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ANALYTICAL DOCUMENT

Accompanying the document

CONSULTATION DOCUMENT

Second phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 91/533/EEC) in the framework of the European Pillar of Social Rights

{C(2017) 6121 final}

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INTRODUCTION

Protecting workers' rights and improving working conditions has been at the heart of the European project since its beginning. The social dimension has developed alongside the deepening of the single market, to ensure a level playing field for business and promote concrete improvements in working conditions for millions of workers across all Member States. The comprehensive framework of the EU's social acquis guarantees workers unparalleled levels of protection concerning their working time, occupational health and safety, right to information and consultation, collective rights, protection from discrimination and abusive practices linked to their employment status.

In recent years the EU labour market has however undergone deep transformations. The financial and economic crisis has exposed weaknesses in social protection systems, globalisation has affected production models, and unprecedented technological development has brought about new opportunities but also new demands not only in terms of skills but also in flexibility of working arrangements. There is a growing diversity of forms of work, which has created new jobs and new opportunities for millions, but has also led to a growing precariousness of employment and gaps in protection. This trend has led the Commission to pose the question through the initiative the European Pillar of Social Rights, of which the current exercise forms a part, whether the EU social policy framework is still valid and sufficient to maintain the EU's high social standards. In the same vein, the Commission underlined in its reflection paper on "Harnessing Globalisation"[1] the importance of addressing the impact of globalisation through strong social policies at EU and national level to reinforce the resilience of citizens and workers.

While economic and financial recovery has been the immediate priority in the midst of the crisis, this Commission has put social dimension once again in the very centre of its political agenda. As President Juncker has declared, 'Building a more inclusive and fairer Union is a key priority for this European Commission.'[2]

The extensive public consultation on the European Pillar of Social Rights ('the Pillar') [3] in 2016 has shown that while the EU acquis is indeed comprehensive, there are some gaps linked to developments on the labour market that need to be addressed in order to make it more relevant for the 21st century. This was also emphasised in the European Parliament's Resolution of January 2017 on the Pillar, and most recently in their Resolution of July 2017 on working conditions and precarious employment.[4]

[1] https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation_en.pdf

[2] See Political Guidelines for the next European Commission, "A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change", 15 July 2014.

[3] Delivering on the European Pillar of Social Rights, http://ec.europa.eu/social/main.jsp?catId=1226&langId=en , and Public consultation on the European Pillar of Social Rights http://ec.europa.eu/social/main.jsp?catId=333&langId=en&consultId=22&visib=0&furtherConsult=yes

[4] P8-TA(2017)0010 of 19.01.2017 and P8-TA(2017)0290 of 04.07.2017.

The Commission has set out in its final proposal for the Pillar a number of key principles and rights to support fair and well-functioning labour markets and welfare systems (including a whole chapter on fair working conditions), which it is currently discussing with the Council, European Parliament and the EU level social partners. The aim is to agree on a joint approach in the form of a Proclamation setting out these principles and rights and implementing them jointly in respect of competencies of the Member States and the social dialogue process.

The possible revision of the Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, known as the Written Statement Directive, is one of the concrete initiatives announced by the Commission in April 2017 when presenting the Pillar. Other initiatives, closely related to and complementary to this one, include a legislative proposal on work-life balance of parents and carers, a social partners' consultation on access to social protection, and an interpretative communication on working time.

Directive 91/533/EEC, adopted on 14 October 1991, gives employees the right to be notified in writing of the essential aspects of their employment relationship when it starts or within a limited time thereafter (two months maximum). It also defines additional information that must be provided before departure to employees who are required to work abroad.

Revising the Directive could contribute to the Pillar principles by improving workers' and employers' clarity on their contractual relationship and by ensuring this protection is extended to all workers, irrespective of the type of employment relationship, including those in atypical and new forms of work. For doing so, the Directive's effectiveness could be enhanced by following up on the conclusions of its recent evaluation conducted in the framework of the European Commission's Regulatory Fitness and Performance programme (REFIT).[5,6] Furthermore, by defining a set of minimum rights reflecting the challenges of the new labour market reality, such a revision could support upward convergence towards equal access to a number of important rights for all workers, in particular those in precarious employment relationships.

These objectives can and should be addressed without obstructing the development of new forms of work. Indeed, these forms can offer opportunities for flexible working arrangements and for the integration in the labour market of people who might have otherwise been excluded. If a set of minimum fair working conditions were to be ensured across the EU and across all forms of contracts, this would set a framework within which new forms of work could develop. This framework could offer fairer protection to workers, a clearer reference framework for national legislators and courts, and a better

[5] The Commission's Regulatory Fitness and Performance programme, REFIT, ensures that EU legislation delivers results for citizens and businesses effectively, efficiently and at minimum cost. REFIT aims to keep EU law simple, remove unnecessary burdens and adapt existing legislation without compromising on policy objectives. https://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-making-eu-law-simpler-and-less-costly_en

[6] REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC), SWD(2017) 205 final, of 26.04.2017; http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=202

level playing field for business within the internal market, limiting incentives for regulatory arbitrage.

To achieve this goal, between 26 April and 23 June 2017 the Commission conducted a first phase consultation of the European social partners on the possible direction of Union action [7], in accordance with Article 154 TFEU.

This document provides an overview of the results of the first phase consultation and an analytical background to a second phase consultation of the European social partners on possible legislative action. It identifies the problem to be addressed through the initiative, presents the objectives of an EU intervention, and explores the added value of EU action[8]. The analysis relates to the relevant developments in EU labour markets and provides an overview of existing legal framework in the EU and across Member States. The document also gives first indications as to impacts of the possible avenues of EU action set out in the second phase consultation document.

The purpose of this document is to provide extensive background and contextual information to inform social partners' deliberations during the second phase consultation, and to explain the Commission's rationale for the options for action outlined in the second phase consultation document, so as to enable the consultation process to be as concrete and informed as possible, and to make the link between this initiative and the objectives and principles set out in the European Pillar of Social Rights, which should serve as a compass for future policy development in the social field in the EU.

The present document does not constitute a finalised Impact Assessment. It only provides background information and data and the analyses, statements or views contained do not reflect in any way the position of the European Commission but only the preliminary views of a Commission service. This is in particular the case where this document describes or interprets Union law or the manner in which Union law might or should evolve in the future.

1 RESULTS OF THE FIRST PHASE SOCIAL PARTNERS CONSULTATION

The first phase of social partner consultation closed on 23rd June 2017.

1.1 Workers' organisations

Six trade unions replied to the first phase consultation: the European Trade Union Confederation (ETUC), Eurocadres, the European Confederation of Executives and Managerial Staff (CEC), the European Confederation of Independent Trade Unions (CESI), the European Arts and Entertainment Alliance (EAEA), the European Federation of Journalists (EFJ). It should be noted that ETUC's reply also took into account the view of 10 ETUC sectorial trade union organisations.

[7] Consultation Document of 26.04.2017, First phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 91/533/EEC) in the framework of the European Pillar of Social Rights, C(2017) 2611

[8] http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf

The workers' organisations agreed, broadly, with the challenges described in the consultation document, the need to improve the effectiveness of the written statement Directive and to broaden its objectives in order to improve the working conditions of vulnerable workers. They welcomed, in particular, the initiative of a minimum floor of rights[9] for workers and acknowledge the need for further action at EU level in line with the European Pillar of Social Rights.

Possible improvements to the EU legal framework

The workers' organisations were generally in favour of the insertion of a definition of worker based on the CJEU case law. However, ETUC argued additionally for the inclusion of self-employed in the scope of application. Trade unions stated the need to cover, in particular, casual workers,[10] and those in new and atypical forms of employment. They favoured removing the exemptions for short employment relationships and short working hours.

With regard to the extension of the information package, trade unions were in agreement with the list suggested in the consultation document. However, ETUC advocated broader and more detailed information requirements regarding working time arrangements (rest periods, length of break), elements of remuneration (bonus, overtime, sick pay), the identity of sub-contractors, an obligation to hand out and ensure access to relevant documents, information for temporary agency workers on the duration of assignment and name of user undertaking, information on worker representatives and on equal pay rights, information on (equal) pay and social contributions for workers working abroad, information to posted workers about their rights, information on conditions of accommodation, as well as a series of specific elements for interns, trainees and apprentices.

Trade unions unanimously agreed with the proposal to reduce the 2 months deadline for the employer to provide the written statement and stated that this should be prior to the start of the employment relationship or immediately on signing the contract.

The need to improve access to sanctions and means of redress and their effectiveness =was acknowledged, including by calling for the introduction of a presumption of employment in case the employer fails to provide a written statement.

[9] The first phase consultation document used the terms 'floor of rights' since these new rights will complement the existing floor of rights (as regards working conditions and protection of health and safety at work) already established at EU level.

[10] 'Casual work' is not formally defined at EU level. Eurofound defines 'casual work' as '*a type of work where the employment is not stable and continuous, and the employer is not obliged to regularly provide the worker with work, but has the flexibility of calling them in on demand*'. Casual work covers on-call / on-demand (such as zero-hours contracts) and intermittent work.

Since the issue of the qualification of on-call time as working time is a separate issue dealt with in the context of the Directive 2003/88/EC on working time, for ease of understanding this document will mainly use 'on-demand work' instead of 'on-call work'. Eurofound meaning does apply. Indeed, in the framework of working time, on-call time refers to any period where the worker is not required to carry out normal work with the usual continuity, but has to be ready to work if called upon to do so.

Workers' organisations were strongly in favour of a floor of rights for workers. In addition to the proposals in the consultation document, ETUC advocated a minimum notice period (3 months), a right to decent working hours, a right to at least the minimum wage, and finally a right to social protection in conjunction with the access to social protection initiative of the Commission. ETUC also argued for inclusion of collective rights in the floor of rights: the right to join and be represented by a trade union, the right to freedom of association and finally the right to collective bargaining.

Willingness to enter into negotiations

The workers' organisations expressed their willingness to enter into negotiations with employer organisations; however, they urged the Commission to come up with a legislative proposal that would improve the situation of workers in case negotiations were not launched or if they failed.

1.2 Employers' organisations

Thirteen employers' organisations replied to the first phase consultation: Business Europe, the European association of craft small and medium-sized enterprises (UEAPME), the Council of European Employers of the Metal, Engineering and Technology Based Industry (CEEMET), the Association of Hotels, Restaurants and Cafés in Europe (HOTREC), Eurocommerce, the Confederation of European Security Service (COESS), the European Chemical Employers Group (ECEG), the Council of European Municipalities and Regions (CEMR), the World Employment Confederation, the European Farmers Association (GEOPA-COPA), the European Community Ship-Owners Associations (ESCA), the European Coordination of Independent Producers (CEPI), the European Centre of Employers and Entrerprises providing Public Services and Services of general interest (CEEP).

A large majority of employers' organisations stated their opposition to the revision of the Directive, and all of them rejected the idea of creating a minimum floor of rights for all workers.

Possible improvements to the EU legal framework

A large majority were opposed to the extension of the scope of application of the Directive and the insertion of a definition of worker. They argued that this definition would be too broad and would hamper flexibility for business and would depress job creation. They raised concerns about subsidiarity and the impact on Member States' national legal arrangements. However, COESS was favour of introducing an EU definition of worker, to cover all forms of employment and to simplify the exclusion provisions. For COESS, this would help in reducing unfair competition.

All employers' organisations expressing a view, with the exception of COESS and HOTREC, did not support amending the information package. COESS supported the possible extension outlined in the consultation document. HOTREC supported including information about probation and about the applicable social security system.

Regarding the reduction of the 2 months' deadline for providing the written statement, most employer organisations were not in favour of any change. HOTREC stated that it could be reduced to 1 month but exemptions should remain so as to avoid creating additional administrative burden.

No employers' organisation supported changes at EU level to the system of redress and sanctions. Some indicated that this should be left to Member States. For the World Employment Confederation, better implementation and enforcement of the existing Directive would be more effective than a revision. HOTREC indicated that some of its members could accept favourable presumptions of employee status.

All organisations were opposed to the floor of rights of EU workers, arguing that this would infringe proportionality and subsidiarity principles. They also highlighted the importance of respecting the autonomy of the social partners and stated that the issues raised in the consultation should be tackled either at national level or in collective agreements.

Willingness to enter into negotiations

In their responses to the first phase consultation, Business Europe, UEAPME, and CEEP expressed their willingness to engage in exploratory talks with the ETUC in order to assess the feasibility and appropriateness of initiating a dialogue under Article 155 TFEU on the Written Statement Directive (challenge 1 of the consultation document). The other organisations were not in favour of opening discussions at EU level.

Subsequent to the first phase consultation, ETUC, CEEP and Business Europe confirmed that they were not in a position to initiate formally the joint negotiation process provided for in Article 155 TFEU, while reserving the possibility to do so in the context of the second phase consultation.

1.3 Other consultations of stakeholders

The results of both the public consultation on the Pillar of Social Rights, and the public consultation for the REFIT evaluation of the Written Statement Directive,[11] are integrated in this analytical document in the section describing the avenues for EU action.

The document also integrates feedback received on the Inception Impact Assessment.

[11] The results of the public consultation, which ran between January and April 2016, are summarised in the annex to the Staff Working Document REFIT evaluation of the Written Statement Directive, SWD(2017)205 final..

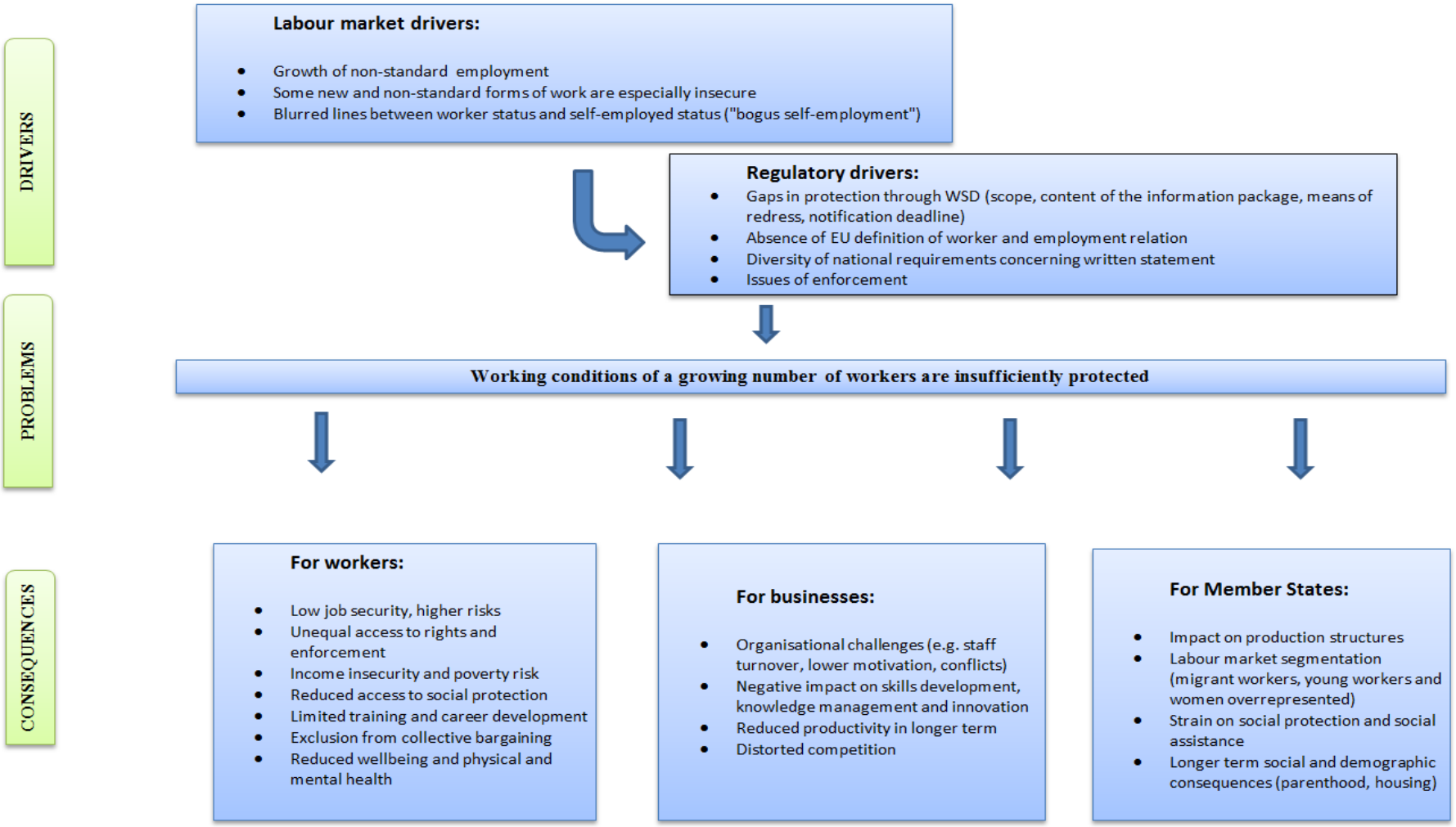
2 PROBLEM DEFINITION

2.1 What is the problem and why is it a problem?

The problem to be addressed relates to the risk of **insufficient protection of working conditions of a growing number of workers, including those in new and non-standard forms of employment, with a specific focus on the provision of information on their working conditions**.

The problem tree (Figure 1) presents the drivers underlying this problem, in relation to labour market developments and to the regulatory context. It also indicates consequences of the problem for workers, business and Member States.

Figure 1. Problem Tree



Note on terminology

Across the document, different categories of workers are presented.

Non-standard employment is described by the ILO[12] as employment arrangements which deviate from the 'standard employment relationship' understood as work which is full time, of indefinite length, part of a subordinate relationship between an employer and an employee. Under ILO classification non-standard employment includes temporary employment (fixed term, casual, seasonal work), part-time and on-call work (working hours fewer than full time, but also on-call work), multi-party employment relationship (subcontracted labour, temporary agency work) and disguised employment (misclassified self-employment but also dependent self-employment). When quoting ILO evidence, this definition applies.

Atypical work is described by Eurofound as referring to employment relationships not conforming to the standard or 'typical' model of full-time, regular, open-ended employment with a single employer over a long time span.

New forms of employment under Eurofound classification[13] include employee sharing, job sharing, interim management, casual work (including intermittent work and on-call work), ICT-based mobile work, voucher-based work, portfolio work, crowd employment, collaborative employment. These forms include elements of non-conventional workplaces, support of ICT, different employment relationship organisation (one to many, many to one, many to many), different work patterns (discontinuous, intermittent, non-conventional fixed term), networking (amongst self-employed and SMEs). Eurofound underlines that there is currently no shared understanding of what constitutes 'new forms of employment'. When quoting Eurofound evidence, these descriptions apply.

Precarious work is described by the European Parliament Policy Department A[14] as the intersection of three components: insecure employment (e.g. fixed term or temporary agency work), unsupportive entitlements (i.e. few entitlements to income support), vulnerable employees (i.e. few other means of subsistence such as wealth or partner's income). The Report underlines that precarious work is a concept that does not have a universally-accepted definition in Europe and that it is always a relative concept, referring to non-precarious forms of employment and a certain threshold as a border line.

Non-regular employment is understood in OECD publications as work in all forms of employment that do not benefit from the same degree of protection against contract termination as permanent workers.[15]

[12] *Non-standard employment around the world: Understanding challenges, shaping prospects* International Labour Office – Geneva: ILO. 2016.

[13] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg.

[14] European Parliament, Policy Department A, (2016) *Precarious Employment: Patterns, Trends and Policy Strategies in Europe*.

[15] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209.

2.2 Main drivers

The fact that there is a growing number of workers, including those in new and non-standard forms of employment, who risk having insufficient access to the protection offered by labour law, is related to two inter-linked phenomena.

On the one hand, there is an increasing flexibility in labour markets. This flexibility can contribute to job creation and can result in new opportunities for workers, but it can also have negative impacts on working conditions and contribute to precariousness.

On the other hand, labour market regulation at EU and national level has not kept up with all the new developments. Gaps in legal protection are increasingly visible and, while most Member States have taken some action to address some of the new phenomena, this action is patchy and leads to a growing diversity of requirements. In some cases regulatory gaps may actually intensify the casualization of working conditions by creating unintended incentives for employers to rely on non-standard forms of employment even where this is not indispensable.

The extent and quality of labour market regulation is indeed a key factor affecting the risk of precariousness of workers. Labour markets that afford protection to workers in the areas of working conditions, protection against discrimination and dismissal, access to social rights and to collective rights are likely to have a lower overall risk of precariousness than those which do not.[16]

2.2.1 Labour market drivers

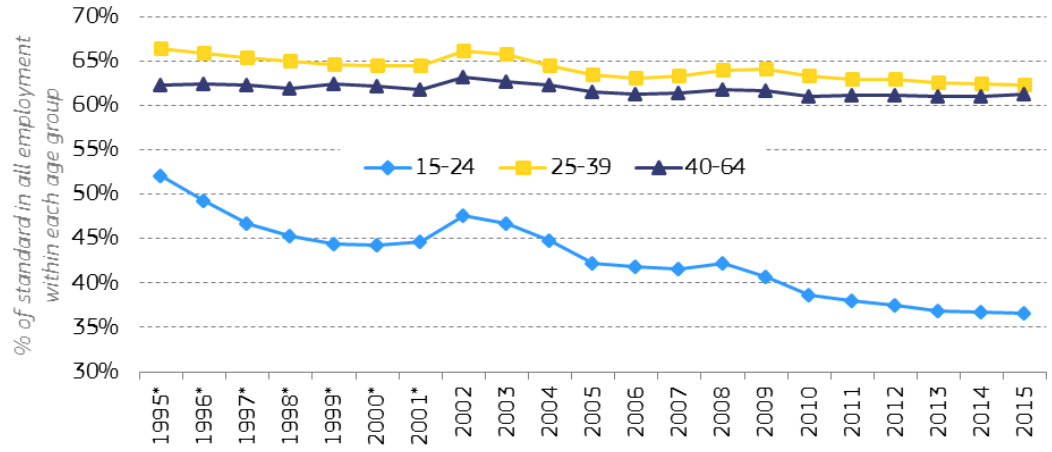
a) Growth of non-standard employment and risk of precariousness

Non-standard employment is not new, and did not arise with the financial and economic crisis. Already over the two decades prior to the global financial crisis, many OECD countries sought to promote flexibility in the labour market largely by easing regulations on non-regular contracts, while leaving largely un-touched relatively stricter regulations on regular contracts. This led to an expansion of non-regular contracts in a number of countries and greater labour market segmentation as characterised by large disparities in job quality across segments (e.g. contracts), as well as low rates of transition of workers from one segment to another.[17]

[16] European Parliament, Policy Department A, (2016) Precarious Employment: Patterns, Trends and Policy Strategies in Europe, page 10.

[17] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209. Non-regular employment is understood as all forms of employment that do not benefit from the same degree of protection against contract termination as permanent workers.

