Overall the authors find that the net effect estimate tends to be smaller if an experiment is used for the evaluation. Hence, the results for training may be biased upwards. Wage subsidies and job creation are found to perform rather poorly. De Koning and Peers also find that the net impact of active labour market policies depends on the socio-economic situation: it tends to be lower when unemployment is low than during a recession period.

The results of the two meta-evaluations show several quite unambiguous results. Firstly, training measures seem to exhibit a rather modest effectiveness, if any. Secondly, direct job provision schemes seem to reduce net-integration rates of participants. Thirdly, services (e.g. counselling) and sanctions seem to unfold a positive effect on the probability to find work. However, both analyses do not take into account further objectives of active labour market policies, e.g. the improvement of personnel stability or of employability. Furthermore, the influence of labour market policies on (subjectively perceived) job stability was also not subject of these meta-analyses. Therefore, the relation between labour market policies on the one and perceived job security on the other hand is investigated by looking at a study published by ILO,[258] which suggests a positive relationship between these two variables and concludes that labour market policies exhibit a security enhancing role.

Figure III-6 below displays the relationship between the two variables. In European countries with high expenditures on labour market policies, workers report a relatively high degree of job security. This is particularly true for **Denmark** and **The Netherlands**. On the other hand, workers perceive a relatively high degree of job insecurity in Member States with relative low expenditures for labour market policies such as **Greece, Portugal** and **the United Kingdom** representing the old Member States and **Czech Republic** and **Hungary** from the new Member States.

[258] Auer, P.: In search of optimal labour market institutions. Economic and Labour Market Paper 2007/3, Geneva: ILO, 2007.

Figure III-6: Job insecurity and labour market policies, 2000[259]



Note: Job insecurity is the average percentage among two indicators: 1) workers worried about the future of their company and 2) those unsure of a job with their company even if they perform well. Source: Data on job insecurity from International Survey research, cited in OECD, 2001; Data for LMP spending from OECD, 2004. (Data for Ireland from 2001).

The author of the study concludes,[260] that *"There seem then to be strong arguments in favour of "protected flexibility" or flexicurity arrangements for labour market transitions that combine a fair degree of stable employment (and EPL[261]) with flexible jobs that are embedded in a system of social protection. Flexibility, stability and security can be imagined dynamically as distributed over the life cycle of individuals with flexible jobs at younger ages and stable jobs once family formation starts and intermittent times of protected transitions (e.g. parental leave, training periods …) and job changes. But flexicurity and "transitional labour markets" for being effective need also zones of stable employment, both in the public and the private sector. Indeed, transitions can be considered as bridges to employment and not as traps for exclusion."*

… and furthermore the author suggests:[262] *"the observation, that employment stability – up to a point – is effective for productivity suggests that a fair level of employment stability (external numerical stability) of the workforce is positive for firms, and should thus also be an employer's goal, as it is required for productivity, human capital investment and worker motivation. Such a level of employment stability is ideally combined with internal forms of adjustments" Accordingly, the study proposes that governments should provide for an efficient labour market security system based on labour market policies that supports also internal adjustments.*

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[259] Source of figure: Auer, P.: In search of optimal labour market institutions. Economic and Labour Market Paper 2007/3, Geneva: ILO, 2007, p. 16.
[260] Ibidem, p. 16.
[261] EPL = Employment Protection Legislation.
[262] Auer, P.: In search of optimal labour market institutions. Economic and Labour Market Paper 2007/3, Geneva: ILO, 2007, p. 18. The author underlines also the need for high employment rates and for a work-based and not welfare-based labour market policy, ibidem, p. 17.

… and finally:[263] *"Tripartite bargaining on optimal combinations of flexibility, stability and security in the labour markets and a common acceptance that all three elements are needed for a productive economy and a well-functioning labour market yielding decent work is an essential part of optimal labour market institutions that will be country specific with some common elements."*

The last section (chapter IV) contains the conclusions of labour market analysis for the overall study. Conclusions are drawn up in the light of the cited results of the ILO-study.