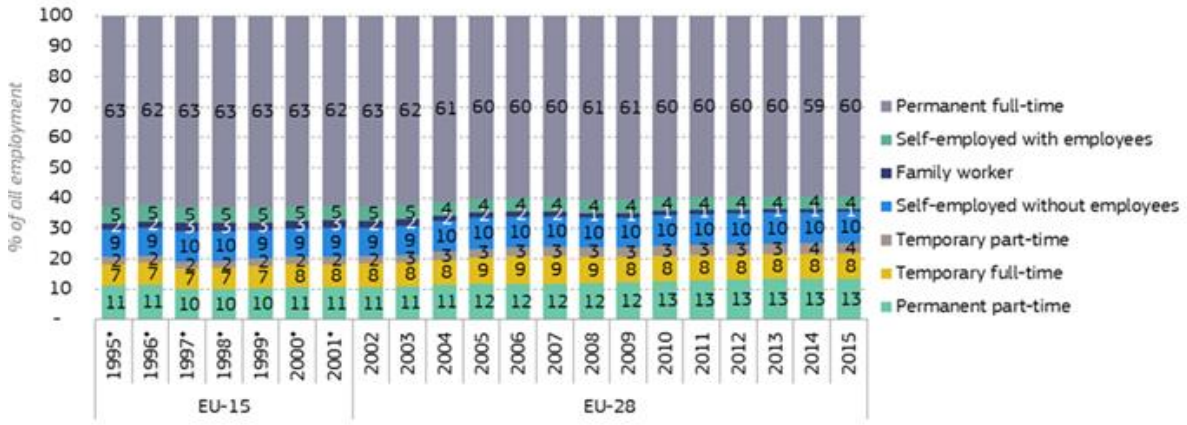
Figure 2. Proportion of those employed on a permanent full-time (standard) contract by age, 1995-2001 (EU-15) and 2002-2015 (EU-28)



Source: Own calculations based on EU-LFS. Other employment includes temporary, self-employed, family workers and permanent part-time.

While a full-time permanent labour contract is still the predominant contractual employment relationship, non-standard work[18] has increased over the last 20 years (Figure 3**).** In 1995, 32 % of the EU-15 workforce had non-standard contracts. This proportion had increased to 36 % in the EU-28 (and 38% in EU-15) by 2015. In absolute terms, there were 5.5 million more workers on non-standard contracts in 2015 compared with a decade before, but only 3.8 million more employed in standard employment (permanent full-time).[19] What is more, full-time employment contracts are already no longer the predominant contractual labour relationship for young (15-24) people (37% in 2015 vs. 48% in 2002).

Figure 3.Employed persons of working age (15-64) by type of contract, 1995-2001 (EU-15) and 2002-2015 (EU-28)



Source: Own calculations based on EU-LFS.

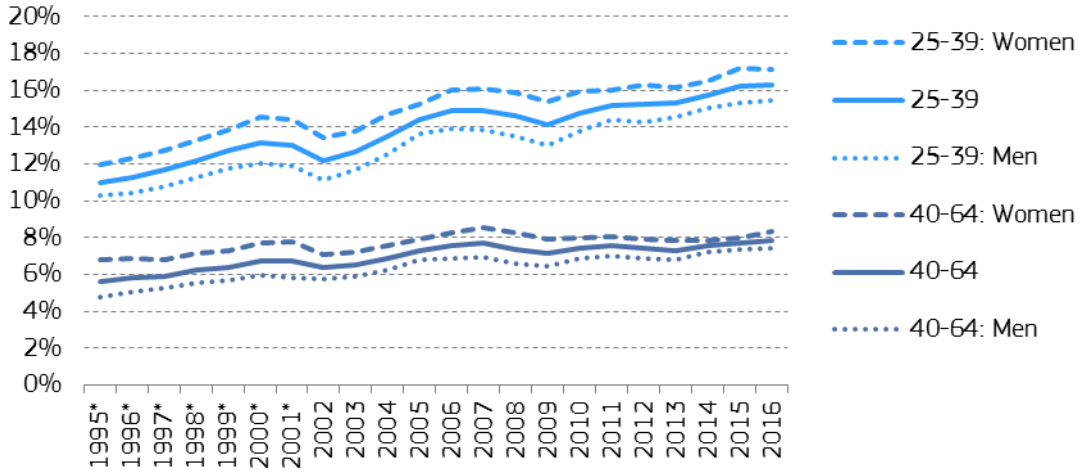
[18] Non-standard work here includes permanent part-time, temporary full-time and part-time, self-employed persons with no employees and family workers.

[19] The growth of non-standard employment has also been pointed out by the European Parliament, European Parliament resolution of 4 July 2017 on working conditions and precarious employment.

Workers in non-standard employment: young, women and 'involuntary'

Among those likely to have finished their education (aged 25 and above), **temporary work has increased primarily among younger workers** (25-39), widening the gap between age groups. While the proportion of people working on temporary contracts has increased for all workers aged 25 and above, the increase has impacted the recent cohorts of younger workers (11.0 % in 1995 to 16.3 % in 2016), significantly more than the prime-age and older workers aged 40-64 (5.6 % in 1995 to 7.9 % in 2016, Figure 4). This development has widened the pre-existing gap between the two age groups (5.4 pps in 1995, 7.1 pps in 2005 and 8.4 pps in 2016).

Figure 4. Share of employees employed on a temporary contract by age and gender, 1995-2001 (EU-15) and 2002-2016 (EU-28)



Source: Own calculations based on EU-LFS.

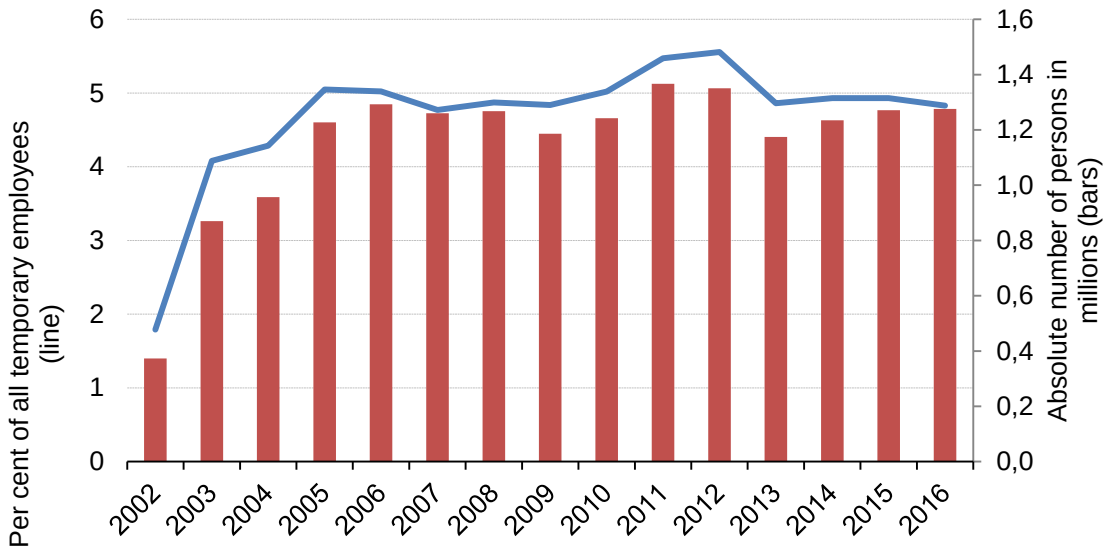
Women continue to be more likely to work on temporary contracts than men, but the gap between them has been shrinking. The gender gap in terms of temporary employment shrank between 2002 and 2016. It declined somewhat more for younger workers (2.3 pps in 2002 vs 1.7 pp in 2016) than for prime-age and older workers (1.3 pps vs 0.9 pps). The gender divide in non-standard employment was also underlined by the European Parliament in its Resolution of 4 July 2017 on working conditions and precarious employment.

The duration of temporary contracts is rising for young workers, and falling for prime-age and older workers. The share of younger temporary workers (25-39) on contracts lasting less than 6 months fell from 43% in 2006 to 37% in 2016, while the share of those on temporary contracts lasting longer than a year increased from 27% to 31%. The exact opposite happened for prime-age and older workers (40-64). Nonetheless, for younger workers this might be of a cyclical rather than of a structural nature; as a consequence of the recent crisis employers might still be cautious about hiring younger workers on permanent contracts even for work of a longer duration. The share of temporary young employees in the EU-28 with a contract duration of longer than a year has fluctuated considerably over time but was not very different in 2002 from that in 2016 (30.4 % vs 31.5 %).

The number of employees on contracts lasting less than one month increased at the beginning of the 2000s and has remained more or less stable over the last decade. As many as 4.8% of all temporary employees in 2016 were employed on contracts lasting less than one month. This is a significant increase compared to 2002 when their

proportion was just 1.8% of all temporary employees. In absolute terms their number has grown from 373,000 in 2002 to almost 1.3 million in 2016. Most of this increase took place in the early 2000s and their share and absolute number has not changed significantly in the last decade, apart from some fluctuation during the crisis. However, **the absolute number of temporary workers on contracts of less than one month has been increasing with the economic recovery**, indicating that this extremely short duration of work contracts will continue to be a feature of the EU labour market in years to come.

Figure 5. Proportion of temporary employees working on contracts with a duration of less than one month, 15-64, EU-28, 2002-2016



Note: 'No answer' category not included in the calculation. *Break in series in 2005.
Source: Own calculations based on EU-LFS [lfsa_etgadc]

Some non-standard employment is associated with a risk of precariousness

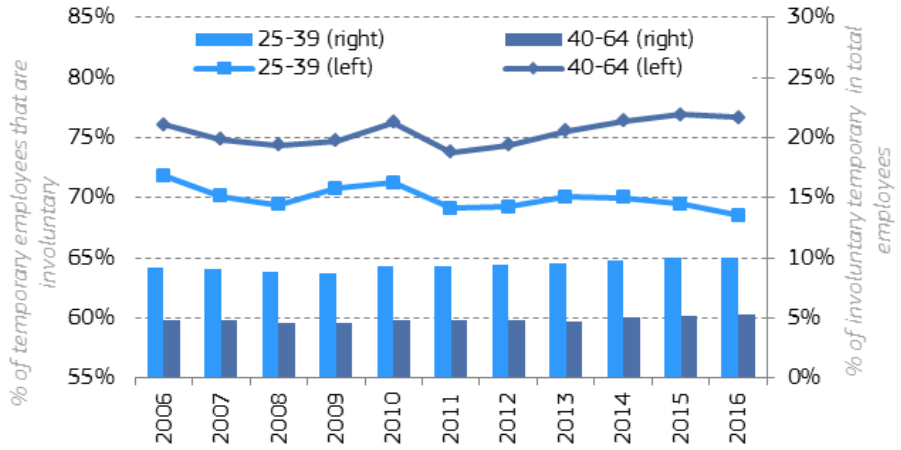
For some, working in non-standard employment is an explicit choice and has positive outcomes. However, for some workers, employment in some new and non-standard arrangements is associated with insecurity and diminished social rights. As the extensive public consultation on the European Pillar of Social Rights[20] clearly revealed, there is a growing challenge to define and apply appropriate rights for many workers in new and non-standard forms of employment relationships across the EU.

Over two thirds of employees who work on temporary contracts do so involuntarily. This is especially true of prime-age and older workers. In 2016, 76.7 % of prime-age and older temporary employees and 68.5 % of younger temporary employees were working on a temporary contract because they could not find a permanent one (Figure 6). The relatively lower level of involuntary temporary employment among younger workers is

[20] https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/towards-european-pillar-social-rights-0_en

likely to reflect the greater incidence of apprenticeships, combining full-time education with work, and potentially the practice to start a new job with a temporary contract as probation. It is also likely to be linked with the fact that younger workers are more than twice as likely to be employed on temporary rather than permanent contracts (16.3 % vs 7.9 % in 2016).

Figure 6. Percentage of temporary employees who could not find a permanent job as a share of all employees (permanent and temporary, bars) and of temporary employees only (line), by age, EU-28, 2006-2016



Note: Major break in series in 2005 so not possible to compare with earlier years. 'No answer' category was not included
Source: Own calculations based on EU-LFS.

The likelihood of being employed on a full-time permanent contract decreases, the lower the educational level and the lower the age.[21]

The multiplicity of contracts makes the profiles of non-regular workers difficult to define as a homogeneous group, but the picture that emerges from available data suggests that non-regular jobs - and particularly fixed-term jobs - are still disproportionately held by younger, less-educated and lower-skilled workers, and are not a voluntary choice for most workers.[22]

The financial crisis enhanced precariousness and job insecurity

The financial crisis and its aftermath have affected the risk of precariousness in Europe. As employers and employees found themselves operating in a more competitive and uncertain context post-crisis, new hirings increasingly took place on the basis of temporary and marginal part-time contracts. Jobseekers accepted these contracts, as the alternative was normally continued unemployment. While data from 2014-2016 shows gradual decrease in involuntary part-time and temporary work, there is evidence that at

[21] European Parliament, Policy Department A, (2016) Precarious Employment: Patterns, Trends and Policy Strategies in Europe, page 11.

[22] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209.

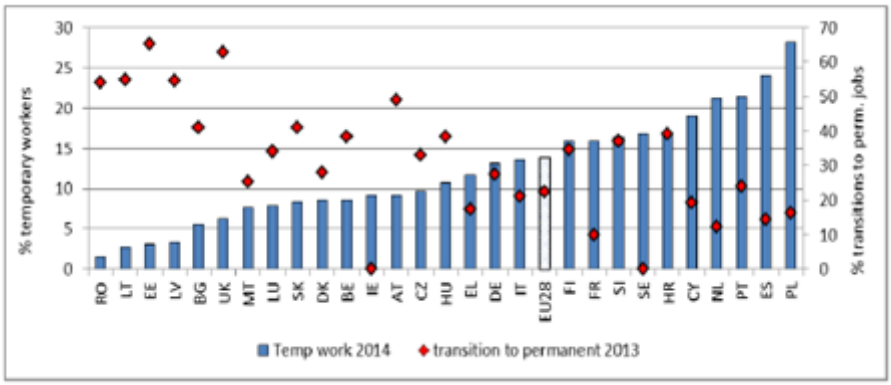
the height of the crisis job insecurity increased significantly in some countries (e.g. Portugal, Spain, Ireland, Italy, Latvia and Greece).[23]

Eurofound also found that the financial crisis had a significant negative effect on working conditions in Europe, including within standard forms of employment relationship.[24] Moreover, funding for enforcement services has been reduced in several Member States, with the result that abuses of employment relations, such as non-compliance with labour legislation or collective agreements, may be going undetected.[25]

Other drivers of precariousness include the institutional framework, such as the absence or presence of a statutory national minimum wage, which helps to reduce the risk of in-work poverty; the extent of active labour market policies; the interaction of tax and social security systems with low pay, which has an impact on labour market participation and on reducing the risk of in-work poverty; and the existence of collective bargaining systems, which help to balance worker protection and flexibility.[26]

Overall, different regulatory contexts and economic developments in the Member States have led to significant differences between them in the share of temporary contracts and the opportunities for workers to progress towards permanent contracts (Figure 7). In 2015 more than one in five employees in Poland (22.2%) and Spain (20.9%) had a temporary contract. Among the remaining Member States, the share of employees working on a contract of limited duration ranged from 18.7% in Portugal, to 1.8% in Lithuania and 1.0% in Romania.

Figure 7. Share of temporary contracts and transitions from temporary to permanent



Source: Eurostat. Data on transitions for BG, EL, PT, HR refer to 2012, for AT to 2014. Data on transitions are not available for IE and SE.

[23] European Parliament, Policy Department A, (2016) Precarious Employment: Patterns, Trends and Policy Strategies in Europe, page 10. Data for 2014-2016: Eurostat.

[24] Eurofound (2013b). Impact of the crisis on working conditions in Europe. Available at: http://www.eurofound.europa.eu/observatories/eurwork/comparativeinformation/impact-of-the-crisis-on-working-conditions-in-europe.

[25] European Parliament, Policy Department A, (2016) Precarious Employment: Patterns, Trends and Policy Strategies in Europe, page 10

[26] Ibid.

b) Some new and non-standard forms of work are especially insecure

Societal and economic developments, such as the need for increased flexibility by both employers and workers, have resulted in the emergence of new forms of employment across Europe. These have transformed the traditional one-to-one relationship between employer and employee and are characterised by unconventional work patterns and places of work, or by the irregular provision of work.

Eurofound distinguishes three categories of employer-employee relationship: relationships between employers and employees involving either multiple employers for each employee, one employer and multiple employees or even multiple employer-multiple employee relationships; provision of work on a discontinuous/intermittent basis or for very limited periods of time; and networking and cooperation agreements involving self-employed persons, especially freelancers. [27]

On the basis of this broad categorization, the following *new* forms of non-standard employment were identified: employee-sharing[28], job-sharing[29], interim management[30], casual work[31,] ICT-based mobile work[32], voucher-based work[33,] portfolio work[34], crowd employment[35] and collaborative employment.[36,37]

[27] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 4.

[28] Employee sharing, where an individual worker is jointly hired by a group of employers to meet the HR needs of various companies, resulting in permanent full-time employment for the worker.

[29] Job sharing, where an employer hires two or more workers to jointly fill a specific job, combining two or more part-time jobs into a full-time position.

[30] Interim management, in which highly skilled experts are hired temporarily for a specific project or to solve a specific problem, thereby integrating external management capacities in the work organisation.

[31] Casual work, where an employer is not obliged to provide work regularly to the employee, but has the flexibility of calling them in on demand.

[32] ICT-based mobile work, where workers can do their job from any place at any time, supported by modern technologies.

[33] Voucher-based work, where the employment relationship is based on payment for services with a voucher purchased from an authorised organisation that covers both pay and social security contributions.

[34] Portfolio work, where a self-employed individual works for a large number of clients, doing smallscale jobs for each of them.

[35] Crowd employment, where an online platform matches employers and workers, often with larger tasks being split up and divided among a 'virtual cloud' of workers.

[36] Collaborative employment, where freelancers, the self-employed or micro enterprises cooperate in some way to overcome limitations of size and professional isolation

[37] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, pages 1-3

Figure 8. Overview of main characteristics of new forms of employment[38]

	Availability of specific regulatory frameworks (legislation or collective agreements)	Characteristics of employers and employees	Contract type	Main job or income source
Employee sharing	In a few countries	Mainly sectors with seasonal fluctuations (such as agriculture and tourism) and manufacturing Largely private sector SMEs Workers with low-level or general skills, and specialists	Standard employment contract between employer and worker; civil law contract between employer and user	Yes
Job sharing	In a few countries	More common in the public sector Both low-skilled and high-skilled jobs Younger and older workers, re-entrants to the labour market, women	Specific employment contract if specifically regulated, standard employment contract otherwise	Yes
Interim management	No	More common in private sector traditional industries Highly-skilled and experienced experts (mainly with management competences) Middle-aged and older workers	Standard employment contract	Yes
Casual work	In most countries	Mainly sectors with seasonal fluctuations (such as agriculture and tourism) or with variable demand (care work); low-paying industries Low-skilled workers, women, younger workers	Standard employment contract	Yes, but in combination with other jobs
ICT-based mobile work	No (except in the case of Hungary and, implicitly, Denmark)	More common in private sector services (notably IT and creative industries) and international businesses Young workers, high-skilled specialists, knowledge workers, management, men	Standard employment contract	Yes
Voucher-based work	Yes	Mainly household services and agriculture Well-educated, wealthier, older employers Women, low-skilled workers	Voucher	Probably additional family income
Portfolio work	No	More common in private sector services (notably IT and creative industries) Highly skilled and experienced experts	Civil law contract	Yes
Crowd employment	No	IT and web-related sectors, creative industries SMEs and large companies lacking internal capacities, NGOs Highly skilled, young workers	Civil law contract	Usually additional income
Collaborative employment	No, for umbrella organisations and coworking; yes, for cooperatives	Highly skilled, older workers in umbrella organisations Highly skilled, young workers in the creative industries in coworking Construction and manufacturing for cooperatives	n.a.	Yes

Note: n.a. = not applicable

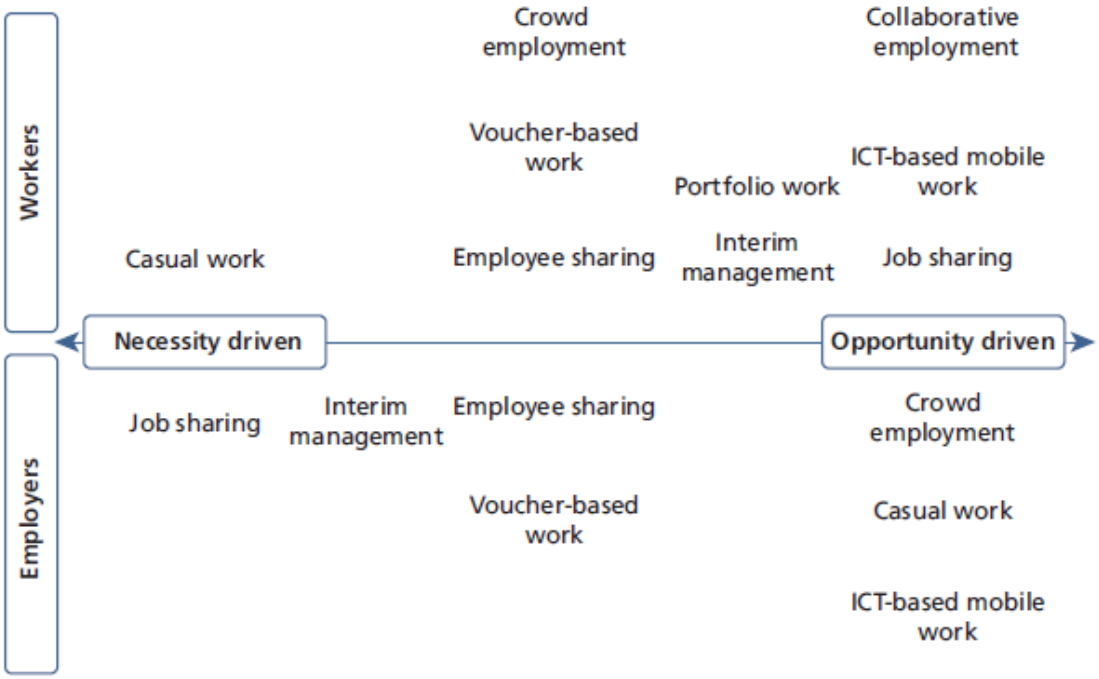
Source: Eurofound, based on national contributions

In spite of the considerable differences among these employment forms, flexibility is the key concept inherent to all: the new employment forms have been emerging due to an increased demand from employers, employees or both for enhanced flexibility. And this demand is driven either by economic challenges or societal developments. Consequently, some of the employment forms discussed are opportunity-driven while others emerge out of necessity, and these drivers might differ between employers and workers.[39]

[38] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 137.

[39] Ibid, page 135.

Figure 9. Schema of new employment forms according to drivers



Source: Eurofound

While most of these new forms of employment contribute to labour market innovation and make it more attractive to both employers and a wider range of potential workers, they are not found to be equally beneficial for workers or for the labour market in general. Employee sharing, job sharing and interim management generally have positive consequences for workers and employers, while contributing to modern and innovative labour markets. Voucher-based work and ICT-based mobile work can, in general, also be considered a positive development, but they require further action in some national systems in order to better exploit their potential for both employers and workers. In contrast, casual work and crowd employment are often linked to deteriorating working conditions and an increasingly fragmented labour market, and can increase scope for competition on the basis of working conditions ("race to the bottom").[40]

The data on new forms of work have limitations because several of the categories are new, differently defined in different countries, and not systematically collected. Nonetheless, the table below from Eurofound (Figure 10) gives an insight into the magnitude of the diverse new forms of work, their relative relevance for different Member States and sectors, as well as main risks for workers that they might entail. It is to be noted that workers might fall under different categories (e.g. zero-hour contracts can be also fixed term).

[40] Eurofound (2015), *New forms of employment,* Publications Office of the European Union, Luxembourg, page 143.

Figure 10. Eurofound - Types of employment relationship[41]

Type of employment relationship	Magnitude	Main risks	Overall level of risk	Countries/sectors most affected
Open-ended full-time contracts	59 % of the share of EU employment. Decreasing trend	Low pay and in-work poverty Stress and health Career development and training.	Low	Greece, Poland, Hungary, Latvia, Lithuania Personal service workers, sales personnel, plant and machine operators and elementary occupations
Part-time work, involuntary part-time work, marginal part-time work	7 % of EU employment. Involuntary part-time work account for around 25 % of part-time work. Marginal part-time work accounts for 9 %. Increasing trend for all types of part-time work	Low pay and in-work poverty Social security Career development and training	Low (open-ended part-time work) Medium (marginal part-time work) Medium (involuntary part-time work)	Involuntary part-time working high in Greece, Spain, Italy, Bulgaria, Portugal and Cyprus in particular. Marginal part-time work highest in the Netherlands, Germany, Denmark, Ireland, UK and Austria.
Freelancers, self-employment, bogus self-employment	Freelancers account for 10 % of employment. Stable trend. Self-employed persons with at least one employee = 4 % of total employment in Europe	Low pay and in-work poverty Social security Labour rights Career development and training	Medium	Romania Risk for bogus self-employment and social security risks for artistic workers
Fixed-term contracts	7 % of employment in the EU. Stable trend	Low pay, in-work poverty Social security Labour rights	Medium	Casual and seasonal work, Agriculture and tourism Labour rights risk UK,
.Temporary agency work	1.5 % of total employment in the EU	Low pay and in-work poverty Labour rights Career development and training Low level of collective rights	Medium/high	Outsourcing, especially in cleaning, catering, services and ICT Netherlands and Slovenia Young people. Limited transitions Countries where collective bargaining coverage and union density is now
Posted work	There were 1.92 million postings in Europe in 2014. Increasing trend	Low pay and in-work poverty Social security Labour rights Career development and training	Medium/high	Those affected by abusive practices. Construction In absolute terms, the three main sending Member States were Poland, Germany and France. The three main receiving Member States were Germany, France and Belgium.
Zero hours contracts	About 5 % of the workforce in UK and Austria, 2.6 % in Estonia and the Czech Republic and 1 % in Malta and Norway	Low pay and in-work poverty Social security Labour rights	High	Austria, Netherlands, UK Retail, hospitality
Internships	46 % of 18 to 35-year-olds have completed at least one internship	Low pay and in-work poverty Social security Labour rights Career development and training	Medium	Young people
Informal/undeclared work	4 % of people in the EU admit to carrying out undeclared work in the previous 12 months (Eurobarometer). Stable trend	Low pay and in-work poverty Social security Labour rights Career development and training Low level of collective rights	High	Estonia, Latvia, Netherlands, Malta Care and domestic services Women and migrant workers

[41] Eurofound (2015).

Three types of non-standard forms of work are especially relevant from the point of view of increased insecurity and the potential for growth in the future: casual work, (involuntary) marginal part-time, and crowd employment/platform work. In addition, some long-standing forms of non-standard work - domestic work and temporary agency work - continue to present challenges from the point of view of job security and protection of working conditions. These types of work are discussed in more detail below.

- **Casual work**

Casual work is a type of work where the employment is not stable and continuous, and the employer is not obliged to regularly provide the worker with work, but has the flexibility of calling them in on demand; it is work which is irregular or intermittent with no expectation of continuous employment. Workers' prospects of getting such work depend on fluctuations in the employers' workload.[42]

Casual work tends to be performed by the young, the less educated, and predominantly by women and is characterized by low pay.

As underlined by Eurofound, among the new employment forms analysed, casual work is the one which raises most concerns about working conditions. It is characterised by low levels of job and income security, poor social protection, little access to HR measures and, in many cases, dull or repetitive work. The high degree of flexibility is valued by some workers, who benefit from an improved work–life balance, but is reported as excessive for the majority of the casual workers, who would prefer more continuity.[43] The European Parliament has underlined that atypical employment can also have negative effects on work-life balance, due to non-standard working time as well as irregular wages and pension contributions[44].

ILO points out that casual workers have very low rates of transition to standard employment status. Moreover, in some countries, there are widespread practices of hiring and firing casual workers at frequent intervals to evade establishing an obligation to provide social security protection or compensation. As a result, casual workers face high levels of insecurity in all aspects of their working conditions. Unpredictability of employment leads to unpredictability about the level of earnings, and into inadequate social security coverage, if any is provided at all. Similarly, training and career path security is lacking in most cases. Occupational safety and health outcomes are particularly negative for this category of workers as they often perform tasks that other workers are reluctant to undertake – work that can be unpleasant, hazardous, done at irregular hours, and involve high levels of physical strain and fatigue. Casual workers are rarely covered by enterprise-level collective agreements. The level of unionization is low since conventional organizational strategies rarely suit casual workers, as they often have no regular place of work. Moreover, tensions between regular unionized employees and

[42] Eurofound (2015), page 46

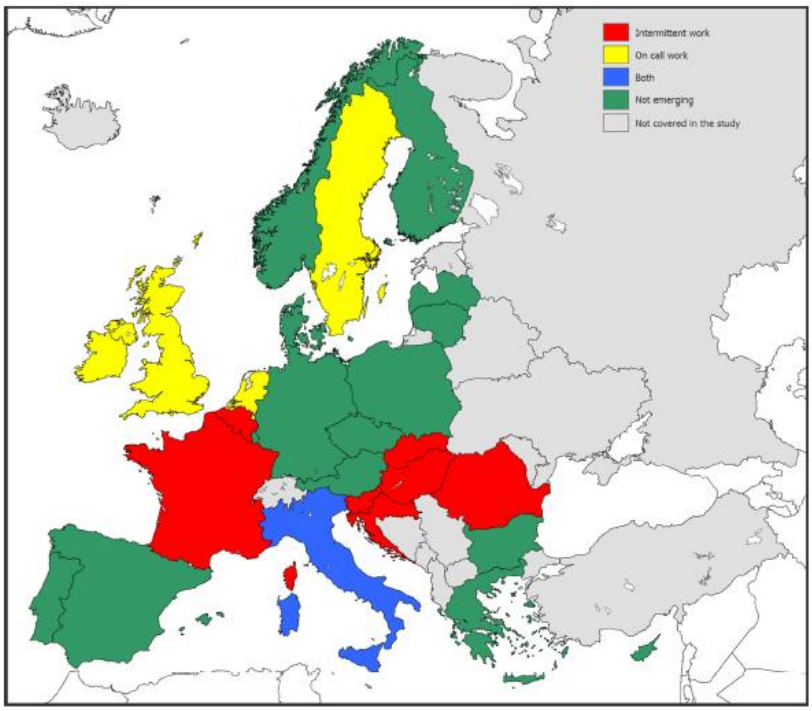
[43] Eurofound (2015), page 138

[44] European Parliament, European Parliament resolution of 4 July 2017 on working conditions and precarious employment

casual, non-unionized workers often occur when employers resort to casual work during strikes. Casual workers are also more likely to be subject to discrimination.

Two types of casual work are prevalent: intermittent work,[45] and on-demand work.[46] While intermittent work can be found in Belgium, Croatia, France, Hungary, Italy, Romania, Slovakia and Slovenia, on-demand work has emerged or has expanded over the last decade in Ireland, Italy, the Netherlands, Sweden and the UK[47]. Casual work may also overlap with voucher-based work.

Figure 11. European countries where casual work is new or of increasing importance



Source: Eurofound, based on national contributions

A specific form of on-demand work, zero hours contracts, does not occur in all Member States but is significant in some. It accounts for around 5 % of the workforce in Austria, mainly in hospitality and retail. In the UK, such contracts are 5-6% of all contracts,

[45] Intermittent work involves an employer approaching workers on a regular or irregular basis to conduct a specific task, often related to an individual project or seasonally occurring jobs. The employment is characterised by a fixed-term period, which either involves fulfilling a task or completing a specific number of days' work.

[46] On-demand work involves a continuous employment relationship maintained between an employer and an employee, but the employer does not continuously provide work for the employee. Rather, the employer has the option of calling the employee in as and when needed. There are employment contracts that indicate the minimum and maximum number of working hours, as well as so-called 'zero-hours contracts' that specify no minimum number of working hours, and the employer is not obliged to ever call in the worker.

[47] Eurofound (2015), *New forms of employment,* Publications Office of the European Union, Luxembourg, page 46

representing 2.8% of all people in employment.[48] Zero hours contracts have no guaranteed minimum hours of work. Flexible hours are not always a negative aspect and can be positive if flexibility is chosen or "employee-led" (e.g. 18% of workers on zero hours contract in the UK are in full-time education[49]), but workers in lower-level occupations are less likely to have the bargaining power to negotiate their working schedules, or indeed any autonomy and control over their schedules.[50] The risk of precariousness can moreover be high for some individuals if they are in need of guaranteed hours of work and income levels.[51]

The interval between being requested to work and the actual start of work varies in line with company practice and the emergence of HR needs. Among the case studies set out in the Eurofound report,[52] there are examples of employers summoning casual workers only one hour before the shift starts and others doing so as long as four weeks in advance. A UK survey showed that one-third of organisations using zero-hours contracts have a set policy for the notice period required for staff asked to work, 40% had no policy, and the remainder did not know if they had one. Almost half of zero-hours workers said they have no notice; workers might even discover at the start of a shift that their work has been cancelled. On receiving a job offer, a casual worker may decline, in which case, the next candidate is contacted. However, in several case studies, respondents said that repeated refusal makes it less likely that a worker will be asked to come to work. In a UK survey, 17% of zero-hours workers said that they are sometimes penalised if they refuse a call-in, and 3% said they were always penalised.[53]

Policy discussions on casual work are ongoing in several Member States, for example in Ireland, the Netherlands, Romania, Slovenia and the UK, and mainly focus on addressing abuse of the established system and exploitation of workers.

➢ Involuntary and/or marginal part-time

The volume of part-time work has been increasing for decades, due to changing structure of the economy towards services and preferences for part-time work, not least related to the increase in female labour force participation. The proportion of the EU-28 workforce in the 15–64 age group reporting that their main job was part-time increased steadily: from 17.5% in 2007 to 19.6% by 2015, representing the type of non-standard employment that has grown most significantly since the onset of the crisis. Between 2007 and 2015, there was a widespread increase in the share of part-time workers, though it

[48] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/may2017

[49] "Good Work: The Taylor Review of Modern Working Practices", July 2017, p. 25

[50] Non-standard employment around the world: Understanding challenges, shaping prospects International Labour Office – Geneva: ILO. 2016, pp. 226-227

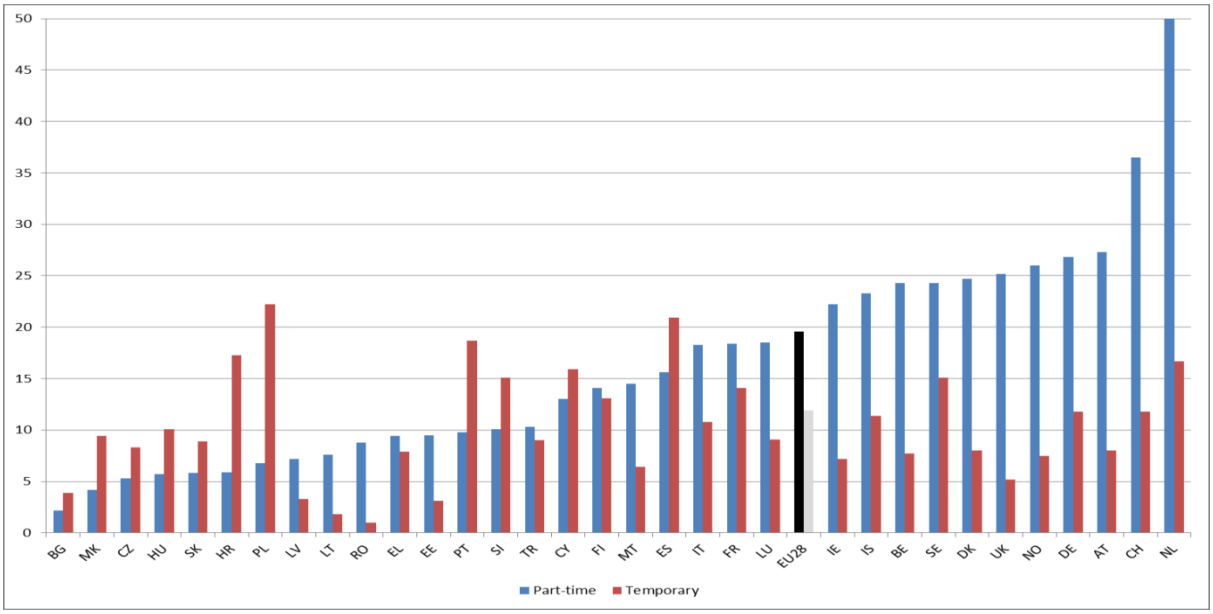
[51] European Parliament, Policy Department A, (2016) Precarious Employment: Patterns, Trends and Policy Strategies in Europe, page 14

[52] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg. Page 48

[53] Ibid.

declined in Croatia, Lithuania and Poland.[54] As shown in Figure 12, there are wide differences between Member States as far as the use of part-time is concerned.

Figure 12. Share of temporary and part-time workers in total employment, age 15-64, by countries, 2015



Source: Eurostat, Part-time employment and temporary contracts — annual data [lfsi_pt_a].

There are many advantages related to part-time work. It allows workers to achieve a better balance between professional and private life, which can be especially important for parents of young children, carers of older family members, or people combining work with studies. Thanks to part-time more people can actively participate in labour markets. It has a positive impact on employment rates of women and older people.

However, for some workers part-time jobs are not a voluntary choice. Self-reported **involuntary part-time work**[55] increased from 22.4% of all part-time work to 29.1% between 2007 and 2015[56]. Women, younger workers, less educated workers and – especially – workers new to their current job (tenure < 1 year), those on temporary contracts and in low-paid professions are more likely to be involuntary part-time workers. [57]

There is a very strong association between national labour market performance and changes in the share of involuntary part-time work. Where the unemployment rate has increased most, so has the proportion of involuntary part-time. Greece, Spain and Cyprus are illustrative examples. The corollary is also true. The Member State with the most improved unemployment record over the period, Germany, also has the sharpest decline

[54] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin

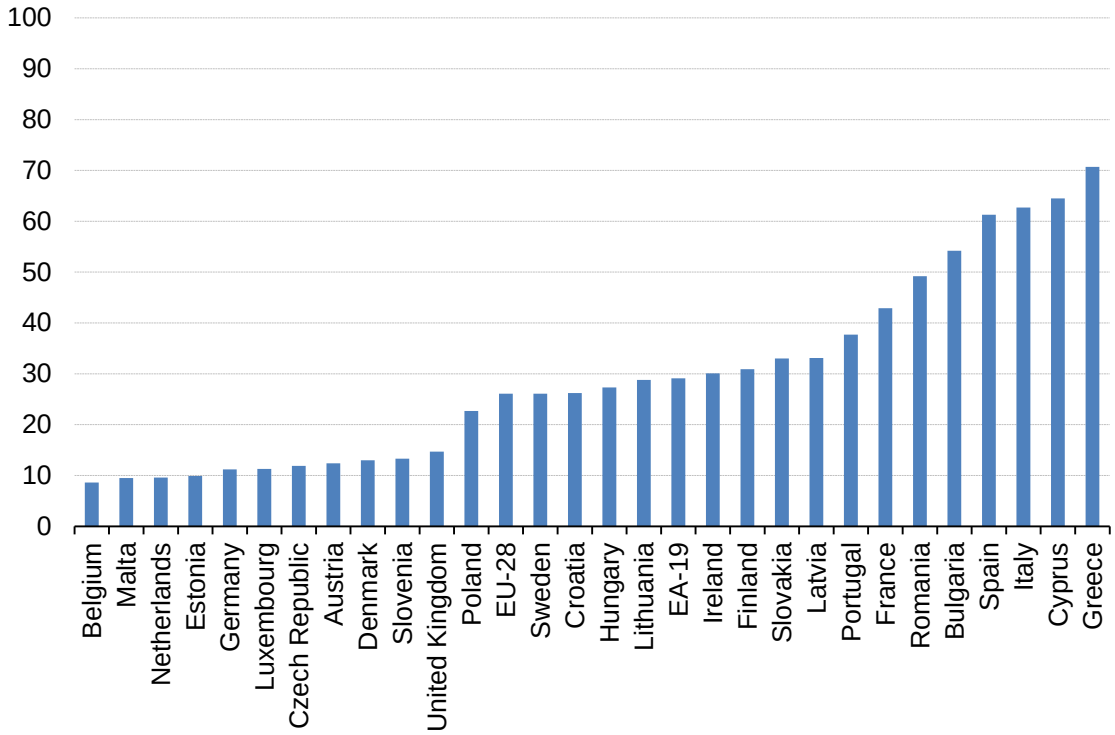
[55] Positive response in the LFS survey to a statement "Person could not find a full-time job"

[56] EU LSF.

[57] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin

in involuntary part-time share.[58] Figure 13 shows the share of involuntary part-time employment in the EU in 2016.[59]

Figure 13. Share of involuntary part-time employment in Europe 2016 (% of all part-time workers incl. marginal part-time)



Source: *EU-LFSA [lfsa_eppgai]*

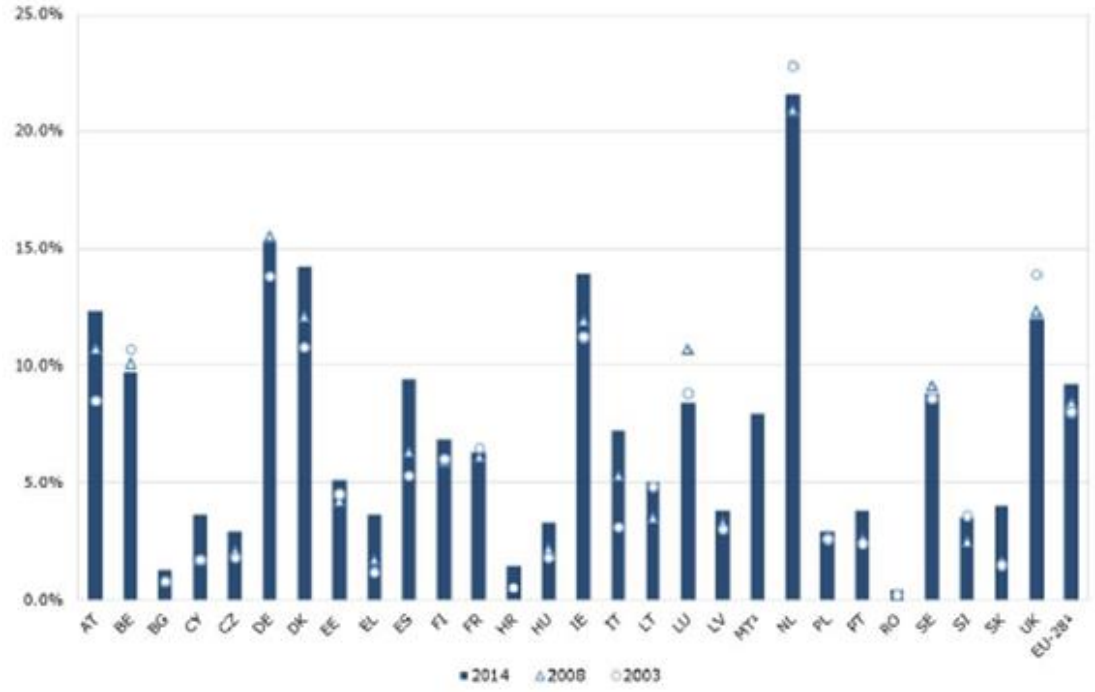
Marginal part-time work (working fewer than 20 hours per week) is also increasing. About 9 % of the total employed workforce in Europe are employees on marginal part-time work. The share of marginal part-time work has grown constantly in almost all European countries since 2003, mainly due to the increasing participation of women who enter or re-enter the labour market with a low number of working hours and due to specific regulations, such as the 'Minijob' in Germany.[60]

[58] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin

[59] "Precarious employment in Europe, Part 1: Patterns, trends and policy strategy"- study for the EMPL Committee, 2016, p.75-78

[60] Ibid

Figure 14. Share of marginal part-time employment in Europe 2003, 2008 and 2014[61]



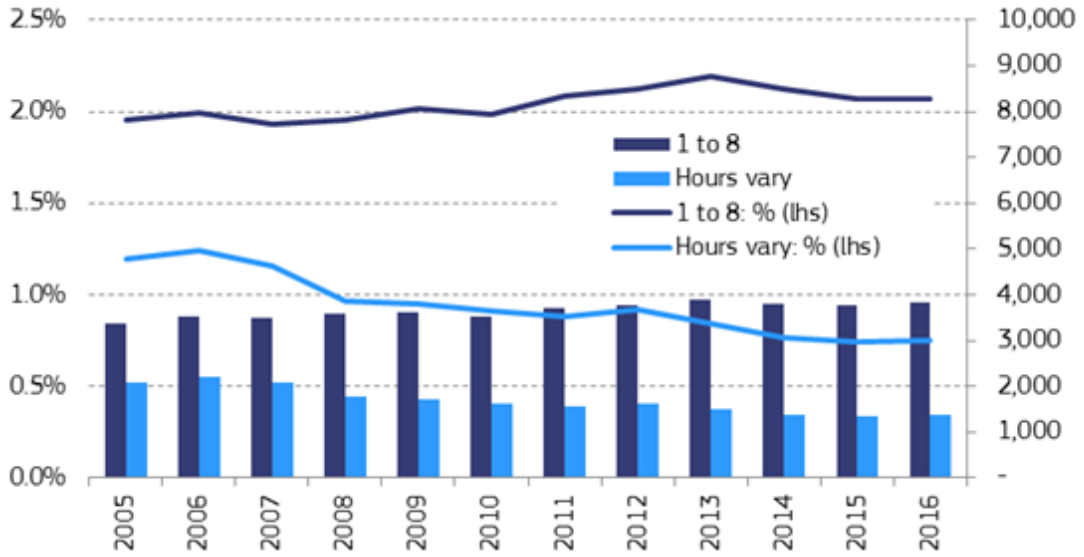
Source: EU-LFS 2003, 2008, 2014, marginal part time: <20 hours working per week, weighted results. Note: data for HR in 2003&2008 less reliable. No data for Malta in 2003 and 2008.