III.8 Composite Indicator of ISG for the Tier of Employment

III.8.1 Preliminary Step: Reducing the Number of Indicators by Factor Analysis

The following paragraphs summarize the results of the *factor analysis* for indicators of the unemployment situation in the Member State. In our empirical application, we started by considering the following set of variables:

- Unemployment rate for the prime age-group (i.e. 15-59)
- Unemployment rate of females for the prime age-group (i.e. 15-59)
- Unemployment rate of workers under 25 years (i.e. 15-24)
- Unemployment rate of female workers under 25 years (i.e. 15-24)
- Unemployment rate of workers over 50 years (i.e. 50-59)
- Unemployment rate of female workers over 50 years (i.e. 50-59)
- Share of unemployed with low qualification (ISCED 0-2) in the prime age-group (i.e. 15-59)
- Share of female unemployed with low qualification (ISCED 0-2) in the prime age-group (i.e. 15-59)
- Share of unemployed with low qualification (ISCED 0-2) under 25 years (i.e. 15-24)
- Share of unemployed with low qualification (ISCED 0-2) over 50 years (i.e. 50-59)
- Share long-term unemployed for the prime age-group (i.e. 15-59)
- Share long-term unemployed females for the prime age-group (i.e. 15-59)
- Share long-term unemployed under 25 years (i.e. 15-24)
- Share long-term unemployed over 50 years (i.e. 50-59)

Again data restrictions and high correlations between some of these variables imply that a reduction to a smaller set is necessary. This is done by factor analysis which results in a subset of variables carrying the majority of information contained in all the above variables.

The results of the final estimation step are summarized in **Table III-5**. According to the Kaiser-Guttman-Criterion (*Eigenvalue* > 1.0) we retained three factors which in the case at hand explain more than 90% of the overall variance observable in the data. For these three factors we estimated the factor loadings for each and every variable.

[263] Ibidem, p. 18.

Table III-5: Results of factor analysis for EU-Countries – unemployment indicators

Factor	Eigenvalue	Difference	Proportion	Cumulative
Factor1	6.56	4.80	0.63	0.63
Factor2	1.77	0.73	0.17	0.81
Factor3	1.04	0.20	0.10	0.91
Factor4	0.84	0.71	0.08	0.99
Factor5	0.13	0.05	0.01	1.00

The results of this estimation procedure are reported in **Table III-6**. The estimated *Uniqueness* values again suggest that all original variables are represented very well by the three factors since the uniqueness values are all considerably lower than 0.6 which is commonly deemed as the lower bound for acceptable uniqueness values.

Table III-6: Estimated factor loadings for EU-Countries – unemployment indicators

Variable	Factor1	Factor2	Factor3	Uniqueness
Unemployment rate 15-59	0.943	-0.233	-0.053	0.055
Unemployment rate females 15-59	0.845	-0.416	0.011	0.113
Unemployment rate U25	0.803	-0.556	0.064	0.042
Unemployment rate females U25	0.718	-0.672	0.104	0.022
Unemployment rate 50+	0.837	0.345	-0.277	0.104
Unemployment rate females 50+	0.824	0.265	-0.260	0.183
Share long-term unemployed 15-59	0.463	0.187	0.736	0.210
Share long-term unemployed 50+	0.472	0.406	0.553	0.306
Share unemployed with low qual. 15-59	0.854	0.320	-0.084	0.161
Share unemployed with low qual. U25	0.772	0.008	-0.076	0.398
Share unemployed with low qual. 50+	0.812	0.536	-0.136	0.034

Furthermore, the results from **Table III-6** indicate that the first factor loads strongly on the six unemployment rate variables and also on the share of unemployed with low qualification. The share of unemployed with low qualifications aged 50 years and older exhibits also a relatively large loading on the second extracted factor. The same holds for share of low-skilled unemployed in the prime age-group, although with to a quantitatively lesser extent. Both long-term unemployment indicators turn out to dominate the third factor.