As shown in Figure 15, among workers on marginal part-time contracts, there are some whose working hours are extremely short, between 1 and 8 hours per week. Many of them are currently excluded from the right to receive a written statement of their working conditions. **The share of workers working eight hours or less per week has been growing over the last decade and affects as many as 4.3 million workers in the EU.** In 2016, there were 2.1% of working-age (15-64) people in employment working eight hours or less per week. Albeit small, their share grew to +0.1 pps in 2016 compared to 2005. In absolute terms, this has meant that workers with working eight hours or less per week increased by over 400,000, going from 3.4 million in 2005 to 3.8 million in 2016.

Conversely, the number of people whose hours vary significantly from one month to another has been reducing in the last decade. Their proportion in overall employment has fallen to less than 1% in 2016, or nearly 1.4 million workers.

[61] "Precarious employment in Europe, Part 1: Patterns, trends and policy strategy"- study for the EMPL Committee, 2016, p.75-78

Figure 15. Proportion of employed persons aged 15-64 who usually work 8 hours or less per week or whose hours vary, EU-28, 2005-2016



Note: 'No answer' category not included in the calculation. 'Hours vary' denotes people who answered that 'Usual hours cannot be given because hours worked vary considerably from week to week or from month to month'.
Source: Own calculations based on EU-LFS.

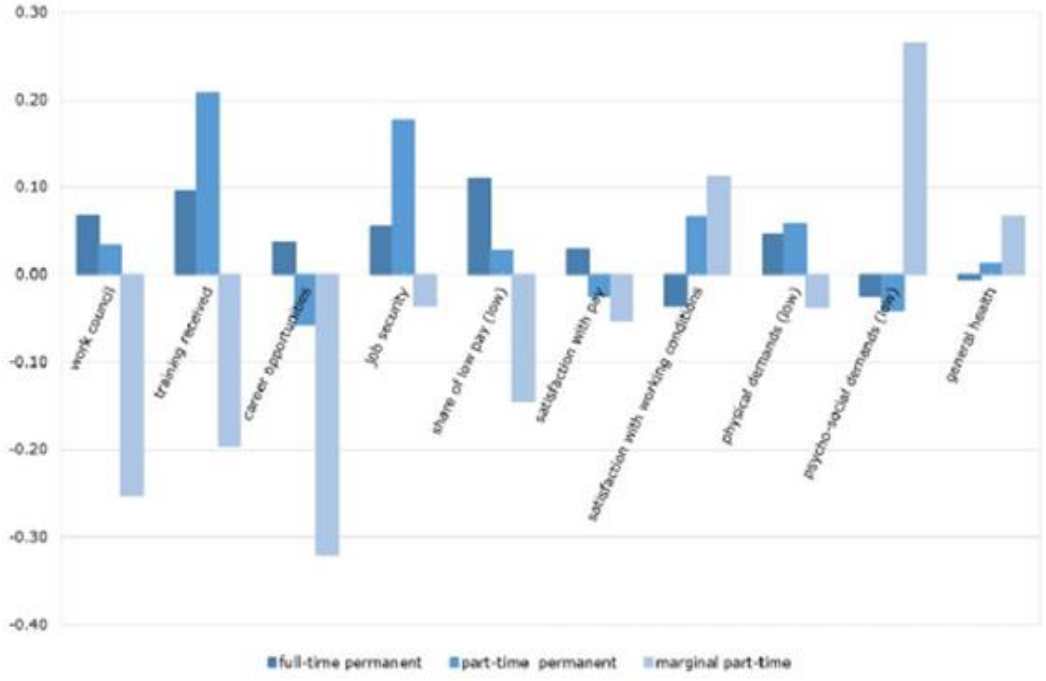
While women account for the majority of very low hours' part-time work, the male share has grown relatively faster since 1996 (from 1.5% to 2.8% of all male workers) compared to the female share (from 6.1% to 6.6% of all female workers). Highest shares were recorded amongst both young workers (<=24 years of age) and workers above 64 years of age, and it was in these groups, in particular the younger group, that the greatest growth in the share of very short hours part time work was recorded.[62]

Overall, marginal part-time workers report higher levels of satisfaction with working conditions and general health, and lower levels of psycho-social demands than full-time or part-time workers. However, they fare much worse than full-time work in the case of representation on works councils, career opportunities, share of low pay and satisfaction with pay (see Figure 16).[63]

[62] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin.

[63] "Precarious employment in Europe, Part 1: Patterns, trends and policy strategy"- study for the EMPL Committee, 2016, p.75-78

Figure 16. Working conditions of part-time work in Europe, 2010 (average deviation from average across all types of work)



Source: Eurofound, European Working Conditions Survey *2010, weighted results.*

➢ Crowd work/platform work

Eurofound (2015) defines crowd employment as an employment form that uses an online platform to enable organisations or individuals to access an indefinite and unknown group of other organisations or individuals to solve specific problems or to provide specific services or products in exchange for payment.
The service delivery in this category is exclusively digital. To this should be added other work done in collaborative economy with physical delivery.

The JRC defines work in the collaborative economy as digital labour markets, defined as:
1) *digital marketplaces for non-standard and contingent work*
2) *where services of various nature are produced using preponderantly the labour factor (as opposed to selling goods or renting property or a car),*
3) *in exchange for money, and*
4) *where the matching is digitally mediated and administered although performance and delivery of labour can be electronically transmitted or be physical.*

Digital labour markets can be divided into two types:

(1) Markets for on-line services, which allow the remote delivery of electronically transmittable services. These can be micro tasks (e.g. Amazon Mechanical Turk) which generally demand low skills or entire projects (e.g. Upwork, Freelancers), which generally demand medium to high skills.

(2) Markets for off-line services, where the matching and administration processes are digital but the delivery of the services is physical (e.g. TaskRabbit) and/or requires direct interaction (e.g. TakeLessons).

Markets for on-line services are potentially global, while markets for off-line services are inevitably local.[64] This type of work has attracted much attention in recent years due to its growth potential as well as the challenges it poses to the traditional understanding of employment relationships.

The Communication "A European agenda for the collaborative economy"[65] includes an examination of the conditions under which an employment relationship exists in line with EU labour law and jurisprudence. This is to provide some orientation on how the traditional distinction between the self-employed and workers applies in the context of the collaborative economy. Since, in general, EU labour law only sets minimum standards and does not cover all aspects of social legislation applicable to work relationships, Member States may set higher standards in their national legislation.

Whether an employment relationship exists or not has to be established on the basis of a case-by-case assessment, considering the facts characterising the relationship between the platform and the underlying service provider, and the performance of the related tasks, looking cumulatively in particular at the following three essential criteria:
-the existence of a subordination link;
- the nature of work; and
- the presence of a remuneration.
EU Member States remain largely responsible for deciding who is to be considered a worker.

There are no official statistics on employment in the collaborative economy in the EU, and the following quantification is based on surveys, literature reviews and to some extent data emanating directly from the platforms. Given the very recent emergence of this type of work, all projections are subject to significant uncertainty. The collaborative economy is estimated to be worth € 570 billion across the EU by 2025.[66] The data and evidence in the EU on how many persons are providing services and working in the collaborative economy, and the intensity of their work, are very limited. According to a JRC study, in countries such as the UK and the US, those working regularly for collaborative economy platforms (every week), are conservatively estimated to make up between 1% and 2% of the labour force.[67] This aligns broadly with a 2016 survey conducted in the UK.[68] A recent LFS-based study in Finland also showed that about 1% of the workforce is in the collaborative economy. [69]

[64] "The Future of Work in the 'Sharing Economy", Codagnone et al, JRC (2016)

[65] COM(2016) 356 final

[66] http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/future-of-the-sharing-economy-in-europe-2016.html

[67] "The Future of Work in the 'Sharing Economy", Codagnone et al, JRC (2016)

[68] CIPD (2017): *To gig or not to gig? Stories from the modern economy*. A nationally representative sample of 5,019 UK employed persons aged 18 to 70 was asked about the use of on-line platforms in the previous 12 months in December 2016.

[69] LFS 2017, nationally added questions

A 2016 McKinsey Global Institute study estimated that approximately 9 million people in the United States and the "EU-15" (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom) have earned income by performing labour over a digital platform.[70] Another survey[71] implemented in UK, Sweden, Germany, Austria and the Netherlands in the first two quarters of 2016, showed that between 5% and 9% of the online population[72] were engaged in some type of crowd work.[73] This work usually brings a small supplement to the total income.[74]

Overall, even if the size of collaborative economy platforms is still rather small, they have grown exponentially over the last five years. It is difficult to predict their future development. On the one hand, factors such as technology replacing human work for some of the simple tasks they perform or the possibility of increased fiscal regulation of their activity may hamper the growth of employment through platforms.[75] On the other hand, there are empirically-consequential hypotheses, that if they do continue to grow at the current pace, their importance for traditional and long-term forms of employment could be considerable.[76]

Profile and working conditions of workers in the collaborative economy

Workers in digital labour markets tend to be younger and better educated than their population of reference. However, between 6% and 12% of individuals 55 years and older also participate. There are fairly large shares of individuals for whom earnings from working for collaborative economy platforms represent their primary source of income and/or who engage in a portfolio of several activities. In the UK for instance, according to a survey based on a nationally-representative sample, as many as 60% (2.9 million if projected on the population of reference) of those who have worked in collaborative economy platforms at least once (11% or 4.9 million), work for several of them and are registered with between 2 and 5 platforms. Even when the pay is very low, available surveys indicate that the primary motivation for engaging in this type of work is to earn money.[77]

In the few surveys available, it does appear that the attitudes to platforms from those doing the work are rather positive. One striking feature of work on digital platforms is

[70] *Independent work: choice, necessity and the gig economy*, McKinsey Global Institute, October 2016.

[71] Huws et al. (2016): *Crowd work in Europe: preliminary results from a survey in the UK, Sweden, Austria and the Netherlands*.

[72] In absolute numbers: United Kingdom: About 1.4 million, Germany: About 1.3 million, Netherlands: About 280,000, Sweden: About 200,000

[73] Although the sample has been weighted *ex post* to be representative of the national population as regards age, gender, region and working status, the results "cannot be generalised with complete confidence" to the entire population.

[74] For 45% (from 58% in Austria to 33% in Sweden) it made up only 10% or less of all income.

[75] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin.

[76] "The Future of Work in the 'Sharing Economy'", Codagnone et al, JRC (2016)

[77] Ibid.

that it is often a very marginal or occasional activity, and so the expectations of the individuals concerned in terms of traditional workers' rights and protections may be lower than for those for whom it is the main source of income.

An ILO survey of 1,100 workers on two leading micro-task platforms showed that for nearly 40 % of the workers, crowd work was the main source of income.[78] They generally appreciated the ability to work from home. Nevertheless, this positive aspect contrasted with dissatisfaction over low pay, insufficient work and unresponsiveness from the platforms in the face of their concerns. Some 90% of respondents said they would like to be doing even more crowd work – if only more were available and the pay were higher.

The survey found that the workers averaged between US$2 and US$6 per hour, depending on the micro-task platform and the tasks that they carried out. Part of the low hourly earnings stemmed from time spent looking for more work on the platform or from taking unpaid qualification tests to qualify for work when it became available. Indeed, for every hour of paid work, workers averaged 18 minutes of unpaid work.

Workers' pay was also compromised by the lack of protection regulating this form of work. As the platforms have, for the most part, classified their workers as independent contractors, these workers are not subject to the protections – on working hours, pay, occupational safety and health, voice and representation, and social protection – that are accorded to employees. This means that earnings are often allowed to fall below the applicable minimum wage. Moreover, there is generally no provision for paid leave or breaks, and workers bear all the costs of social security payments, or risk not being covered by social security in the event of disability, job loss or retirement. Indeed, the survey found that of the American Amazon Mechanical Turk workers for whom crowd-working was the main source of income, only 9.4% made contributions to social security and only 8% made contributions to a private pension fund.

- **Domestic workers**

Domestic work, while not new, continues to present challenges from the point of view of job security and protection of working conditions.

ILO defines “domestic work” in Article 1 of the Domestic Workers Convention, 2011 (No. 189):

(a) the term “domestic work” means work performed in or for a household or households;
(b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
(c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Domestic work involves providing care to children, the elderly, or persons with disabilities. It also includes tasks such as cleaning and cooking, as well as gardening,

[78] Berg, 2016, quoted in "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO. 2016

chauffeuring or providing security services. Some domestic workers live and work full time on the premises of their employer ('live-in' workers). Others live elsewhere and travel to their workplace(s) for a number of hours per week ('live-out' workers).

Domestic work - a growing sector

Obtaining reliable data on domestic work in Europe is difficult, particularly due to its often informal character. In 2012, some 2.6 million persons were employed as domestic workers in the EU-27 Member States. Around 2.3 million of these were women (89%), and slightly fewer than 300 000 men (11%).[79]

Within Europe, the biggest employers of domestic workers are Italy (27.5%), Spain (25%), France (23%). A common pattern among them – and other Western European countries – is the employment of migrant women, for whom domestic work is a main entry point into the labour market.

Domestic workers can be nationals of the EU Member State in which they work, or nationals of another, or third-country nationals (legally or illegally resident in the EU). In 2014 in Italy, the proportions were 23% nationals, 46% other EU nationals and 31% third-country nationals. Data from the 2004 European Community Labour Force Survey show that 36 per cent of all female migrant workers in Spain find work as domestic workers. Similarly, 27.9 per cent and 21.1 per cent of all female migrant workers are hired by private households in Italy and France, respectively (Oso Casas and Garson, 2005).

For example, Spain has seen a particularly rapid increase in the number of domestic workers, from 355,000 in 1995 to 747,000 in 2010. As shown in Figure 17, the increase outpaced growth in total employment during the years of economic prosperity and was followed by a modest decline from 2008 onwards.[80]

Figure 17. Total employment and employment of domestic workers in Spain, 1995-2011

[79] Invisible jobs. The situation of domestic workers, European Parliament briefing, December 2015

[80] "Domestic workers across the world: Global and regional statistics and the extent of legal protection", International Labour Organization 2013 – pp. 35-39

Source: Spanish National Statistics Institute, Economically Active Population Survey, 1995-2011

The United Kingdom, with some 138,000 domestic workers working in private households, is one of the rare cases where the number of domestic workers has fallen over the past decades.[81] However, some researchers have suggested that families in the United Kingdom increasingly rely on *au pairs* as an alternative. Although their work essentially resembles that of migrant domestic workers (but with some restrictions, such as a lower limit on weekly hours), they are not considered to be workers or migrants, but as participants in a "cultural exchange programme".[82]

Employing domestic staff is very uncommon in the Nordic countries. Denmark (3,900 domestic workers in 2007) and Finland (8,200 in 2008) have very low numbers of domestic workers, and domestic workers account for only 0.1 to 0.3 per cent of total employment (no data are available for Sweden). This is partly due to the public provision of childcare and elderly care, tasks that are often undertaken by domestic workers in other countries. Likewise, Eastern Europe also has a very low incidence of domestic work, which usually makes up less than 1 per cent of total employment.[83]

Despite these exceptions the demand for domestic workers to provide personal and household care services is likely to continue to grow in future decades due to several factors:[84]

[81] According to the labour force survey carried out by the Office for National Statistics, some 206,000 domestic workers were counted in 1990 and 153,000 in 1995.

[82] "Domestic workers across the world: Global and regional statistics and the extent of legal protection", International Labour Organization 2013 – pp. 35-39

[83] Ibid.

[84] *Formalising Domestic Work*, International Labour Office – Geneva: ILO. 2016

- Ageing populations and fewer multigenerational households, meaning that more and more of the elderly live alone.
- A continued rise in women's economic participation, meaning greater pressure on families to find alternative ways of coping with childcare and housework.
- Home-based care for young children, the elderly and chronically ill is a preferred mode to institutional care, for several reasons: lower costs, greater independence, and the potential of assisted-living technology, limited public services in some countries, and cuts in public expenditures.[85]

Characteristics of domestic workers and their working conditions

A common characteristic of much domestic work is the lack of a formal employment contract and a resulting insufficient protection of working conditions. According to the European Federation for Services to Individuals, in 2010, the share of informal work in the market for personal services was 70% in Italy and Spain; 50% in the United Kingdom; 45% in Germany; 40% in the Netherlands; 30% in France and Belgium; and 15% in Sweden.[86]

Lack of a formal employment contract leads to problems such as lack of protection against illness, occupational accidents and workplace hazards, lack of access to social security benefits, such as maternity protection and pension schemes. Sickness, injury and pregnancy can be grounds for immediate dismissal.

In some cases, mainly involving migrant workers, domestic work is associated with precarious work, defined by the inability of individuals to impose their rights, the absence of social protection, as well as health and safety risks and insufficient income. Furthermore, domestic work is characterised by an unspecified length of employment and uncertainty about future employment. Domestic workers' wages are often below the national statutory minimum wage, and there is no provision for overtime pay. In addition, wage payments may be delayed, improperly calculated or withheld arbitrarily.[87]

The highest likelihood of being an involuntary part-time worker is in domestic employment, which accounts for just over 1% of all workers but 6% of all involuntary part-timers.[88]

Need to improve working conditions of domestic workers through regulation

The aforementioned ILO Convention of 2011 reflects the need to better regulate working conditions of domestic workers, especially given the situation of vulnerable workers: women, young workers and migrant workers, who are predominant in this sector. To date, the Convention has been ratified by six Member States (Belgium, Finland, Portugal, Germany, Ireland and Italy), and is in force in the latter three.

[85] Eurofound (2013), *More and better jobs in home-care services*, Publications Office of the European Union, Luxembourg

[86] *Invisible jobs. The situation of domestic workers*, European Parliament briefing, December 2015

[87] *Ibid.*

[88] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin.

As a practical measure to improve protection of domestic workers and tackle undeclared work different national schemes have been created, using voucher-based forms of work, such as the *chèque emploi service universel* in France and *titres services* in Belgium. These systems offer domestic workers healthcare, social protection and a fixed hourly wage, as well as limits to maximum working hours and a right to paid vacation.

In 2016, in recognition of the difficult situation of many domestic workers, the European Parliament published a report on women domestic workers and carers in the EU. It "calls on the Member States to include domestic workers and carers in all national labour, healthcare, social care, insurance and anti-discrimination laws, recognising their contribution to the economy and society; urges the Commission accordingly to consider revising any EU Directives which exclude domestic workers and carers from rights that other categories of workers enjoy."[89]

Despite these policy efforts, the situation of domestic workers in the EU remains too often unregulated and their employment status unclarified.

➢ Temporary Agency workers

'Temporary Agency Work' is a form of work where the worker has a contract of employment or an employment relationship with a temporary-work agency with a view to be assigned to a user undertaking to work temporarily under its supervision and direction.[90]

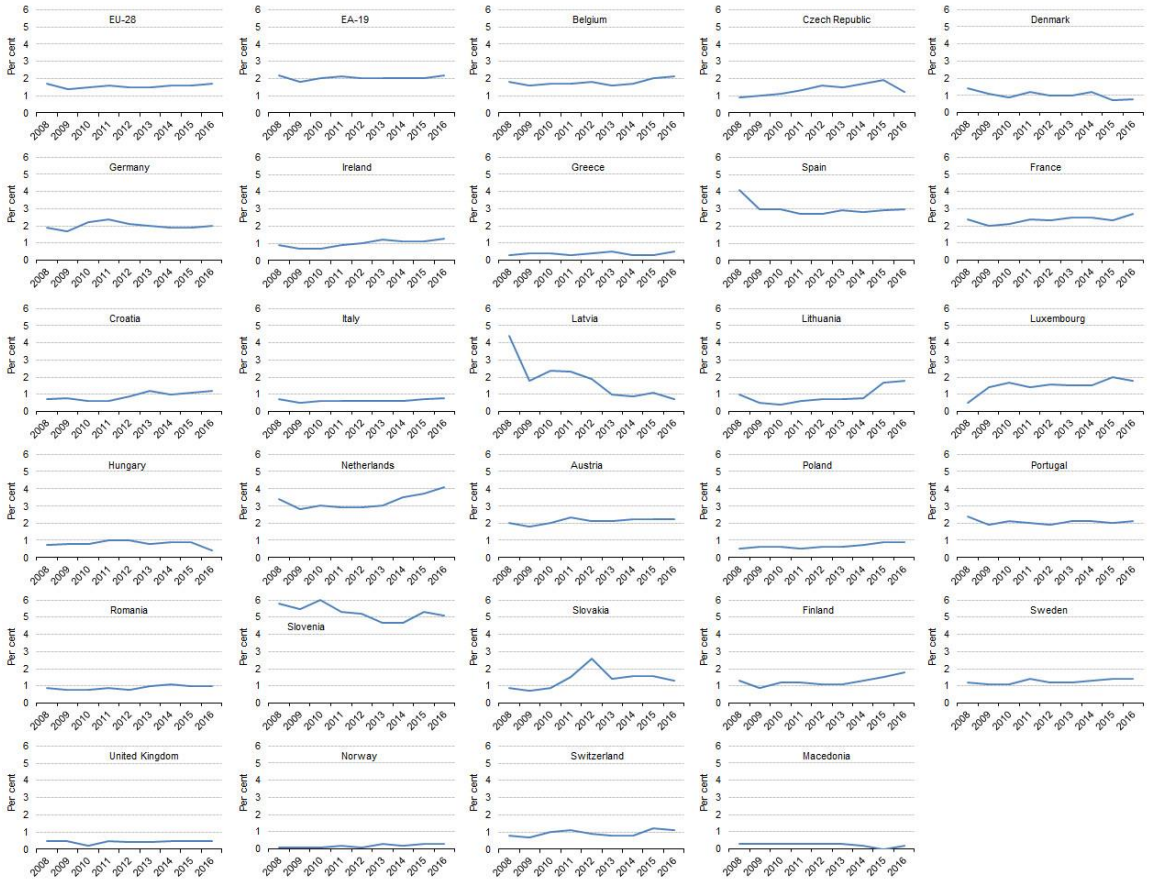
The share of temporary agency work has been generally growing in the EU. In 1999, just when this form of employment had become legally permissible in most of Europe it was 1.2%. In 2016, temporary agency work accounted for 1.7% of all employment in Europe. In 2016, the highest rate was in Slovenia (5.1%). Significant rates can be found in the Netherlands (4.1%), Spain (3%) and the lowest rate of 0.5% in Greece and in the UK.[91] The evolution of temporary agency work has however been varied across EU Member States in recent years.

[89] Report on women domestic workers and carers in the EU(2015/2094(INI)) of 5.4.2016.

[90] Directive 2008/104/EC, Article 3 (1) (c)

[91] Eurostat, [lfsa_qoe_4a6r2]

Figure 18. Temporary agency workers as a percentage of employees, selected countries, 2005 and 2010[92]



Source: EU-LFS data

Besides the substantial quantitative growth, the temporary employment agency industry also grew "qualitatively", with respect to the range of occupations it entered in and the functions it performed. From short-term cover of absences or seasonal peaks it evolved into a more systemic and continuous solution for some companies.[93]

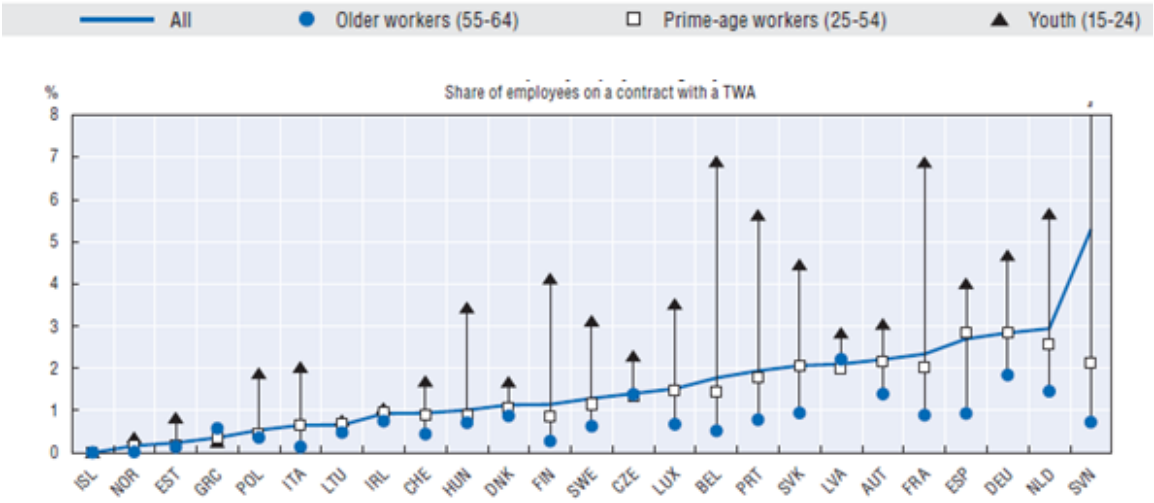
As in other non-standard forms of employment, some groups are overrepresented among temporary agency workers. The 2012 European Labour Force Survey data for 14 European countries showed that young people aged 15–24 had a temporary agency employment rate (2.9 per cent) more than double that of workers aged 25–54 (1.3 per cent). The incidence of temporary agency work among the low-skilled (1.8 per cent) is also more than double that of the high-skilled (0.8 per cent).[94]

[92] *Non-standard employment around the world: Understanding challenges, shaping prospects* International Labour Office – Geneva: ILO. 2016

[93] idem

[94] EU-LFS data - Eurobase lfsa_qoe_4a6r2

Figure 19. Temporary employment by age group, 2011-12 – share of employees on a contract with a temporary work agency

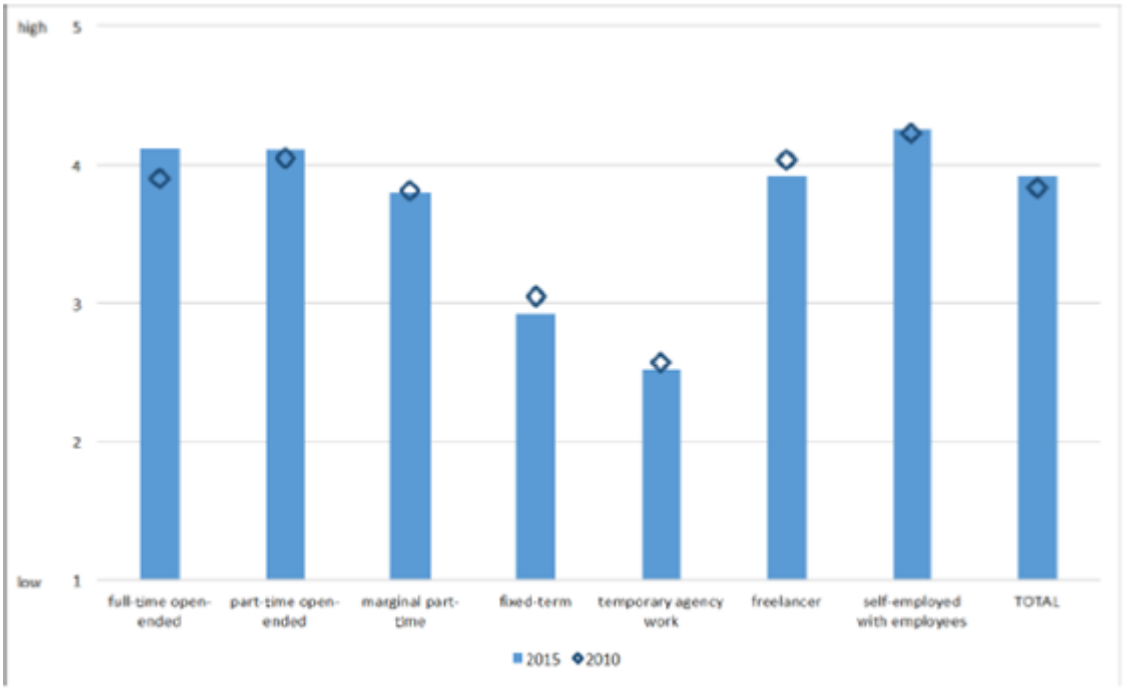


TWA: Temporary work agency.
a) Slovenia: 23% of youth are employed with a TWA.
Source: OECD calculations based on microdata from the EU-LFS and OECD (2013), "labour market statistics. Employment by permanency of the job: incidence", OECD Employment and Labour market Statistics (database)

While in at least eight European countries, open-ended contracts between the agency and the worker were the dominant contractual form of temporary work agency employment (for example in Austria, Germany and the Slovak Republic), in others it was fixed-term contracts (e.g. in France, the Netherlands and Slovenia).[95] Overall, temporary agency workers have a very negative perception of their job security.

[95] OECD Employment Outlook 2014, *Non-regular employment, job security and labour market divide*

Figure 20. Self-reported perception of security in Europe 2010 and 2015 by type of employment[96]



Source: Eurofound, European Working Conditions Survey *2010, 2015, weighted results as calculated in Eichorst, Werner and Verena Tobsch (2016)*

It is debatable whether temporary agency work can serve as a stepping stone to permanent employment. Houseman (2014) reviewing evidence from Germany, Spain and Italy finds rather low transition rates for agency workers (lower than those on fixed-term contracts) and conclude there is no evidence of a stepping-stone effect. There is, however, more positive evidence from both Sweden and Denmark as regards the role of temporary agency work as a stepping stone for migrants. [97]

[96] Storrie (2017)

[97] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin.

2.2.2 Regulatory drivers

Article 153 TFEU of the Social Policy Title X is the basis for the implementation of the **EU's social mission and objectives to promote the well-being of its peoples** (Article 3 TEU) and to work for the **sustainable development based on a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection**.

A central provision in this Title is Article 153(1). It has a wide personal and material scope, providing the legal basis for the EU "*to support and complement the activities of the Member States*" in a number of fields for people both inside and outside the labour market: workers, jobseekers and unemployed. The objective is to improve working conditions, social security and social protection, workers' health and safety, information and consultation of workers, and the integration of persons excluded from the labour market.

The directives based on Article 153 can 'set minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States'. Such directives 'shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings'. The provisions adopted 'shall not prevent any Member State from maintaining or introducing more stringent protective measures'.

The European Union has built over the years a strong core of individual rights for workers, encompassing information to each worker about his/her working conditions; health and safety protection, including limits on working time; combating discrimination and abuse of non-standard employment types; equal treatment at the workplace; conditions for workers posted to another Member State and third country nationals coming to work in the EU. A further set of Directives provide for minimum standards in relation to collective rights: for representation via European Works Councils; for information and consultation in relation to structural changes in companies; in relation to collective redundancies; and for transfers of undertakings.

Nonetheless, the changes in the labour market described in the section above have exposed some deficiencies and/or gaps in EU and national legal frameworks.

a) The EU social acquis

The protection of workers at the EU level is currently ensured through secondary legislation, mostly in the form of Directives on the basis of what are now Articles 153 and 157 TFEU on social policy,[98] including a set of individual and collective rights. Many of these give a more concrete expression or implementation of social rights as derived from the Treaties and in the Charter of Fundamental Rights of the EU.

Several Directives aim to implement the **principle of equal treatment between persons** in the workplace. The Employment Equality Directive[99] prohibits discrimination in employment **on the basis of sexual orientation, religious belief, age and disability**,

[98] For a detailed overview, refer to the Commission Staff Working Document The EU Social Acquis, accompanying the Communication Launching a consultation on an European Pillar of Social Rights, SWD(2016) 51 final.

[99] Directive 2000/78.

and the Racial Equality Directive[100] prohibit discrimination on the basis of **race and ethnicity** in employment, in education, and in access to social security and goods and services. In 2006, the Gender Recast Directive consolidated into a single Directive earlier EU legislation relating to equal opportunities and **equal treatment for men and women** in employment and occupation.[101]

The Pregnant Workers (**Maternity Leave**) Directive provides for paid maternity leave, at least at the level of sick pay for fourteen weeks.[102] In addition, the Directive on self-employed workers and assisting spouses also grants a maternity allowance that is sufficient to enable an interruption of occupational activities for at least fourteen weeks for female self-employer workers or female spouses of self-employed workers.[103] The **Parental Leave Directive**[104] entitles men and women workers to a minimum of four months' leave after the birth or adoption of a child. The **proposal from the Commission for a Directive on work-life balance for parents and carers** currently in the legislative procedure[105] would replace Council Directive 2010/18/EU, preserving existing rights but also introducing new rights to paternity leave, leave to take care of ill or dependant relatives, and to request flexible working arrangements.

Three separate EU labour law Directives, concerning **fixed-term work, part-time work and temporary agency work** aim to ensure equal treatment and **prevent abuse of 'atypical' contracts**.[106] Where a worker is employed under such an atypical contract, he or she should generally not be treated in a less favorable manner than comparable permanent and/or fulltime staff concerning employment conditions unless there are objective reasons for different treatment. Under the Temporary Agency Work Directive for instance, from the first day of their assignment, temporary agency workers have to be subject to the same basic working and employment conditions as if they were recruited directly by the user firm to occupy the same job. The Fixed-Term Work Directive also includes an 'anti-abuse' clause to impede unjustified successions of such contracts. An additional Directive extends the EU rules on occupational health and safety to temporary workers, generally more exposed to the risk of accidents at work and occupational diseases.[107] **These protections do not however always apply to the other newer forms of atypical employment discussed in Section 2.2.1 above, notably casual, marginal part-time or platform work.**

[100] Directive 2000/43.

[101] The Recast Directive 2006/54/EC.

[102] Directive 92/85/EEC.

[103] Directive 2010/41/EU.

[104] Directive 2010/18/EU implementing the revised Framework Agreement on parental leave.

[105] Proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, COM(2017) 253 final

[106] Fixed-Term Work Directive 1999/70/EC; Part-time Work Directive 97/81/EC; Temporary Agency Work Directive 2008/104/EC.

[107] Directive 91/383/EEC.

The **Working Time Directive**[108] provides a limit to weekly working time, which must not exceed 48 hours on average, including overtime. It also prescribes a minimum daily rest period of 11 consecutive hours, a rest break during working hours, and a minimum weekly rest period of 24 uninterrupted hours. The Directive also lays down the right to minimum paid annual leave of 4 weeks. The Working Time Directive allows flexibility to accommodate differences between national rules or the requirements of specific activities. In addition to the Working Time Directive, specific directives apply to a number of transport sectors.[109] An interpretative communication providing legal guidance on the application of the Directive has been adopted as part of the European Pillar of Social Rights deliverables.[110]

EU rules in the social policy area guarantee workers' right to **occupational health and safety** (OSH)**.** A Framework Directive and 23 individual directives provide rules on the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors.[111] The Framework Directive establishes general principles for managing safety and health, such as responsibility of the employer, rights/duties of workers, using risk assessments to continuously improve company processes, and workplace health and safety representation. All individual directives follow these common principles, tailoring the principles of the Framework Directive to specific tasks, specific hazards at work, specific workplaces and sectors, and specific groups of workers. The individual Directives define how to assess these risks and, in some instances, set limit exposure values for certain substances or agents.

[108] Directive 2003/88/EC.

[109] Minimum standards for working time in the civil aviation sector are laid down in Directive 2000/79/EC. Directive 2005/47/EC implements the Social Partners agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. Directive 2002/15/EC in turn sets the framework for the organisation of working time for mobile workers in road transport activities and self-employed drivers. Regulation (EC) No 561/2006 provides for minimum requirements on the daily and weekly driving times, minimum breaks and daily and weekly rest periods for drivers engaged in the carriage of goods and passengers by road. These provisions reinforce the existing rules on the organisation of the working time and are strictly monitored by means of recording equipment. The working time of seafarers is regulated by Directive 1999/63/EC. Also to be mentioned is Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF).

[110] Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time, C/2017/2601

[111] Framework Directive 89/391/EEC and Directive 89/654/EEC on minimum safety and health requirements for the workplace; 92/57/EEC on temporary or mobile construction sites; 92/91/EEC on the mineral-extracting industries through drilling; 92/104/EEC on workers in surface and underground mineral extracting industries; 93/103/EC on fishing vessels; 92/29/EEC on improved medical treatment on board vessels; 89/656/EEC on personal protective equipment; 90/269/EEC on the manual handling of loads; 90/270/EEC on work with display screen equipment; 92/58EEC on safety and/or health signs at work; 2009/104/EC on work equipment; 92/85/EEC on pregnant workers; 2013/35/EU on electromagnetic fields; 1999/92/EC on explosive atmospheres; 2002/44/EC on mechanical vibration; 2003/10/EC on noise; 2006/25/EC on artificial optical radiation; 2000/54/EC on biological agents at work; 2010/32/EU on sharp injuries in the hospital and healthcare sector; 98/24/EC on chemical agents; 2004/37/EC on carcinogens or mutagens; 2009/148/EC on asbestos.

To ensure fair and just working conditions also in the context of the temporary provision of services across borders, the Posting of Workers Directive[112] provides that a host State is required to apply to workers posted to its territory certain basic standards of its own labour law system (e.g. minimum wage, working time, holidays) as laid down in national legislation or universally applicable collective agreement. The Enforcement Directive allows host States more effective methods of enforcing labour standards in these situations.[113] On 8 March 2016, the European Commission proposed a revision of the rules on posting of workers within the EU to ensure they remain fit for purpose.[114] Moreover, the Commission adopted a proposal for a directive amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.[115]

Free movement is also supported via the Regulation on **free movement of workers** (Regulation 492/2011) and the Directive on free movement of workers (Directive 2014/54/EU). The coordination of Social security systems is regulated by Regulation 883/2004 and by Regulation 987/2009 on its implementation, to protect the social security rights of workers moving within the EU.

A Directive on seasonal work sets important labour standards for third country nationals engaging in seasonal work in the EU.[116] The Directive provides the principle of equal treatment between third country nationals and Union nationals, particularly as regards the freedom of association and the right to strike, concerning terms of employment, working conditions and social security benefits. The Single Permit Directive establishes a single application procedure for a single permit to work in the EU and a common set of rights for third country workers legally residing in a Member State.[117] A common set of rights for intra-corporate transferees when working in the EU, facilitating their entry and mobility between Member States is provided by Directive on the conditions of entry and residence of third country nationals in the framework of intra-corporate transfers.[118]

Article 153 TFEU provides for the possibility for the EU to support Member States in ensuring the protection of workers where their employment contract is terminated, notably through the adoption by unanimity voting of Directives laying down minimum standards**.** There is no secondary EU law to implement this right. Similarly, there are no EU rules regarding the length of probation periods.

[38] Directive 96/71/EC.

[39] Directive 2014/67/EU.

[114] Proposal for a Directive amending 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, COM(2016) 128 final

[115] COM/2017/0278 final - 2017/0121 (COD)

[116] Directive 2014/36.

[117] Directive 2011/98/EU.

[118] Directive 2014/66/EU.

Three different Directives are concerned with the potential termination of the employment contract in the event of **structural changes in companies**. They embody the basic right to protection against unjustified dismissal, but only in 'collective' circumstances. The Insolvency Directive ensures payment of employees' outstanding claims in the event of the employer's insolvency.[119] The Collective Redundancies Directive regulates the situation of workers affected by decisions of employers to lay off a group of employees.[120] The Transfer of Undertakings Directive[121] protects employees' rights in the event that an undertaking, business, or part of an undertaking or business is transferred from one employer to another, stipulating *inter alia* that such a transfer does not in itself constitute valid grounds for dismissal. The Directives on transfer of undertakings and collective redundancies provide for information and consultation rights. The already mentioned Maternity Leave Directive[122] prohibits women's dismissal from work because of maternity for the period from the beginning of their pregnancy to the end of the period of maternity leave, save exceptional circumstances, for which the employer needs to give justification in writing. The Recast Directive[123] furthermore sets out that workers taking paternity or adoption leave should be protected against dismissal due to exercising those rights.

The Directive establishing a framework for equal treatment in employment[124] protects workers against dismissal where there is discrimination on a prohibited ground, including victimisation.[125]

The **promotion of social dialogue is enshrined as a common objective of the EU and the Member States** in Articles 151 and 152 TFEU. The rights of association, collective bargaining, to strike or to impose lock-outs are excluded from the application of this article. The role of the social partners is recognised at EU level, taking into account the diversity of national systems and their autonomy (Art 152 TFEU). Eight social partner agreements have been implemented pursuant to Article 155(2) TFEU.[126]

The general Information and Consultation Directive[127] establishes a framework for informing and consulting employees at enterprise level. Information and consultation are required on the development of the undertaking's activities, economic situation and

[119] Directive 2008/94/EC.

[120] Directive 98/59/EC.

[121] Directive 2001/23/EC.

[122] Directive 92/85/EEC.

[123] Directive 2006/54/EC.

[124] Directive 2000/78/EC.

[125] Other EU anti-discrimination Directives (such as Directive 2006/54/EC or Directive 2000/43/EC) also provide specific protection against unfair dismissal.

[126] Articles 153 and 154 TFEU. Examples of such cross-industry agreements are: Parental leave (revised) (2009), Fixed-term contracts (1999); Part-time work (1997); Parental leave (1996). Autonomous Framework agreements implemented by social partners: Inclusive labour markets (2010); Harassment and violence at work (2007); Work-related stress (2004); Telework (2002).

[127] Directive 2002/14/EC.

employment, and particularly anticipatory measures where there is a threat of restructuring, and likely changes in work organisation or in contractual relations.

The European Works Council Directive[128] provides for the creation of a Works Council (a body representing the employees of a transnational company, to inform and consult them on the progress of the business and any decisions significant for their working conditions) at the request of 100 employees of at least two undertakings or establishments in at least two Member States, or on the initiative of the employer. The involvement of employees, including at board level, is also provided by company law Directives.[129] Finally, the Cross-Border Mergers Directive[130] provides for detailed rules of employee participation in the event of mergers of limited liability companies.

The Young People at Work Directive[131] requires Member States to take the necessary measures to prohibit work by children, particularly that the minimum working age is not lower than the minimum age at which compulsory full-time schooling ends, or 15 years in any event. Exceptions can be adopted by Member States for occasional work or short-term work, involving domestic service in a private household or work regarded as not being harmful, damaging or dangerous to young people in a family undertaking, for cultural, artistic, sporting or advertising activities, subject to prior authorisation by the competent authority in each specific case, for children of at least 14 years of age working under a combined work/training scheme, and for children of at least 14 years of age performing light work. The Directive provides specific limits to maximum weekly working time, night work and minimum rest periods for children and adolescents when they engage in employment.[132]

Finally, the worker is entitled to receive essential information relating to the employment relationship in writing, not later than two months after the commencement of employment on the basis of the **Written Statement Directive**.[133] This Directive is presented in detail below.

[128] Directive 2009/38/EC.

[129] Firstly, Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees provides that the establishment of a European company will not mean the disappearance or watering down of existing employee involvement arrangements, calling for agreement between the employer and the representatives of employees and providing subsidiary rules applicable in the absence of agreement. Secondly, Directive 2003/72/EC on the information, consultation and participation rights of employees in a European Cooperative Society provides that information, consultation and in some cases, participation procedures at transnational level are to be used whenever a European Cooperative is created.

[130] Directive 2005/56/EC.

[131] Directive 94/33/EC.

[132] See also Commission Recommendation of 31 January 1967 to the Member States on the protection of young workers and the Commission Recommendation of 15 September 2000 on the ratification of International Labour Organisation (ILO) Convention No 182 of 17 June 1999 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

[133] Directive 91/533/EEC.

b) The Written Statement Directive: objectives and content

An important element of the existing framework of rights for workers is Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship – the so-called "Written Statement Directive", adopted on 14 October 1991.

The Directive gives employees the right to be notified in writing of the essential aspects of their employment relationship when it starts or within a limited time thereafter (two months maximum). It also defines additional information that must be provided before departure to employees who are required to work abroad.

The Directive has two principal objectives:[134]

- improved protection of employees against possible infringements of their rights.

- greater transparency on the labour market by ensuring easy identification of the working conditions applicable to a specific category of employees (e.g. the general working conditions of employees in the health sector or in the construction sector in a particular EU area).

Having information about his/her own rights in writing is, indeed, a prerequisite to enable an employee to enforce them.

Improved transparency is useful not only for employees but also for public authorities (in their efforts to reduce undeclared work), for employers, and for potential investors who may need legal certainty concerning working conditions. Member States may decide not to apply the Directive to employees having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours; or of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.

Article 2 of the Directive sets out the principle that employers are obliged to notify employees of the essential aspects of their employment relationship and defines these essential elements as (at least):

a) the identities of the parties;

b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;

c) (i) the title, grade, nature or category of the work for which the employee is employed; or

(ii) a brief specification or description of the work;

[134]In its Recitals it is spelled out that 'Whereas the development, in the Member States, of new forms of work has led to an increase in the number of types of employment relationship; Whereas, faced with this development, certain Member States have considered it necessary to subject employment relationships to formal requirements; whereas these provisions are designed to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market'.

d) the date of commencement of the contract or employment relationship;

e) in the case of a temporary contract or employment relationship, the expected duration thereof;

f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;

g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;

h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;

i) the length of the employee's normal working day or week;

j) where appropriate;

- the collective agreements governing the employee's conditions of work;

or

- in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded.