Again, we observe very strong correlation for many of these single indicators. For instance, the correlation coefficient between (i) the unemployment rate of workers in the prime age-group and that of females in this age-group is 0.93. The correlation coefficient between (i) and the unemployment rate of the young (15-24) is 0.88; that of (i) and the unemployment rate of elderly (50+) is 0.78. Similarly high correlations can be found for the other two groups of indicators (i.e. long-term and low-skilled unemployment). Thus, based on the factor loadings above and the correlation coefficients between the variables we decided to utilize the following four variables for the composite indicator of unemployment:

- Unemployment rate 15-59
- Unemployment rate 50+
- Share long-term unemployed 15-59
- Share unemployed with low qual. 15-59

These four variables will be summarized to one composite index of flexible employment forms using a radar chart approach. This is explained in detail in the next paragraphs.

III.8.2 Index Construction by Radar Chart Analysis

In a next step, we repeated the standardization exercise, in which again the highest observable values in each year serves as the upper bound, i.e. receives the value of 1, and the lowest observable values in sample forms the lower bound, i.e. zero. These standardized indicators are then used to calculate the SMOP-values, which are the values of the composite indicator for unemployment. It is important to note that the chosen standardization procedure implies, that **high** values of the composite indicator reflect **large** values of the underlying unemployment variables. In other words, higher values of the composite indicator have to be interpreted as higher unemployment problems. A first ordering the calculated SMOP-values in each year again yields a ranking of the countries with respect to the unemployment indicator. This ranking is summarized in **Table III-7**.

The ranking indicates that there is a substantial amount of variation across countries over time. For instance, the United Kingdom moves from a middle ranking of unemployment problems in 1995 and 1996 towards a relatively low position compared to the other European countries at the end of the observation period which means that the relative unemployment problems in the United Kingdom declined during these years. A similar development can be observed for Spain where the composite indicator suggests severe unemployment problems in the 1990s which reduced considerably over time. By contrast, the SMOP-values for Austria and The Netherlands indicate comparatively low unemployment problems over the complete observation period. Again, it should be emphasized that the differences in the value of the unemployment indicator between the single rank positions can be very small. Hence, differences of one or two positions should not be overvalued.

Table III-7: Ranking of countries with respect to the unemployment indicator

Country	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
BE	6	6	7	4	8	14	14	15	15	13	7	6
BG	.	.	.	.	.	1	1	2	3	3	4	4
CZ	.	.	.	12	11	9	7	7	7	8	6	5
DK	11	13	17	17	19	.	20	.	.	.	19	.
DE	4	4	3	3	4	7	6	6	6	5	3	3
EE	.	.	.	6	3	4	.	.	.	6	.	.
IE	3	3	4	.	14	17	.	18	18	20	22	20
GR	9	9	10	9	9	11	9	9	9	9	8	9
ES	1	1	1	2	2	6	11	11	8	12	14	14
FR	5	5	5	5	6	12	12	14	14	11	10	7
IT	7	7	8	3	7	10	8	8	10	16	16	15
CY	.	.	.	.	.	.	.	.	.	.	21	.
LV	.	.	.	1	1	3	5	5	5	7	.	.
LT	.	.	.	.	.	2	3	4	4	4	5	.
HU	.	.	9	10	13	15	16	16	16	18	12	10
NL	.	11	14	15	20	.	.	20	21	21	18	17
AT	12	14	16	13	17	18	18	.	19	19	20	18
PL	.	.	6	8	5	5	4	3	2	2	2	2
PT	10	10	11	14	18	20	17	17	17	17	9	8
RO	.	.	15	16	15	16	15	10	12	10	13	11
SI	.	12	13	11	12	8	10	13	11	15	15	13
SK	.	.	.	.	.	.	2	1	1	1	1	1
FI	2	2	2	7	10	13	13	12	13	14	11	12
SE	.	.	.	.	.	.	.	.	.	.	17	16
United Kingdom	8	8	12	13	16	19	19	19	20	22	23	19