This list is not exhaustive: all the essential aspects of the employment relationship should in principle be notified, not solely those listed in the Directive. In practice, however, this list constitutes the standard package of information required.

The written statement must be provided to the employee not later than two months after the commencement of employment. Modifications to any of the elements in Article 2 must be notified within one month.

As such, the Directive only secures provision of information. It does not harmonise the forms of employment nor does it intend to attach an evidential value to the information provided.

c) Gaps in the EU social acquis

The consultation on the European Pillar of Social Rights provided an opportunity to revisit the EU social acquis[135] and its relevance in light of new trends, and to identify possible areas for future action, at the appropriate level. Conclusions were presented in the Report on the public consultation.[136]

[135] See Commission Staff Working Document "The EU social acquis", SWD (2016) 51 final.

[136] Report of the public consultation accompanying the Communication Establishing a European Pillar of Social Rights, SWD(2017) 206

The EU social acquis was considered as broadly relevant and well developed, but with significant scope for action to improve implementation and enforcement, and some **gaps in terms of coverage of all forms of work** and areas outside labour law. In the online consultation, about half of the respondents (52%) believed that the EU social acquis needs updating.

Personal scope

A key gap is perceived to be the insufficient protection of those in new forms of work. In particular it was noted that the current personal scope of EU working conditions Directives does not necessarily cover all new types of work relationships.

Indeed, Directives on working conditions still predominantly refer to national definitions of 'workers' for defining the people to whom EU Directives apply. Notwithstanding this, the Court of Justice of the EU has limited the discretion of Member States in defining in national law the personal scope of certain EU social law instruments when they make reference to workers or employees, and therefore the discretion to limit the exclusion of individuals (whom do not fall within the definition of worker under national law) from the scope of the EU social acquis.

According to the Court's jurisprudence on the Working Time Directive as regards the application of Directive 2003/88 "*the concept of worker has an autonomous meaning specific to EU law*".[137]

It is indeed settled case-law as regards Article 45 TFEU and concerning legal acts that make no reference to the definition of the term "worker" under national legislation that the essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he or she receives remuneration, the legal characterisation under national law and the form of that relationship, as well as the nature of the legal relationship between those two persons, not being decisive in that regard.[138] These criteria for determining the existence of an employment relationship, and so the status of "worker", were originally developed by the Court in a 1986 judgment on the application of Article 45 TFEU and Directive 2004/38/EC on free movement of workers,[139] and have since been widely used by the Court to interpret references to workers in EU secondary legislation.

Lately, with the Ruhrlandklinik judgment the Court seems to have given greater importance to the autonomous EU definition of worker also where a directive specifically refers to national definitions.

The status quo, with the text of the labour law directives referring to national definitions, and the case-law of the CJEU interpreting them as limiting national discretion (for the purpose of protecting the effectiveness of EU law and equal treatment), leaves scope for clarification on the personal scope of Directives on which case-law has not yet provided clarity, notably the Written Statement Directive (91/533/EEC).

[137] Fenoll, C-316/13, para 26.

[138] Ruhrlandklinik, C-216/15, para 27

[139] Lawrie-Blum, C-66/85, para 12

In this context, ILO has pointed out that increased legal clarity on workers' employment status and employers' responsibilities is not only beneficial from a workers' point of view, but also essential to promote fair competition among businesses.

The European Parliament has identified the same challenge and called in its Resolution on the Pillar for a framework Directive on decent working conditions in all forms of employment. This would extend existing minimum standards to new kinds of employment relationships, and should improve enforcement of EU law, increase legal certainty across the single market and prevent discrimination by complementing existing EU law and ensuring for every worker a core set of enforceable rights, regardless of the type of contract or employment relationship.[140]

Already during the Pillar consultation, the announced revision of the Written Statement Directive was highlighted as one of the opportunities to revisit and modernise the existing acquis with regard to new forms of work.

The REFIT evaluation of the Written Statement Directive[141] reviewed the fundamental changes that have occurred on the EU labour market where new forms of employment have developed. It was examined whether these new forms of employment should be considered as falling within or outside the scope of the Directive and whether they require amendments to its provisions in the light of the objective of protecting employees.

Indeed, it was considered that the protection offered by the Directive to workers suffers from some gaps.

In particular, the scope of the Directive is problematic. It does not cover all workers in the EU as it allows exemptions for short working hours and employment relationships of short duration and gives Member States the possibility to define whom they consider as 'a paid employee' to which the protection applies. There is also a significant lack of clarity in practice whether some categories of workers (e.g. domestic workers) or some new forms of employment (e.g. on-demand work or ICT-based mobile work) are covered or not. Furthermore, the two-month deadline was highlighted as an aspect of the Directive that creates transparency problems and which may in fact increase the potential for undeclared work or abuse of employee rights.

The impact of technology

Secondly, according to the review of the acquis conducted in preparation of the Pillar, gaps arise from changing technologies: it is indeed proposed for instance to include the right to privacy or the protection of personal data in the employment relationship, and an update of health and safety rules.

The rapid development of digital information processing and wide take-up of digital communication devices provides the opportunity for new or previously seldom occurring

[140] European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights

[141] REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC), SWD(2017) 205 final, of 26.04.2017; http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=202; REFIT study to support evaluation of the Written Statement Directive (91/533/EC); http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7941&type=2&furtherPubs=yes

forms of employment to grow significantly. Potential exchanges of low economic value relative to the transaction cost that previously were not economically viable become so, leading to the growth of work mediated by digital platforms or in the "gig economy". This raises issues about the status (employed, worker, self-employed) of those working in such settings, which are currently the subject of a series of test cases in national labour courts, which have implications for the personal scope of the EU social acquis.

Enforcement

Thirdly, the review of the acquis concluded that implementation and enforcement of the existing acquis should be reinforced. Very often, citizens could not enjoy existing rights due to a lack of implementation and enforcement. In the context of EU labour law, unlike in other areas, there are very few EU rules directly concerned with enforcement of rights. Experts highlighted various ways to close the enforcement gap, through legislative and non-legislative action. One proposal was to ensure that existing or future legislation in the field of labour law contained procedural provisions for enforcement, and to complement existing instruments with enforcement provisions, where necessary. The objective would be to provide for access to justice, support in litigation, protection against victimisation, basic rules on remedies, and dissemination of information. It was pointed that inspiration could be drawn from existing instruments e.g. in the field on non-discrimination or free movement, where a range of enforcement tools have been adopted in recent years. Others asked for more and better labour inspections.

Redress mechanisms were also seen as important for the protection of working conditions, including through additional channels such as ombudspersons, equality bodies and one-stop information points.

Significant progress could also be achieved by ensuring higher awareness of rights and enforcement mechanisms in case of violations. Setting out clear concepts, for example through guidelines, was seen as crucial to ensure a more consistent implementation of the acquis on the ground. Other suggestions included increasing the awareness of labour market institutions and labour inspectorates about new employment forms and their potential implications; or establishing codes of conduct and certification to incentivise fairer employment practices at company level.

The REFIT evaluation of the Written Statement Directive also highlighted enforcement of workers' rights a weakness and found that enforcement could be improved by rethinking the means of redress and sanctions in cases of non-compliance.

Access to and portability of social protection

The review of the acquis concluded that the changing nature of the labour market also means that people are faced with multiple transitions during their career. Action was considered necessary to ensure access to and portability of social protection so that people in all forms of employment, standard and non-standard, as well as the self-employed have access to adequate social protection and the possibility to accumulate entitlements and use them through the life-course. Measures in this area would also have beneficial effects in terms of equality between men and women, as women generally undergo more of such transitions during their professional life than men.

This gap is addressed in the Commission initiative on access to social protection for all.

d) Diversity of national provisions on atypical work and lack of equal treatment across the EU

Most of the new forms of work described in the previous chapter do not have a specific legal or collectively agreed basis in most Member States.[142] This is probably due to their newness and their recent emergence as practice rather than a strategically planned labour market development. They are regulated (or not) in very different ways across the EU, and the legal frameworks are in constant change to address these new phenomena. The diversity of regulation is also related to the fact that in each Member State there is a different mix of the new forms of employment (Figure 21).

This diversity of national provisions on atypical work as they currently exist is a further regulatory driver. On the one hand it shows the need to regulate forms of work which are not yet fully and consistently covered by labour market regulation; on the other hand the discrepancy of regulatory frameworks across the EU hampers equal treatment between EU workers in the same situation, as people performing the same job are protected in very different ways in different EU Member States.

Figure 21. New forms of employment identified in European countries[143]

	Employee sharing	Job sharing	Interim management	Casual work	ICT-based mobile work	Voucher-based work	Portfolio work	Crowd employment	Collaborative employment
Austria	X					X			X
Belgium	X			X	X	X		X	X
Bulgaria	X								
Croatia				X					
Cyprus					X		X		X
Czech Republic	X	X	X					X	
Denmark					X		X	X	
Finland	X				X				
France	X		X	X	X	X			X
Germany	X				X			X	X
Greece	X		X		X	X	X	X	X

[142] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg. Page 136.

[143] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg. Page 9

Hungary	x	x	x	x	x		x		x
Ireland		x		x					
Italy		x		x		x	x	x	x
Latvia			x		x		x	x	
Lithuania					x	x	x	x	x
Luxembourg	x								
Netherlands				x	x		x		x
Norway			x		x		x		
Poland		x							
Portugal					x		x	x	
Romania				x					
Slovakia		x		x					
Slovenia		x		x	x				
Spain					x			x	x
Sweden				x	x				x
UK		x	x	x			x	x	

Note: For Estonia and Malta, no new employment form corresponding to the working definitions of this project could be identified.

Source: Eurofound, based on national contributions

Casual work

Despite being regulated as a specific form of employment in a vast number of jurisdictions, a common legal definition of casual work or employment is lacking. Nonetheless, some patterns can still be identified: a common element is the temporary, intermittent or casual nature of the work; another recurrent element in definitions of casual work is the need for the related working activity to be detached from the ordinary or permanent business activity of the employer.[144]

Still, criteria for defining what the legal system recognises as a casual work arrangement vary significantly among national jurisdictions. This differentiates casual work and casual employment from other non-standard forms of employment such as part-time, fixed-term or temporary agency work which have already been regulated at EU level.[145]

On-demand work including zero-hours contracts

Casual or on-demand work includes zero-hour contracts, and Member States have been regulating these forms of work with different approaches.

Indeed, with regards to **national legislation related to on- demand work and zero hours contracts**, Members States can be classified in three categories:

[144] *Non-standard employment around the world: Understanding challenges, shaping prospects* International Labour Office – Geneva: ILO. 2016

[145] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

- The first group consists of Members States that do not regulate these types of employment relationship - such as Poland, Belgium, Finland, Cyprus, Croatia, Greece, Slovenia. Either casual work is not a common practice in the Member State or those forms of employment exist without being regulated.
- In the second group of Member States, on demand work and zero hours contracts are considered illegal either by their national legislation or by case law[146] as not compliant with working time legislation. This is the case, for instance, for Austria, France, Bulgaria, Luxembourg, and Latvia.
- Finally some Members States have regulated zero-hour contracts and on some types of casual work**:** e.g. United Kingdom, Hungary, Italy, Germany, the Netherlands, Spain, Romania, and Portugal. Within Member States regulating casual/ on demand work, the provisions regarding their working arrangements are various and generally very modest.

For details see section 5.4 New minimum rights for all workers.

[146] ECJ c-313/02 Wippel and and Austrian supreme court judgement (Oba 116/04y)

2.3 Consequences of the problem

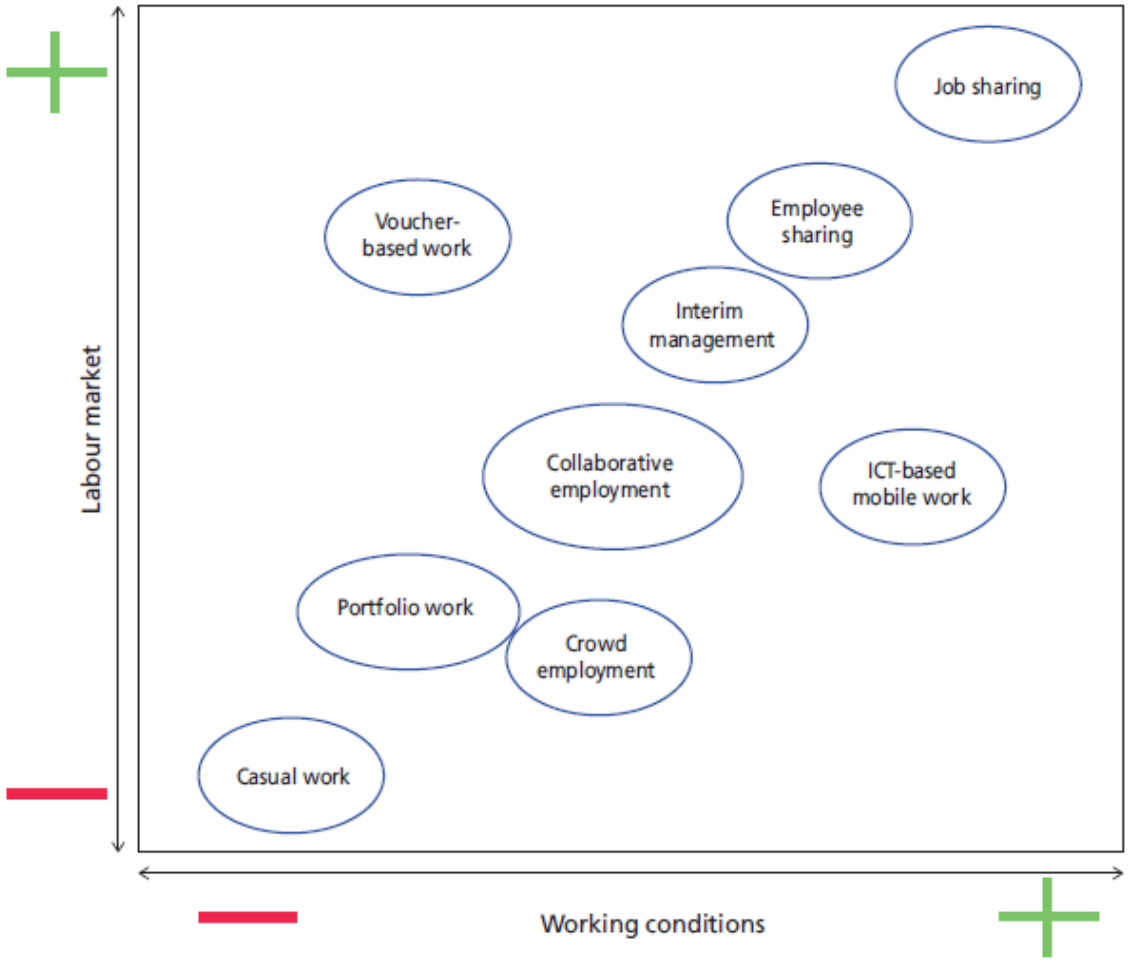
This section outlines the consequences of the developments described in the sections on labour market and regulatory drivers for workers, for businesses and for Member States.

As described earlier, new forms of work are very diverse and their growth is related to different necessities and/or opportunities for employers as well as for workers. As illustrated in the figure below, each form of work represents a different balance of advantages and disadvantages from the point of view of working conditions as well as labour market implications. Moreover, in the context of diverse national approaches to labour law regulation and social protection, the practical consequences for workers in the same type of employment might be quite different across Member States.

Overall, Eurofound concludes that of the nine new forms of work it identified, job sharing, employee sharing and interim management are the most positive both from the point of view of working conditions and labour market development. Casual work stands out as the form of work with the most negative consequences on both working conditions and the labour market.[147] While not covered in the Eurofound assessment, other non-standard forms of work, namely dependent self-employment/bogus self-employment as well as domestic work can have similarly negative implications as casual work, while the consequences of involuntary temporary employment and marginal part-time will depend on the intensity of flexibility and insecurity they impose.

[147] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 141.

Figure 22. Assessment of implications of new forms of employment for working conditions and the labour market (Eurofound, 2015) [148]



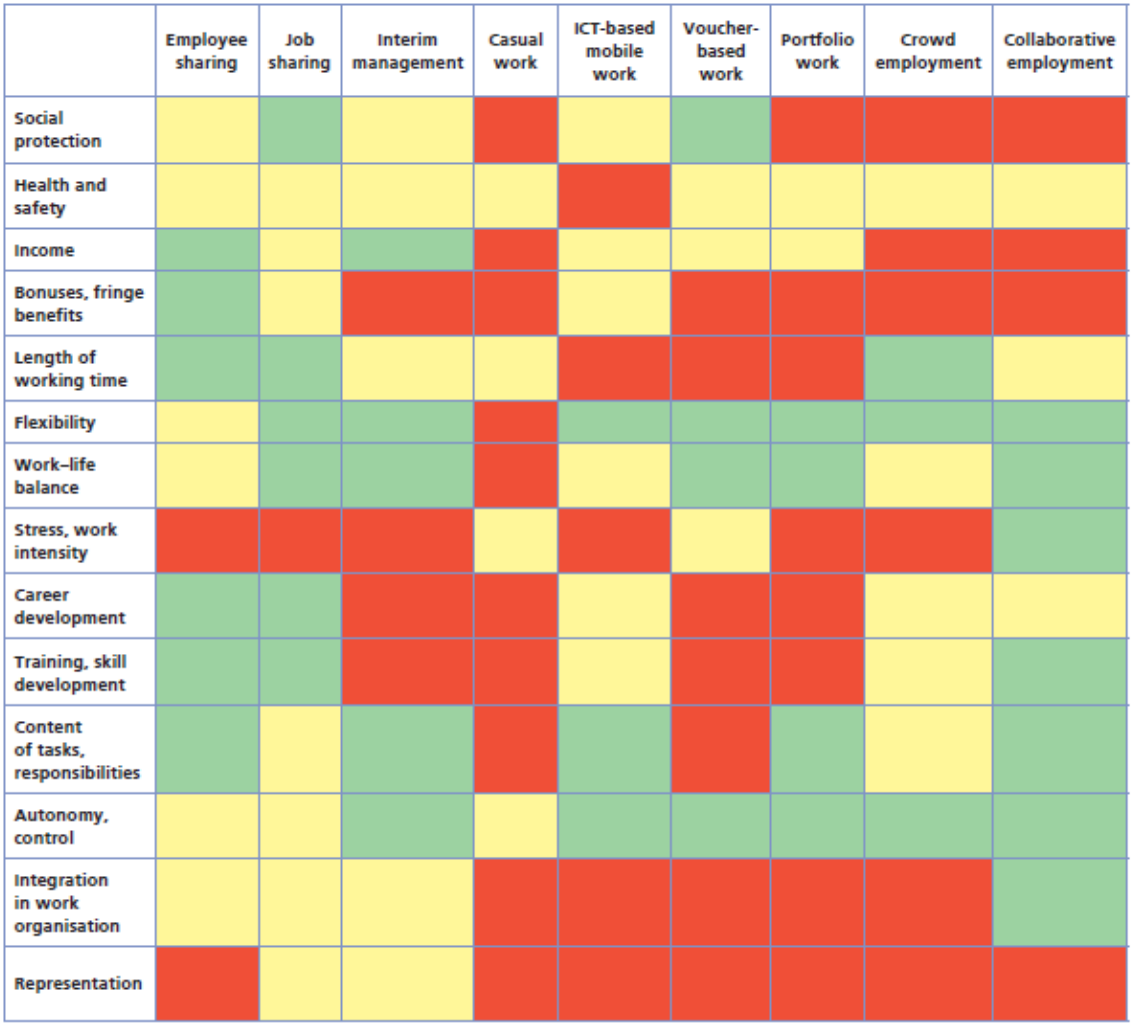
Source: Eurofound, based on national contributions

2.3.1 Consequences for workers

New and non-standard forms of work can be a stepping stone into stable employment for a number of workers, notably for young people or migrant workers. They can be a voluntary choice for some people - e.g. those who need more time for obligations related to family life or who combine work with education. Some workers use these types of work to complement their incomes or develop new professional experience. Figure 23 below shows Eurofound's assessment of the new forms of work based on a number of worker-focused criteria.

[148] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 142

Figure 23. Overview of implications of new forms of employment for selected working conditions[149]



Notes: The operational implications of each employment form might, in practice, vary strongly from case to case.

Green: beneficial working conditions
Yellow: neutral working conditions (or evidence for both benefits and disadvantages)
Red: disadvantageous working conditions

Source: Eurofound, based on national contributions

Job security

The large statutory disparities in termination costs by type of contract trigger differences in job security and generate persistent discrepancies between non-regular and regular workers. Moreover, there is no evidence that non-regular workers are compensated for their lower job security through higher wages. On the contrary, the majority of them experience worse conditions in terms of both job security and wages, even though the situation differs across countries and contracts.[150]

[149] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg. Page 139.

[150] OECD Employment Outlook 2014, *Non-regular employment, job security and labour market divide*, p. 141-209

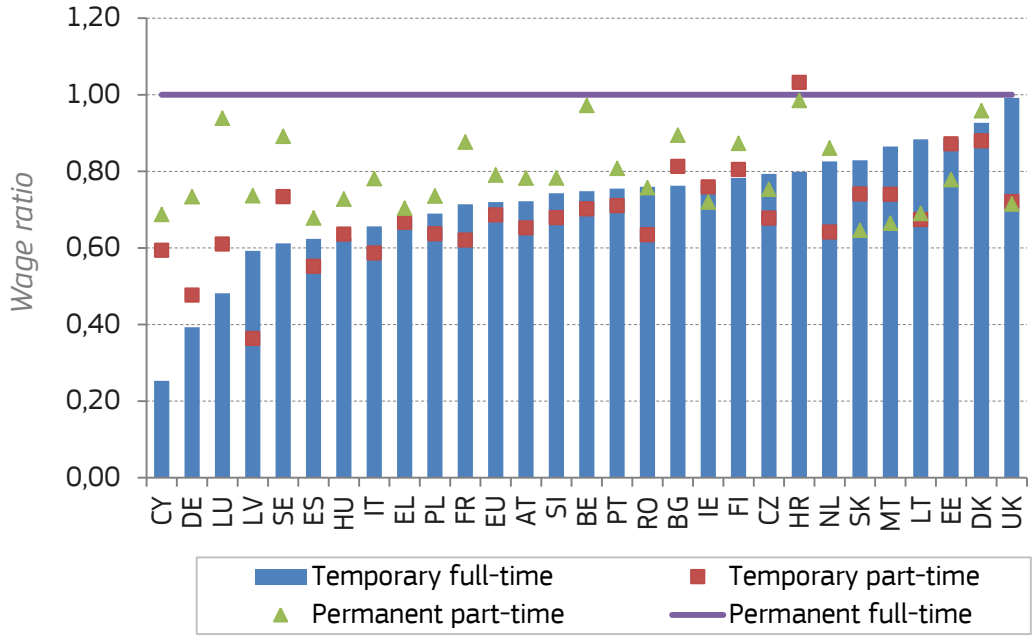
Job insecurity and social or professional isolation are fairly widespread among the new employment forms, which again can be explained by the strong flexibility. This also creates higher stress levels and work intensity as workers tend to work harder, in the hope of more security if they prove to be 'a good performer'.[151]

Lack of job security can be extreme in case of zero-hours contracts where not even a minimum number of hours and a corresponding income is guaranteed.

Wages

Non-standard jobs tend to offer lower hourly pay than permanent full-time jobs (ESDE 2015)[152]. Indeed, non-standard workers are over-represented at the bottom of the hourly wage distribution. Figure 24 shows the ratio between the median wage for three types of employees and the median wage for permanent full-time employees. Temporary and permanent part-time workers have a lower median wage compared to permanent full-time employees. In other words, non-standard workers suffer a considerable wage penalty compared to standard ones. This compounds the income-reducing effects of shorter working time (part-time jobs) and frequent unemployment spells associated with temporary jobs.

Figure 24. Wage ratio between different types of work over permanent-full-time work, 2014



Source: DG EMPL calculations based on EU-SILC cross-sectional micro-data (UDB).
Notes: Median wages are used to compute the ratio. The sample includes employees aged 18-64. The income information refers to the previous year (2013 for 2014 survey).

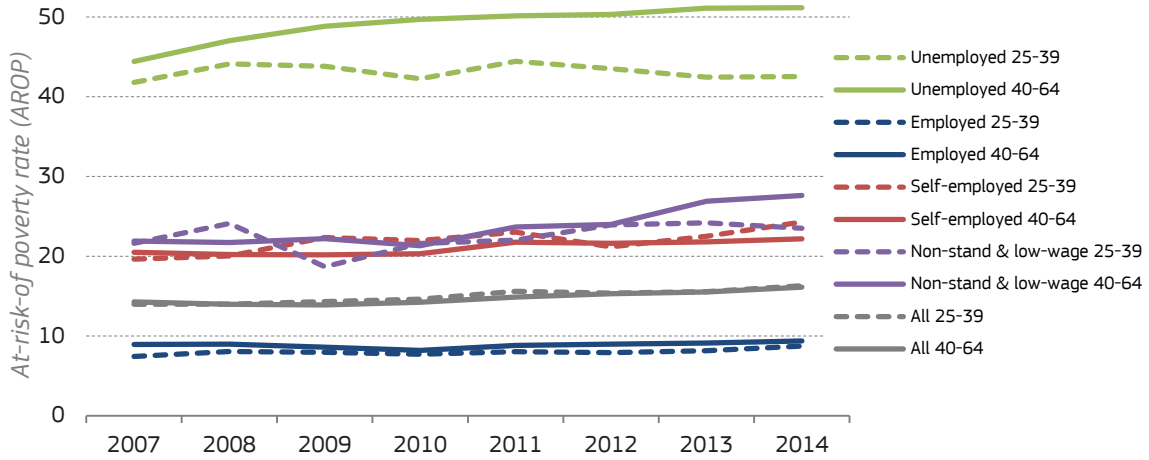
[151] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 139

[152] European Commission (2016), "Employment dynamics and social implications". Chapter 2 in Employment and Social Developments in Europe 2016. Luxembourg: Publication Office of the European Commission.

Income insecurity and poverty risk

Unsurprisingly, non-standard jobs accompanied by low wages pose the highest poverty risk among those in employment (Figure 25, purple lines).[153] The generational gap in the at-risk-of-poverty rate of precarious workers, which reflects the more favourable situation for younger workers, became also increasingly higher between 2007 and 2014 (4 pps in 2014). Overall, younger generations are at a lower risk of poverty than prime-age and older individuals when they have non-standard jobs and earn low wages. This is linked both to their lower economic responsibilities at household level and the existence, in some Member States, of strong family networks and intergenerational households.

Figure 25. Share of working-poor by activity status, 2007-2014, EU



Source: DG EMPL calculations based on EU-SILC cross-sectional data from 2007 to 2014 (UDB), ESDE 2017.
Note: All EU countries are shown together (weighted average). For 2007 data for Croatia and Malta are not available. The income information refers to the previous year (2006 for 2007 survey and 2013 for 2014 survey). Labour market status refers to the status of seven or more months during the income reference period.

Income insecurity and poverty are indicators of precarious employment.[154] Employees who face a high risk of precarious employment are mainly in atypical work. Without access to a minimum set of rights deriving from the employment relationship their situation worsens.

In some forms of employment, the risk of precariousness is mitigated through EU legislation, such as the Fixed-Term Workers Directive, the Part-Time Workers Directive, the Temporary Agency Workers Directive, and the Posted Workers Directive. However for some (newer) categories such as casual and voucher-based workers, there is no corresponding legislative protection and they face a high risk of precariousness.[155]

[153] European Commission (2017), "Working lives: the foundation of prosperity for all generations". Chapter 3 in Employment and Social Developments in Europe 2017, *forthcoming*.

[154] European Parliament Briefing Study in Focus, *Precarious Employment in Europe: Patterns, Trends and Policy Strategies*, 2016, p.23

[155] Ibid, p.66

Workers in portfolio, crowd and collaborative employment are characterised by job insecurity, income insecurity but also low social protection. The level of pay for crowd workers is generally extremely low. Employers normally pay by task and only if they, or their clients, are satisfied with the results. This adds uncertainty to the already low level of remuneration. Access to social protection or other benefits such as training tends to be non-existent for this type of worker.

Casual work can be a means to generate additional income, but it is often not stable. Furthermore, social protection of this category of workers is also limited. Based on the results of an online survey of the Federation of Dutch Trade Unions (FNV), workers employed on on-call contracts report that most respondents are unsure about the number of hours they will be working in the week ahead and how much money they will be earning.[156]

Social Protection

Non-standard workers also tend to have shorter and lower contribution records and this negatively affects their eligibility for benefits, as well as the amount and duration of those benefits. For example, the eligibility for and level of unemployment benefits normally depend on employees' contribution records, and often also on the wage level.[157] Frequent unemployment spells associated with temporary jobs lead to shorter contribution records. In addition, reduced hours resulting from part-time arrangements lead to lower contribution records. Moreover, the lower labour income of non-standard workers may lead to a lower level of benefits from unemployment insurance.

Training and professional development

Low transition rates from temporary to permanent jobs suggest that those inequalities tend to persist over time. Evidence for European countries shows that **less than 50% of the workers who were on temporary contracts in a given year were employed with full time permanent contracts three years later.**

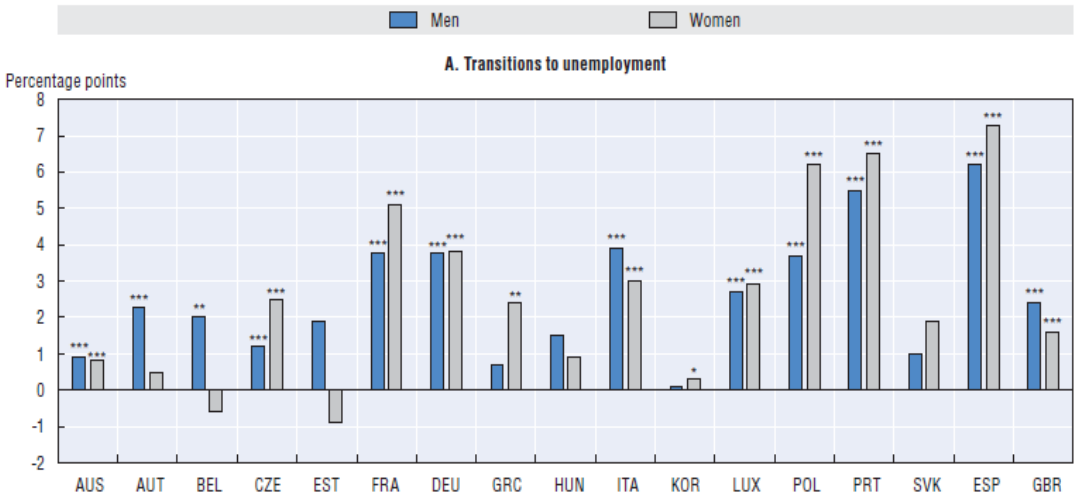
Non-standard employment is also associated with a higher risk of unemployment and inactivity. In a recent OECD study, the effect of contract type on the probability of one-year individual transitions from employment to unemployment was estimated for a sample of 17 OECD countries. The results show that the probability of being in unemployment one year later is significantly higher for non-regular employees than for full-time permanent employees in about two-thirds of the countries for which comparable data are available. The estimated differences are often substantial: in about half of the countries they exceed 2 percentage points, a figure that appears indeed very large if compared with average raw transition rates for all employees (independent of the contract type), which are in general quite low - ranging between 0.9% for the Netherlands and 6.6% in Spain. The same pattern is also found for transitions towards inactivity, estimated using the same methodology. In about half of the countries for

[156] Eurofound (2015), New forms of employment, Publications Office of the European Union, Luxembourg, p.66

[157] Matsaganis M., Özdemir E., Ward T., Zavakou A. (2016), "Non-standard employment and access to social security benefits", Social Situation Monitor research note, European Union.

which comparable data are available, the probability of becoming inactive one year later is significantly greater for non-regular employees than for full-time regular workers.[158]

Figure 26. Impact of contract type on one-year transition probabilities from employment to unemployment - Estimated difference between non-regular and permanent employees, percentage points[159]



One reason behind these long-lasting effects is the reduced probability of receiving employer-sponsored training when in temporary positions: evidence based on the OECD Adult Skills Survey shows that **on average being on temporary contracts reduces the probability of receiving employer-sponsored training by 14%.**[160]

While employee sharing and job sharing may have quite positive effects on professional development opportunities, interim management, casual work, voucher-based work and portfolio work seem less favourable.[161] The same is true for marginal part-time workers, only 29% of whom received training in 2015 compared with 45% of full time workers, up from 39% in 2010. Moreover there was no corresponding increasing trend in the

[158] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209

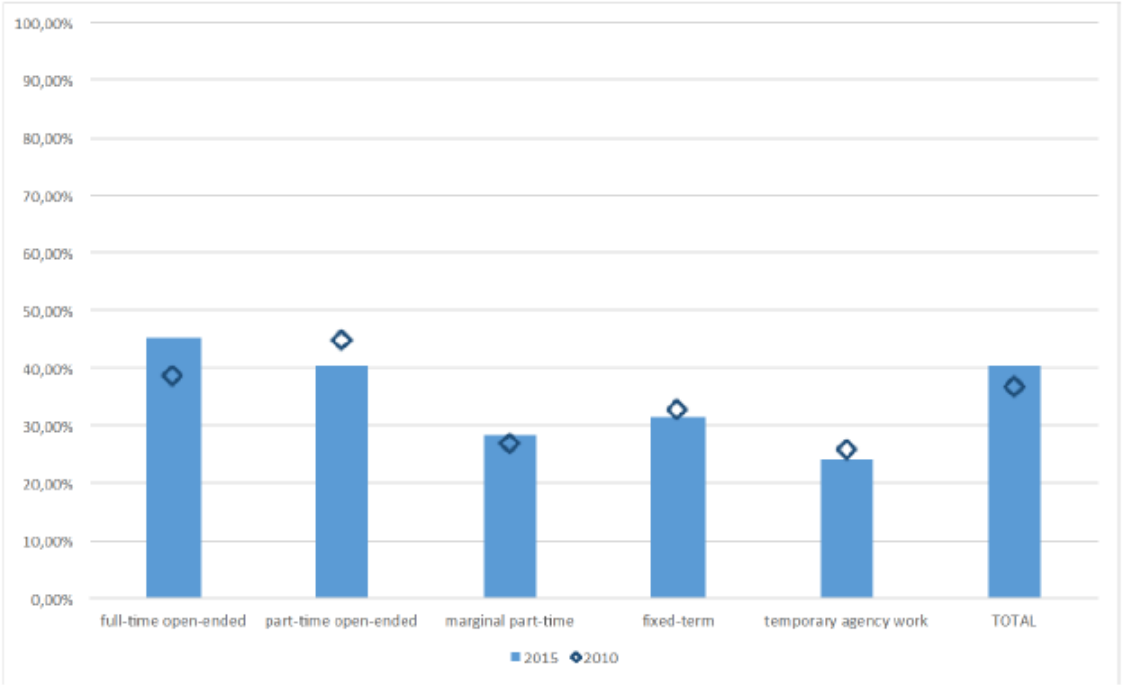
[159] The percentage-point difference in the probability of being unemployed one year later between non-regular and full-time permanent employees. Estimates are obtained through a random-effect probit model controlling for six initial employment statuses (full-time permanent, part-time permanent, non-regular employees, unemployed, inactive and self-employed), household income, and dummies for three age classes, three education levels, married status, children below 13 years and bad health conditions as well as region and time dummies. Casual workers are classified as non-regular employees.***, **, *: significant at the 1%, 5%, 10% level, respectively – based on robust standard errors. Source: OECD (2014), Job, Wages and Inequality, OECD Publishing, Paris, forthcoming, based on the British Household Panel Survey (BHPS) 1992-2008 for the United Kingdom, the German Socio-Economic Panel (GSOEP) for Germany, the European Union Statistics on Income and Living Conditions (EU-SILC) 2004-09 for other European countries.,

[160] OECD Employment Outlook 2014, *Non-regular employment, job security and labour market divide*, p. 141-209

[161] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 138

incidence of training among part-time workers, so the gap is likely to continue to widen.[162]

Figure 27. Average share of employees receiving training in Europe 2010 and 2015 by type of employment



Source: Eurofound, *European Working Condition Survey 2010, 2015, weighted results, calculation Werner Eichhorst and Verena Tobsch.*

Occupational safety and health, wellbeing and mental health

Workers in new and non-standard forms of employment are less protected from occupational safety and health risks.

There is evidence of higher accident rates among temporary and temporary agency workers. In Spain, between 1988 and 1995, the accident rate per 1,000 workers was 2.5 times higher for temporary workers than for permanent employees; the rate of fatal accidents was 1.8 times higher. In Belgium, in 2002, the accident rate for permanent manual workers, or those with long-term contracts, stood at 62 per 1,000 workers, compared with 125 for manual workers hired via temporary employment agencies (Vega-Ruíz, 2014). In general, temporary agency workers, like other workers on temporary contracts, have less knowledge about their work environment (Aronsson, 1999) and may feel too constrained by their status to complain about work hazards or make necessary

[162] Werner Eichhorst and Verena Tobsch, 2017, Risk of precariousness: Results from European Working Conditions Survey 2010 and 2015, page 9.

changes. They are also unlikely to be represented on health and safety committees (Quinlan and Mayhew, 2000). [163]

In addition to physical health and safety issues, workers in insecure and casual forms of employment were found to be more likely to suffer from stress at work.[164] Precarious work has been found to have a detrimental effect on the health of employees, leading more frequently to drug and alcohol abuse, depression and stress, compared this with employees in more secure forms of work.[165] Aronsson et al (2005) found that on-call work was associated with ill health such as stomach, back and neck complaints, headaches, tiredness and listlessness.[166] A meta-review of 68 studies on the health effects of job insecurity found that in 60 studies (88%), "job insecurity was associated with measurably worse OSH outcomes" (Bohle et al., 2001, p.39). [167]

Such negative health impacts are confirmed even among young people. A study conducted by the University College London (Centre for Longitudinal Studies - Institute of Education), found 25-year-olds employed on contracts that do not guarantee a minimum number of work hours were 41% less likely to report having good physical health compared with those with secure contracts. Young people on zero-hours contracts were also one-and-a-half times more likely to report having a mental health problem compared with someone on a more secure employment contract.[168]

Representation and collective bargaining

Workers in the new forms of employment tend not to be represented. Again, this might be attributed to the impact of the enhanced flexibility of these types of work and the rapid turnover of workers, resulting in a rather fragmented workforce from the perspective of workers' representatives, making it difficult for them to identify and approach them and to establish sustained relationships.[169]

Unsurprisingly, therefore, the representation of employees is much better in permanent full-time and part-time compared to other types of employment, in particular marginal part-time work. The share of workers with employee representatives is on average 50%,

[163] Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment (Geneva, 16–19 February 2015)/International Labour Office, Conditions of Work and Equality Department, Geneva, 2015

[164] Eurofound (2010) *Work-Related Stress*, p.17

[165] Ibid

[166] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg., , p.69

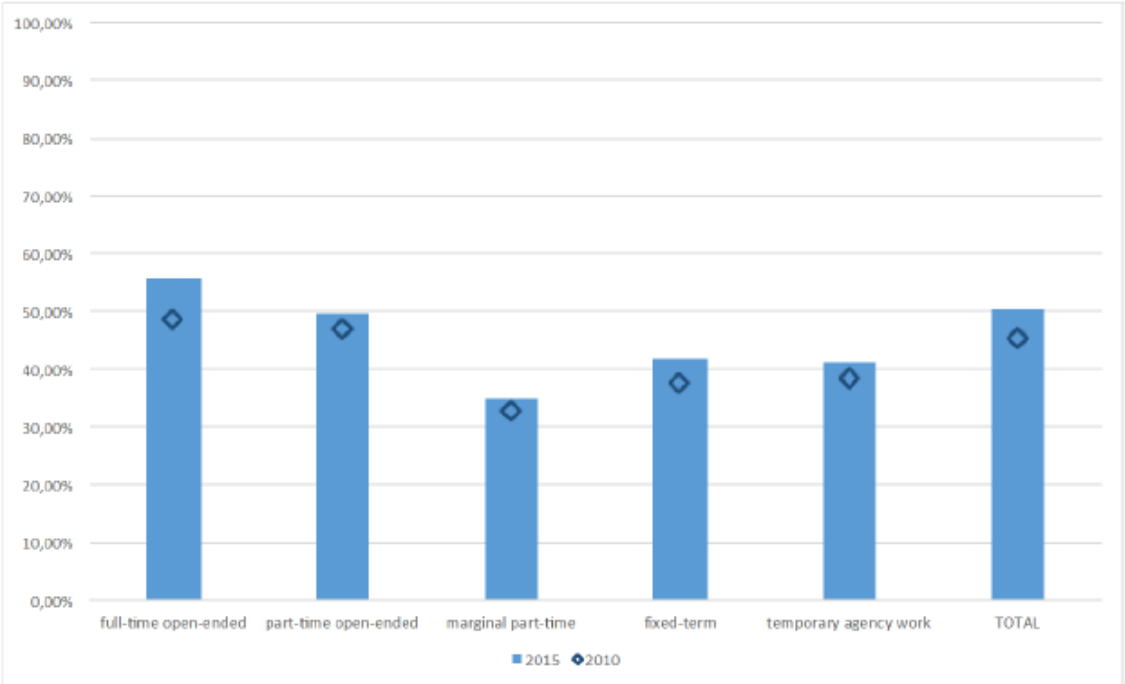
[167] Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment (Geneva, 16–19 February 2015)/International Labour Office, Conditions of Work and Equality Department, Geneva, 2015

[168] 'Economic activity and health – Initial findings from the Next Steps Age 25 Sweep' by Dr Morag Henderson, Centre for Longitudinal Studies, 5.07.2016 (http://www.cls.ioe.ac.uk/shared/get-file.ashx?itemtype=document&id=3301)

[169] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 139

ranging from some 35% for marginal part-time workers to 55% for full-time open-ended contracts.[170]

Figure 28. Average share of employees with employee representative in Europe 2010 and 2015 by type of employment



Source: Eurofound, European Working Conditions Survey *2010, 2015, weighted results, calculation Werner Eichhorst and Verena Tobsch.*

2.3.2 Consequences for businesses[171]

In general, a firm's decision to engage in non-standard work arrangements will be influenced by its specific attributes, such as its size, the industry in which it operates, the skill level of its workforce, its proprietary knowledge, the practices of competing enterprises, and the regulatory framework of the country in which it operates. Aside from **seasonal fluctuations in production**, there are three major reasons why organizations use non-standard workers: **cost advantages, flexibility, and technological change.** These are not independent reasons and organizations may adopt non-standard work for any one, or a combination, of these.

Technological developments have enabled firms to assemble teams of employees who work around the world in virtual contact with each other (Brews and Tucci, 2004). Modern technologies, difficulties in reconciling private and working life and the existence of well-educated young professionals looking for alternative forms of

[170] Werner Eichhorst and Verena Tobsch, 2017, Risk of precariousness: Results from European Working Conditions Survey 2010 and 2015, page 8

[171] This section is adapted from "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO. 2016 and "Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment" (Geneva, 16–19 February 2015)/International Labour Office, Conditions of Work and Equality Department, Geneva, 2015

employment have strongly contributed to the growth of crowd employment. In Greece and Spain, the recent increase of crowd employment is explained by the economic and financial crisis, which has resulted in lack of liquidity and the need to find alternative (and cheap) ways of marketing one's services.[172]

In some instances, regulations may unintentionally – or deliberately – encourage the use of alternative arrangements, such as part-time workers falling below the threshold for social security benefits, or fixed-term workers being exempt from severance pay. As Gleason (2006) explains, based on a comparative study of the US, Japan and Europe, "each type of nonstandard employment exists in its current form because there is either a relative absence of a regulatory environment or a regulatory environment that frames its use". The regulatory environment affects the cost of different arrangements and thus influences firms' decisions whether or not to engage workers under non-standard arrangements. Other cost considerations can also be important. For example, workers who are managed by third parties can save an organization the expenses involved in screening, administering and supervising workers (Kalleberg et al., 2003).

Overall, non-standard and/or new forms of work have advantages for business in terms of flexibility, cost saving and the possibility to tap into a greater pool of skills. The motivation for employing workers in non-standard arrangements may be constructive – for example, by allowing enterprises to focus on their "core competencies" or to shield core workers from any potential downsizing as a result of demand fluctuations or adverse shocks. However, ultimately have they may also result, often longer-term, in potential disadvantages for employers. Thus while there may be some initial cost savings, there may also be substantial hidden costs for the firm.

Organisational challenges

A frequent concern is that relying on non-standard employment arrangements can have a negative impact on the commitment of hired-in workers and that the insufficient protection on working conditions of certain employees will lead to a decrease of motivation to work by their side.[173] A literature review from the ILO[174] indicates that the weaker attachment is likely to be manifested in a reduced attempt to assimilate socially, lower performance, lower motivation and effort as compared to regular workers, including higher absenteeism, lower job satisfaction, or lower commitment to the organization.

Managing temporary workers is a significant organisational challenge. Individuals' perceptions are crucial to predicting their responses to non-standard work arrangements. Consequently, how management communicates its intent to workers is critical for managing expectations related to non-standard work arrangements and their effect on workers. If the temporary workers feel valued and secure in their jobs, they are more

[172] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, p.111

[173]World Health Organization, Regional Office for Europe, *Enterprise for Health-A joint project between AOK for Lower Saxony and WHO*, p.2

[174] "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO.

likely to be positively inclined towards their co-workers and the organization. If, however, they feel short-changed by the firm, they reciprocate by reducing their commitment.