Finally, we investigate the SMOP-values for unemployment in more detail using a regression model. Similarly to the flexibility indicator, we investigate whether and to which extent differences in unemployment problems exist across the country groups used in this study (for a definition of country groups see section 2.2). Furthermore, we consider a time trend to examine if we can pin down a robust temporal variation in SMOP-values and investigate whether and to which extent observable unemployment problems are associated with past changes in overall economic activity. The latter is again modeled by the one year lag of GDP per capita growth. The results of our estimations are summarized in **Table III-8**.

The reference group for the comparison of countries is again the continental group. Thus, the estimation results of model 2 indicate that the Anglo-Saxon countries experienced significantly lower unemployment problems than continental Europe, whereas the opposite holds for the Central and Eastern European countries. The difference between continental Europe and the Nordic countries group is only weakly significant which suggest that unemployment is a slightly less severe problem in Scandinavia and The Netherlands than in continental Europe. No significant differences are exhibited by the comparison of southern European with continental countries.

Table III-8: Results of regression model for SMOP-values as dependent variable

Variable	Coefficient	t-value	Coefficient	t-value
	MODEL 1		MODEL 2	
Nordic countries	-0.1334	-1.39	-0.1816	-1.80
Central and Eastern European countries	0.3423	4.49	0.3412	3.89
Southern countries	0.0447	0.53	-0.0037	-0.04
Anglo-Saxon countries	-0.1403	-1.31	-0.2345	-2.01
Time trend	-0.0223	-2.69	-0.0225	-2.26
Lagged growth rate of GDP p.c. (in %)	-	-	0.0070	0.57
Constant	0.4668	5.76	0.4764	4.65
Number of observations	226		196	

The estimated coefficients for the time trend in both models suggest a statistically significant declining trend in unemployment problems over time. By contrast, estimates for GDP growth are statistically insignificant in both models indicating that there is now significant association of unemployment problems with overall economic activity. The latter result does not change qualitatively when the model is re-estimated without the time trend. Hence, putting to much faith into economic growth as a prime solution of unemployment problems in Europe seems to be misleading. Instead, the differences between the country groups suggest that labour market institutions play a decisive role in combating persistently high unemployment.

IV - COMBINATION OF COMPOSITE INDICATOR AND CONCLUSIONS OF STUDY

IV.1 The Relationship between Flexible Employment and Unemployment across the EU

In a final step, we analyze the correlation between both composite indicators, i.e. the SMOP-values for flexible employment on the one hand and unemployment on the other hand. Clearly, it is anything but obvious which tier of the labour market impinges upon the other, i.e. we can by no means claim a causal relationship between both indicators. It is easily conceivable that the unemployment situation may have an impact on the extent and structure of flexible employment, but is as easily imaginable that flexible employment might affect unemployment. Hence, the following correlations must not be interpreted as causal effects whatsoever.

Overall, the correlation coefficient between the composite index for flexible employment and the unemployment index is 0.24. That is, higher unemployment problems are associated with higher flexibility and vice versa. This correlation is, however, only significant for the EU-15 countries. In the new Member States we do not observe a statistically significant correlation between both composite indicators. Furthermore, the positive association within the EU-15 is completely driven by the Nordic countries group and within this group to the largest extent by Finland. Neither the continental nor the southern European and also not the Anglo-Saxon countries exhibit statistically significant correlations between flexible employment and unemployment.

Hence, we cannot pin down a robust relationship between both tiers of the labour market for the vast majority of countries within the EU. In other words, the use of flexible employment forms and unemployment exhibit no strong systematic relationships. This suggests that the assessment of the determinants and consequences of flexible employment is an intricate issue for which a complex interaction of labour market institutions on the one hand and individual preferences of employees as well as employers on the other hand have to be taken into account. In this endeavour, the use of aggregate statistics across countries seems to blur the picture more than brightening it. Instead, an in-depth analysis of individual data covering spells of flexible employment and the transitions between and out of such forms of work seems to be a much more promising way to shed light on the determinants and consequences of atypical work.

IV.2 Main Results and Conclusions

Flexible work arrangements are an increasing phenomenon all over Europe. This general result seems to be a commonplace. However, our analyses demonstrate that this is the central common conclusion for the labour market developments across Europe in the last ten years. Within this common result, we do not observe strong similarities or universally valid patterns for the different elements or components of employment and unemployment across Europe. In other words, the different European countries are remarkably heterogeneous with respect to the incidence and temporal development of different forms of atypical work. The same conclusion holds for all aspects of unemployment considered in our investigations. Even groups of countries with similar historical roots in terms of labour market regulations do not display a robust overall picture. By contrast, the overall picture appears to be rather fragmented, which might be illustrated by some exemplary findings:

- The **Scandinavian countries** in general exhibit a relatively high incidence of flexible employment arrangements. However, the extent of flexibility varies considerably between these countries. For instance, the prevalence of part-time work is clearly above the European average in Sweden and Denmark but not in Finland. Furthermore, unemployment is relatively low in the Scandinavian countries, in particular in Denmark. However, Denmark also exhibits comparatively high unemployment rates for unskilled workers.
- **The Netherlands** are exceptional with respect to their high degree of flexible work arrangements in almost all categories such as work organization and working time, part-time work and temporary agency work. However, regarding (voluntary and involuntary) fixed-term work, The Netherlands are not in the top group of countries. The high extent of flexibility is associated with low unemployment. The Netherlands exhibit one of the lowest overall unemployment rates and also below-average rates for the young and the elderly.
- In the **western continental countries** the picture is extremely heterogeneous. Similar developments in several categories are relatively seldom and common patterns cannot be observed, neither for flexible employment characteristics nor for unemployment.
- For the **Anglo-Saxonian countries** it is worth noting, that they display low rates of fixed-term workers and also relatively low incidence of almost all other flexible work arrangements. However, we observe a high degree of temporary agency work in the United Kingdom. This is associated with by far the lowest unemployment rate among the large Member States and one of the lowest in the overall ranking. Furthermore, Ireland and the United Kingdom are exceptional with respect to unemployment rates for women, which are lower than those for men.
- Among the **southern European countries** the prevalence of flexible characteristics is very high in Spain. For instance, the proportion of fixed-term contracts is larger than elsewhere in the EU and an above average share of workers holds fixed-term contracts involuntarily. In contrast to western and northern European states the shares of part-time workers in southern Europe are, however, clearly lower than in the other old Member States. Also in contrast to the other old Member States, southern European countries exhibit higher proportions of self-employment in particular in Greece and Portugal. Finally, the relatively low flexibility of working time arrangements is a further difference compared to the other countries in the EU-15. Unemployment is a serious and persistent problem in some southern European countries. With respect to youth unemployment, Spain and Italy, for instance, display unemployment rates clearly above EU-average. On the other hand, there are some Mediterranean countries with low unemployment rates of the elderly such as Cyprus and Portugal.
- The new Member States in **Central and Eastern Europe** are still in the process of transition. This is also reflected in the labour market, which in general exhibit considerably higher problems than that of the old Member States. For instance, we observe extremely high shares of low-skilled unemployed in Slovakia. Furthermore, across the new Member States we find larger variations in unemployment rates such as shares of unskilled workers without a job, shares of long-term unemployment etc. Moreover, the majority of flexible work arrangements such as flexible working time, part-time work and temporary agency work is considerably below the average of EU-15.

Another more general finding across the European countries is the increasing phenomenon of **multiple characteristics**. This holds for atypical employment combinations, e.g. fixed-term contracts combined with part-time work as well as for unemployment, for which we e.g. observe long-term unemployment together with low qualifications. These multiple attributes seem to be one of the largest challenges for policy.

Whether and to which extent **active labour market policies** might help the unemployed is a controversial issue. The results of two meta-evaluations[264] display several quite unambiguous results. Firstly, training measures seem to exhibit a rather modest effectiveness, if any. Secondly, direct job provision schemes seem to reduce net-integration rates of participants, i.e. exhibit a detrimental impact of the job prospects of participants. Thirdly, services (e.g. counselling) and sanctions seem to unfold a positive effect on the probability to find work. However, both analyses do not take into account further objectives of active labour market policies, e.g. the improvement of personnel stability or of employability.

From a theoretical perspective, high employment rates in combination with only short spells of unemployment – if unemployment cannot be avoided – are decisive if flexibility and security can be combined in a favourable way for employees and employers: "To sustain a flexibility cum security system, however, high employment rates are required and security should be work- and not welfare based for those able to work. Therefore, the goal of increasing the employment rates of the population as stated by the European Union is indeed of utmost importance."[265]

[264] Kluve, J. et al.: Study on the effectiveness of ALMPs, RWI Essen, Research project for the European Commission, DG Employment, Social Affairs and Equal Opportunities, Essen 2005, findings presented in European Commission (ed.): Employment in Europe 2006, Luxembourg 2006, p. 141f and Koning, J.; Peers, Y.: Evaluating Active Labour Market Policies Evaluations. Discussion Paper of Social Science Research Center Berlin SP I 2007-112, Berlin 2007.

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ANNEX

Table A-1: Part-time for men and women aged 55 - 64 and 30 – 49 in 2000 and 2005 (in % of total employment in each age group)[266]

	2005						2000					
	30-49			55-64			30-49			55-64		
	All	Women	Men	All	Women	Men	All	Women	Men	All	Women	Men
EU-25	16.8	32.6	4.0	22.2	39.5	10.3	15.0	30.1	3.4	21.1	40.3	9.4
EU-15	18.8	37.2	4.1	23.3	42.0	10.4	16.8	34.7	3.4	21.3	41.8	8.8
NMS-10	5.1	7.7	2.9	14.0	21.2	9.3	5.2	7.3	3.3	19.6	28.9	13.9
Belgium	22.2	44.3	4.5	25.4	47.1	13.0	*21.2*	*42.8*	*4.0*	*21.6*	*44.4*	*11.1*
Czech Republic	3.9	7.6	0.8	8.4	14.5	5.0	4.2	8.2	0.8	12.5	27.3	5.4
Denmark	13.7	24.2	4.4	19.6	31.3	10.3	15.4	28.9	3.7	20.5	40.4	7.6
Germany	24.3	48.3	4.7	26.7	51.0	9.1	20.4	42.2	3.2	22.7	48.3	6.7
Estonia	5.4	(7.0)	:	(8.3)	:	:	4.5	(5.3)	(3.7)	(11.3)	(18.0)	:
Greece	3.8	7.6	1.3	5.0	11.2	2.0	3.6	6.7	1.7	4.8	10.0	2.2
Spain	11.4	24.2	2.7	10.9	26.7	3.2	7.0	16.1	1.8	6.5	18.8	1.8
France	17.1	32.1	4.1	21.1	33.9	9.4	16.4	32.0	3.6	22.4	37.0	10.2
Ireland	:	:	:	:	:	:	15.9	33.2	3.8	19.5	44.0	9.2
Italy	13.1	27.6	3.3	9.9	18.5	5.5	8.6	18.1	2.9	7.5	13.9	4.9
Cyprus	7.0	12.9	2.1	11.8	20.4	7.8	6.7	13.3	2.0	13.5	25.5	7.6
Latvia	7.5	7.8	7.1	11.8	13.3	(10.3)	9.7	10.1	9.3	15.7	18.3	13.9
Lithuania	5.2	6.9	(3.5)	(11.0)	(13.2)	(8.9)	7.5	8.3	6.7	14.1	18.6	10.3
Luxembourg	19.1	43.1	(1.8)	20.6	47.2	:	12.8	30.7	(1.4)	(11.1)	(30.3)	:
Hungary	3.3	5.2	1.7	11.0	14.1	8.5	*2.8*	*4.3*	*1.3*	*11.8*	*21.6*	*6.6*
Malta	8.1	24.3	:	(13.9)	:	:	6.4	20.8	:	:	:	:
Netherlands	41.5	76.9	12.4	49.0	83.4	28.2	38.3	74.9	10.7	44.3	79.5	26.1
Austria	22.4	44.3	3.6	23.9	44.4	12.5	18.7	37.9	3.2	16.6	37.2	7.2
Poland	6.4	9.4	3.9	20.7	32.0	13.7	6.2	8.4	4.3	28.0	35.9	22.6
Portugal	6.3	10.9	2.3	19.3	31.3	9.2	6.2	11.6	1.6	20.8	33.7	10.9
Slovenia	3.7	4.8	(2.6)	15.7	(27.5)	(10.0)	3.1	4.1	(2.2)	(15.4)	(24.9)	(10.6)
Slovakia	1.7	2.8	0.7	7.2	18.9	(2.7)	*1.7*	*2.6*	*(0.8)*	*5.9*	*(13.4)*	*:*
Finland	7.4	12.0	3.3	20.2	22.6	17.6	6.6	10.4	3.3	19.6	21.9	17.2
Sweden	21.3	38.3	6.2	27.2	40.6	15.0	19.3	35.0	5.0	27.6	41.2	15.7
United Kingdom	22.3	43.1	3.8	31.7	53.7	15.1	22.8	45.6	3.2	31.7	56.8	13.7

Source: Eurostat, EU-LFS - Spring Data
( ) The reliability of data shown between brackets may be affected by small sample size.
: Data not available or extremely unreliable
Data in Italic: non-response>5%

[266] Source of table: Aliaga, C., Romans, F: The employment of seniors in the European Union. Statistics in focus 15/2006, Luxembourg, p. 9.

Table A-2: Involuntarily fixed-term contracts and total fixed-term contracts 2000 and 2005 (percentage of all female/male employees)[267]

	Involuntarily fixed-term contracts				Total fixed-term contracts			
	women		men		women		men	
	2000	2005	2000	2005	2000	2005	2000	2005
BE	8.6	8.6	4.6	4.1	12.1	12.0	6.6	6.7
BG	3.8	4.2	4.3	4.0	6.5	6.2	7.1	6.6
CZ	3.7	6.3	2.9	5.3	9.4	9.7	7.0	7.8
DK	5.5	6.1	2.9	3.7	11.7	11.0	8.8	8.9
DE	2.2	2.2	1.8	2.0	14.5	13.6	13.9	14.0
EE	.	.	(2.4)	.	.	(2.5)	(3.1)	(4.1)
IE	1.7	(0.6)	1.2	0.8	6.6	2.7	4.3	2.4
EL	12.4	10.7	9.3	7.3	17.3	14.7	13.3	10.2
ES	25.4	24.4	22.5	21.9	34.6	35.5	30.8	31.6
FR	9.5	9.2	6.4	6.7	14.1	14.2	11.4	12.5
IT	9.3	9.9	5.6	6.5	15.3	14.8	10.5	10.6
CY	11.3	18.5	5.4	7.3	14.3	19.6	7.6	8.5
LV	3.7	2.1	6.6	4.8	4.6	6.0	8.9	11.4
LT	2.0	(2.8)	3.4	5.5	2.6	(3.3)	4.9	6.9
LU	.	2.2	.	(1.4)	4.6	6.0	2.6	4.1
HU	2.5	3.0	3.7	3.9	6.4	6.5	7.3	7.8
MT	.	.	.	(2.0)	(5.3)	(5.5)	(3.5)	(3.2)
NL	4.3	4.3	3.3	4.2	17.2	16.7	11.5	13.8
AT	2.2	1.6	1.3	1.1	11.3	8.8	11.6	8.8
PL	5.5	12.0	6.4	13.7	11.4	24.6	12.4	26.3
PT	8.8	14.2	7.0	13.5	22.2	20.3	18.0	18.7
RO	1.7	1.4	2.1	2.2	2.9	2.1	3.0	3.1
SI	6.0	8.2	5.3	8.0	13.5	18.1	12.4	16.0
SK	2.6	3.0	3.0	3.9	4.3	4.9	3.8	5.1
FI	13.1	15.2	7.8	8.6	20.9	21.8	14.5	14.4
SE	9.5	11.5	6.2	8.0	16.9	17.9	12.3	14.6
UK	2.0	1.2	2.2	1.6	7.7	5.9	5.9	5.2
HR	:	8.0	:	6.5	:	13.0	:	12.7
IS	.	3.3	.	2.0	5.9	8.5	4.9	6.7
NO	0.8	1.6	0.6	1.1	11.8	11.6	7.8	7.6
CH	:	:	:	:	12.8	13.1	10.5	12.5
EU-25	6.6	7.5	5.7	6.7	14.1	14.9	12.5	13.9

Figures in brackets: reduced reliability due to sampling size
".": data can not be published;"": No data

Source: EU Labour Force Survey

[267] Source of table: Hardarson, O.: Men and women employed on fixed-term contracts involuntarily. Statistics in focus 98/2007, Luxembourg, p. 3.

Table A-3: Percentage of self-employed among employed people in 2005[268]

	All		Women		Men	
	30-49	55-64	30-49	55-64	30-49	55-64
EU-25	15.4	23.0	10.4	15.6	19.3	28.1
EU-15	14.9	22.9	10.1	15.1	18.8	28.2
NMS-10	17.8	23.8	12.5	19.0	22.5	27.0
Belgium	13.7	23.8	8.4	18.0	18.0	27.0
Czech Republic	17.5	16.2	10.0	11.3	23.6	19.0
Denmark	7.6	14.1	3.7	6.7	11.1	20.0
Germany	11.9	16.0	8.4	9.7	14.7	20.4
Estonia	9.6	:	(6.0)	:	13.5	:
Greece	29.3	51.8	19.5	44.2	35.7	55.5
Spain	16.6	29.6	12.5	24.9	19.4	32.0
France	9.7	17.9	5.7	10.8	13.1	24.4
Ireland	18.8	28.4	7.9	12.1	26.9	37.6
Italy	24.7	37.7	18.0	25.5	29.3	43.9
Cyprus	20.9	34.9	11.0	20.5	29.2	41.6
Latvia	11.2	11.5	8.2	(8.4)	14.1	14.9
Lithuania	14.8	21.5	10.6	(19.7)	19.1	(23.2)
Luxembourg	8.1	14.9	6.5	(13.5)	9.2	(15.8)
Hungary	13.9	20.3	9.4	13.3	17.9	25.9
Malta	17.1	(18.6)	(8.6)	:	20.2	(19.3)
Netherlands	12.4	19.5	9.1	17.0	15.1	21.1
Austria	12.9	23.9	9.6	22.5	15.8	24.6
Poland	21.1	34.3	16.2	30.1	25.4	36.8
Portugal	18.9	44.1	16.7	42.3	20.8	45.6
Slovenia	9.2	21.0	5.1	(16.8)	13.0	(23.0)
Slovakia	14.3	13.5	7.5	(10.0)	20.3	14.9
Finland	12.1	18.0	7.8	12.0	16.0	24.2
Sweden	10.0	13.9	5.3	6.6	14.1	20.5
United Kingdom	13.1	18.9	8.0	11.0	17.6	24.9

Source: Eurostat, EU-LFS - Spring Data
() The reliability of data shown between brackets may be affected by small sample size.
: Data not available or extremely unreliable

[268] Source of table: Aliaga, C., Romans, F: The employment of seniors in the European Union. Statistics in focus 15/2006, Luxembourg, p.10.