Management face a challenge to manage "blended" workforces, so that neither non-standard nor standard workers become disaffected, with negative repercussions on firm performance. Organisations that have both standard and non-standard workers find that the greater the presence of non-standard workers in the organization, the poorer the relationship of standard workers with the organization (George, 2003), their supervisors (Davis-Blakeet al., 2003) and their co-workers (Chattopadhyay and George, 2001). The managerial competency required for the effective management of non-standard workers is to develop processes that facilitate good horizontal and vertical interpersonal relationships. Ironically, the increase in the percentage of non-standard employees in a firm can lead to the development of denser management bureaucracies.

Innovation and skills development

The use of non-standard work arrangements has shifted the responsibility of training and development from organizations to individual workers (Barley and Kunda, 2004). In general, the greater the proportion of non-standard workers in an organization, the less the organization will invest in training and development (Blake and Uzzi, 1993). As a result, the role of human resources shifts from training and development to identifying the sets of skills they need to buy from the market and procuring these skills for the organization in an efficient and timely manner.

This dependence on buying in all the skills that the firm needs could lead to, firstly, a gradual erosion of firm-specific skills in the organization and as a result diminish the ability for companies to mark themselves out as distinct from their competitors. Secondly, the firms' ability to respond to changing markets might be restricted. Since the focus is less on training-for-skills and more on hiring-for-skills, firms can be limited in the extent to which they can change by the availability of skills in the labour market (Lepak and Snell, 2002). Finally, innovation can also be negatively affected by insecurity in employment relationships leading to a lack of trust and risk-averse behaviour.

Productivity

The increasingly widespread use of temporary work may harm productivity growth (ESDE 2017)[175, 176]. There is evidence that a high proportion of temporary work, even when controlling for sectorial differences and for firm size, harms total factor productivity growth in various ways, with the impact being more damaging in skilled sectors. These include limited incentives for workers to acquire firm-specific knowledge, fewer on-the-job training opportunities and less workers' effort. Temporary jobs are also more likely to be associated with poor quality of jobs and low utilisation of skills and discretion.

On the basis of an extensive research review, ILO states that at best, there is an inverse U-shaped relationship between the use of temporary workers and firm productivity. The

[175] Ibidem.

[176] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209

initial use of temporary workers can improve firm productivity because of the facility it provides to screen employees before hiring them, and because of the flexibility in the number of workers. Beyond a certain point, however, the use of temporary workers can result in firms losing human capital and, along with the associated spillover effects, lead to a loss of productivity.[177] A study from Spain attributed 20 per cent of the slowdown in productivity in manufacturing firms between 1992 and 2005 to the "reduced effort" of temporary workers.[178] Evidence from Italy and the Netherlands also warns that firms using higher proportions of flexible labour experience lower labour productivity growth.[179] Similarly, a study of Member States using industry-level panel data found that the use of temporary contracts had a negative effect on labour productivity.[180]

Underinvestment in training, both for temporary and permanent employees, reduces incentives to invest in productivity-enhancing technology and patenting, and slows down innovation. An over-reliance on temporary workers, especially if they are low skilled, may end up deskilling the organization as a whole and have a detrimental effect on the working environment for all workers.[181]

A firm's performance depends also on accumulated tacit firm-specific knowledge acquired by employees over time from their own work and from colleagues in previous years or even decades, and how they transmit this information to new employees. Such accumulation of knowledge, however, can only be passed on by ensuring continuity of personnel. Non-standard workers, especially those who are in the organization for a limited period of time, might not have relationships that facilitate the transfer of knowledge within the organization.

Lower levels of trust and higher turnover and uncertainty also impede cooperative behaviour and increase tensions among workers. A study based on a sample of Italian firms found that a higher proportion of temporary workers resulted in higher levels of absenteeism and lower productivity, with the motivation of all workers reduced.[182]

Competition in the internal labour market

Not all firms use and benefit from employing workers in non-standard arrangements. In practice recourse to the different forms of such arrangements is uneven. Firms can be broadly classified into three groups: firms that do not rely at all on non-standard employment; firms that employ some workers on these contractual arrangements, but on an occasional basis, to a moderate degree and usually for "traditional" purposes; and firms that use non-standard employment intensively and have made these work arrangements central to their human resource and organizational strategies.

[177] Nielen and Schiersch (2014)

[178] Dolado, Ortigueira and Stucchi, 2012

[179] Kleinknecht et al., 2006; Lucidi and Kleinknecht, 2010.

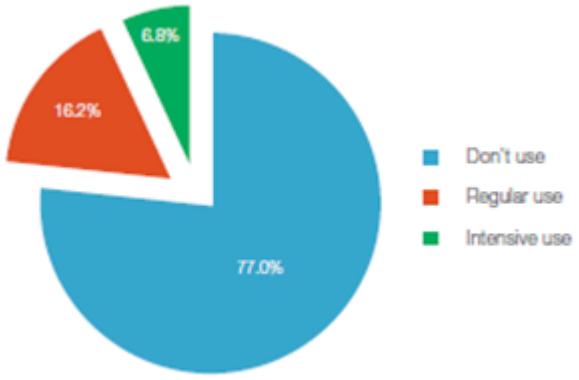
[180] Lisi, 2013.

[181] Håkansson and Isidorsson, 2012

[182] Battisti and Vallanti, 2013.

Data from the European Union Structure of Earnings Survey (SES)[183] reveals that in 2010, 77 per cent of firms in the EU survey did not use any temporary workers, 16 per cent used them regularly (less than 50 per cent of their workers were employed as temporary workers), and 6.8 per cent of firms used them intensively (more than 50 per cent of their workers were either fixed-term or temporary agency workers) (see Figure 29)[184]. Moreover, 5% of enterprises accounted for 76 per cent of all temporary workers employed.

Figure 29. Firms' use of temporary workers, 22 European countries, 2010 (percentages)



Note: Temporary workers include workers on fixed term contracts and temporary agency workers. Regular use means between zero and 50% of workers on temporary contract; intensive use means >50% of workforce on temporary contracts. Source: ILO calculations based on the EU-SES survey.

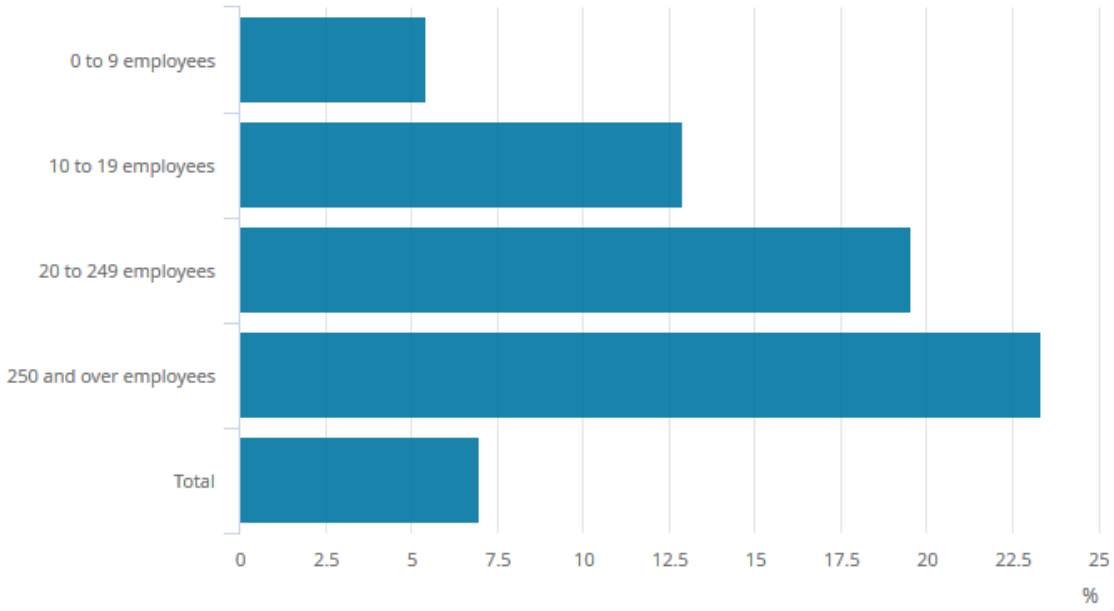
In the same vein, data from the UK show that only some 7% of enterprises make some use of contracts that do not guarantee a minimum number of hours and use of such contracts is significantly more widespread among the biggest enterprises in comparison with SMEs.

Figure 30. Percentage of businesses making some use of contracts that do not guarantee a minimum number of hours by size of business, UK, November 2016[185]

[183] Establishment level survey covering private sector firms with at least ten employees in 22 European countries

[184] "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO.

[185] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/may2017



Source: UK Office for National Statistics

This could mean that the relatively large number of companies in Europe, which provide workers with protection related to standard employment status, may be in a disadvantaged position in relation to companies which compete on the basis of limited labour costs, though establishing such a link would require further analysis.

As regard situation in some specific sectors, the ILO Tripartite Sectoral Meeting on Safety and Health in the Road Transport Sector in its "Resolution on transport network companies – 'Transporting tomorrow'" already highlighted "the need for a level playing field which ensures that all transport network companies are covered by the same legal and regulatory framework as established for transport companies, in order to avoid a negative impact on job security, working conditions and road safety and to avoid an informalisation of the formal economy". It invited "governments, social partners and the International Labour Office (...) to elaborate, promote and implement rules and regulations that promote occupational safety and health and innovation while at the same time ensuring a level playing field for all (...)".[186]

2.3.3 Consequences for Member States

As Eurofound summarised (Figure 31)[187], non-standard employment and new forms of work can have positive effects on labour markets, creating new jobs, allowing for a professional activation of a greater number of people (including vulnerable workers) and facilitating reconciliation between private and professional lives. This is particularly the case for employee sharing or job sharing for instance.

However, some new forms of work, especially casual work, can have disadvantageous effects on labour markets and society at large. Similarly, negative effects of other non-

[186] Resolution on transport network companies – "Transporting tomorrow", Tripartite Sectoral Meeting on Safety and Health in the Road Transport Sector, TSMRTS/2015/14 (Geneva).

[187] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 141

standard forms of work such as (marginal/involuntary) part-time or temporary work, agency work, domestic work and bogus self-employment on firms and workers can have accumulative consequences for labour markets, economies and societies of the Member States.

Figure 31. Overview of implications of new forms of work on labour markets

Note: The operational implications of each employment form might, in practice, vary strongly from case to case.

Green: beneficial labour market effects
Yellow: neutral labour market effects (or evidence for both benefits and disadvantages)
Red: disadvantageous labour market effects

Source: Eurofound, based on national contributions

Production structures and fiscal weight

As shown in the section above describing the consequences of new and non-standard employment on business, temporary employment can have negative consequences for the productivity and innovative capacity of business. It can also lead to de-skilling of workers in companies relying to a large extent on temporary labour. These effects can accumulate in economies where many companies opt for dependence on non-standard work. Recourse to inexpensive and highly flexible forms of labour contracting may reduce incentives to invest in productivity-enhancing technologies, with long-term implications for economic growth (Galbraith, 2012). The more limited training opportunities offered to non-standard workers may further exacerbate the incidence of low-skilled and low-productivity work (Boeri and Garibaldi, 2007).[188] These developments can have a cumulative negative effect on a Member State's labour market, increasing the need for the state to intervene to address the reduced incidence of training

[188] "Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment" (Geneva, 16–19 February 2015)/International Labour Office, Conditions of Work and Equality Department, Geneva, 2015

offered by firms or to see a decline in the productivity and adaptability of their workforce, or to invest in technological developments that are not being undertaken at company level, or to see the value-added of their economy reduced.

Moreover, if not followed by another job, short employment spells have negative fiscal implications due to lower contributions and higher expenditure on benefits.

Labour market segmentation

Labour market segmentation implies that a part of the labour market faces inferior working conditions and greater insecurity, and transitions from one segment to the other are compromised. Labour market segmentation points to unequal risk-sharing, not only between regular and non-regular workers regarding unemployment and income security, but also between non-regular workers and employers in terms of economic adjustment, as workers in non-standard arrangements disproportionately bear the brunt of economic adjustment.

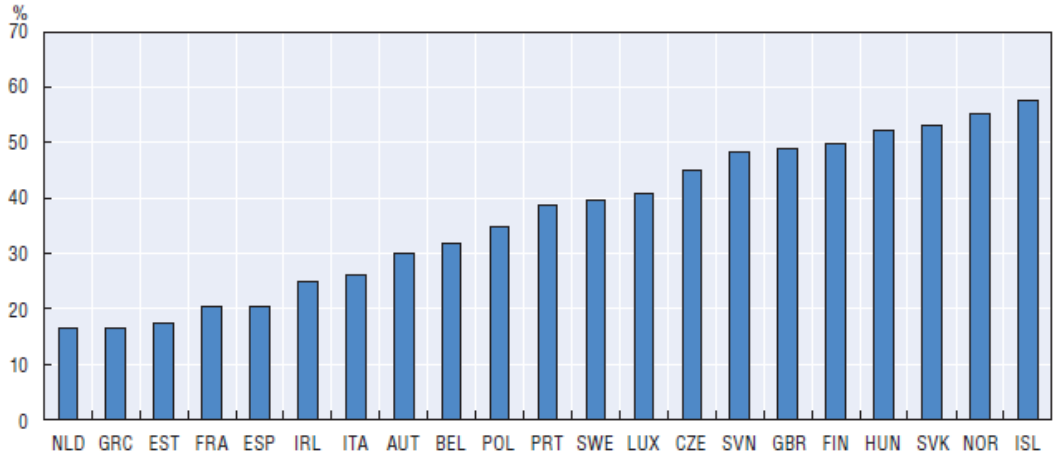
In an economic downturn, the initial reaction by employers is to not renew temporary contracts and to limit recourse to temporary agency work. The jump in unemployment in Spain during the recent economic crisis has been largely the result of the non-renewal of and cuts in fixed-term jobs. In Spain, in the last quarter of 2008, 2.5 per cent of permanent workers lost their jobs, compared to 15% of workers on fixed-term contracts. In other countries (e.g. Ireland 2011–12), when firms started hiring again they chose to substitute permanent hires with workers on short temporary contracts, as a means of keeping labour costs flexible. As a result, the volatility of both employment and unemployment in segmented labour markets is high (Bentolila and Saint-Paul, 1992; Boeri and Garibaldi, 2007). The more volatile labour markets are, the higher the volatility of public budgets (OECD, 2014), both because there is more volatility in payroll and income tax receipts, but also because there are more individuals claiming unemployment benefits or requiring social assistance.[189]

Labour market segmentation is exacerbated by limited transitions between non-standard and standard employment. While a temporary job might be simultaneously a stepping-stone for some individuals, according to EU-SILC data, in almost all European countries for which data are available, less than 50% of the workers that were on temporary contracts at a given year are employed with full-time permanent contracts three years later. Although these figures do not control for individual differences and must therefore be interpreted with caution, they nonetheless suggest a high degree of persistence given that transitions from permanent to temporary jobs are typically very low.[190]

[189] "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO.

[190] OECD Employment Outlook 2014, *Non-regular employment, job security and labour market divide*, p. 141-209

Figure 32. Three-year transition rates from temporary to permanent contracts - Percentage share of temporary employees in 2008 that were employed as full-time permanent employees in 2011



Note: 2007-10 of the Czech Republic, France, Greece, Sweden and the United Kingdom; 2006-09 for Norway and the Slovak Republic; and 2005-08 for Ireland.
Source: OECD calculations based on the European Union Statistics on Income and Living Conditions (EU-SILC) 2005-11.

Inequality and social cohesion

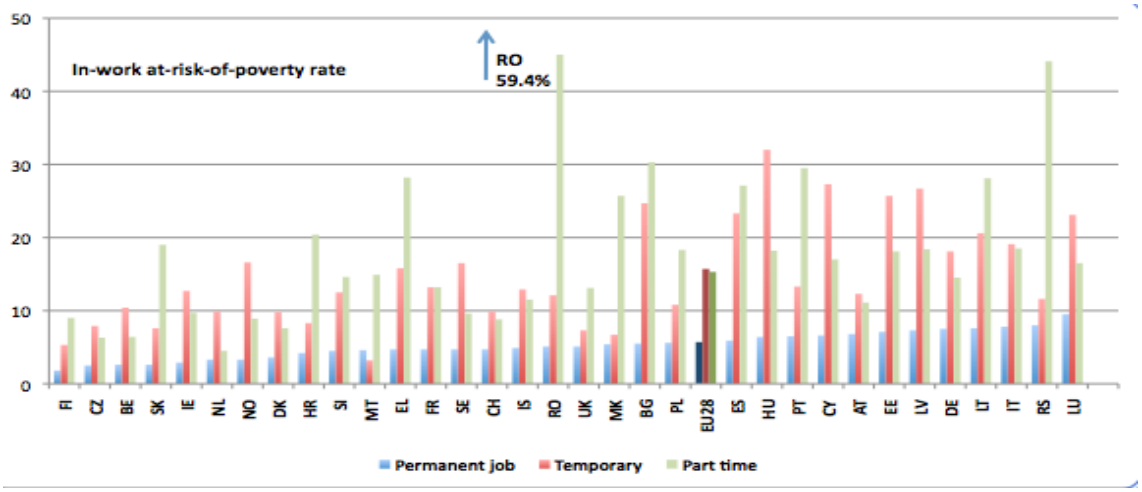
As shown, **non-standard jobs are disproportionately held by women, by young workers, and by less-educated, lower-skilled workers and by migrant workers.** They are also not a voluntary choice for most workers. This impacts on social cohesion and equality.

Non-standard forms of employment are not only associated with lower wages but also with stagnant and falling wages (Dey et al., 2009), contributing to wage polarization. Wage inequality is further exacerbate by relatively lower training opportunities for non-standard workers, which further decreases the potential for career advancement and the possibility of closing the wage gap. Moreover, non-regular workers face more unemployment spells and a greater likelihood of remaining in non-standard work, which negatively affects their lifelong earnings.[191]

Consequently, everywhere in Europe (except in Malta), poverty risk rates for non-standard workers in 2015 were higher than those for workers with a permanent and full time job. On average, in Europe (EU28), around 15% of temporary and part-time workers are income poor. Figure 11 shows that the in-work at-risk-of-poverty rates are not at all correlated between categories of non-standard workers. In 15 countries, temporary workers are more frequently income-poor than part-time workers, especially in Cyprus, Estonia, Hungary, Latvia and Sweden.

[191] "Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment" (Geneva, 16–19 February 2015)/International Labour Office, Conditions of Work and Equality Department, Geneva, 2015

Figure 33. In-work at-risk-of-poverty rate employees according to their status, by countries, 2015, %



Source: Eurostat, Employees with a temporary job (ilc_iw05); Employees at part-time (ilc_iw07).
Note: countries are ranked according to the growing poverty risk rate of workers with permanent jobs.

Strain on social protection and social assistance

Non-standard and new forms of work have a significant impact on social protection systems.

On the one hand, non-standard workers and self-employed people can be (partially) excluded from coverage formally, i.e. due to the lack of statutory access to various social protection schemes. Even when people in non-standard employment and self-employment may be formally covered or have the legal possibility to opt for access they can end up without achieving effective access in the sense of de facto being able to build and take up adequate entitlements to benefits and services (de facto access). This is because it may be difficult for them to meet entitlement criteria of employment hours/duration, income level, contribution periods etc. or because they may be disadvantaged by rules of benefit calculation including the transferability of their rights among various employment statuses and contract. De facto access to social protection for non-standard workers and self-employed can be limited because the rights are non-transferable or do not accumulate across various types of work.

On the other hand, gaps in access to social protection tend to weaken the financing of social protection systems as people in non-standard forms of employment and self-employment eventually often only have access to safety nets of last resort (e.g. minimum income, universal minimum healthcare benefit package) while the number of people contributing to social protection is proportionately smaller. As the demand for health and long term care increases with population ageing, this leads to inefficiencies, delays in care seeking and overuse of costly emergency services instead of primary or integrated care services.

This question is examined in the detail in the parallel initiative on access to social protection.

Parenthood and home ownership

Employment insecurity and poorer remuneration – two key aspects of non-standard employment - have particularly strong repercussions on the consumption and socialization patterns of workers. Research shows that for temporary workers it is **more difficult to get access to credit and housing**, because banks and landlords usually prefer workers with stable jobs and regular incomes. Some research shows that home ownership can contribute positively to community involvement and enrich the social capital of communities, which means that further spread of NSE and associated lower home ownership rates may have adverse consequences for societies in general.[192]

The growing precariousness of the labour market is affecting household decisions across generations (ESDE, 2017)[193]. The increase in non-standard jobs for younger generations has started to cause discontinuity and variation in income levels. As a consequence it has become more common for parents to make financial transfers to assist them with rent expenses or mortgage costs/deposits. Decisions such as parenthood and home ownership are postponed in favour of prolonged intergenerational co-residence with parents (especially in Southern and Eastern European countries) or cohabitation and rental housing. In France, young workers are more likely to live separately from their parents if they have stable jobs, compared to young workers on temporary contracts. There is similar evidence that temporary workers in Italy and Spain, are less likely to own their home or to be able to accumulate assets. [194]

The widespread increase in non-standard work is likely to be one of the causes of delayed parenthood (ESDE, 2017)[195]. The mean age at which women become mothers is highly correlated to the proportion of non-standard workers among younger people in the country. The increase in the average age at which women become mothers across the EU is in turn likely to impact fertility negatively.

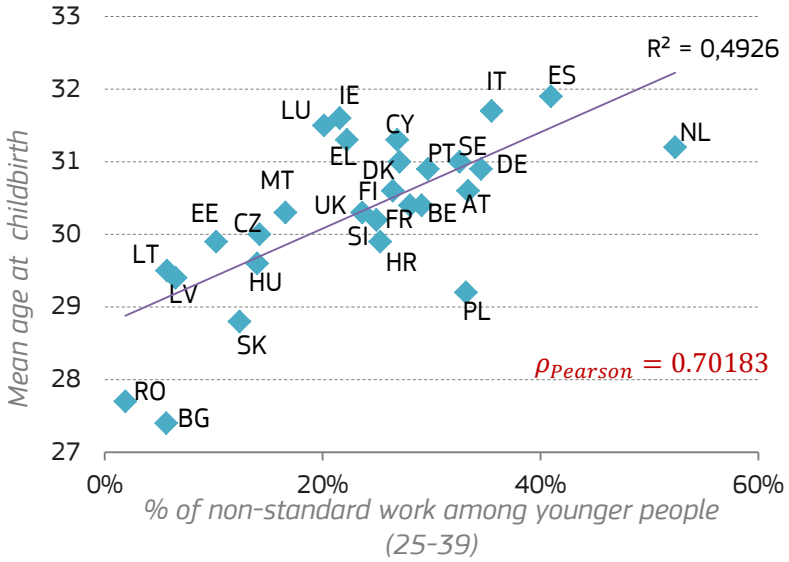
[192] "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO. 2016, p.221

[193] Ibidem.

[194] "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO. 2016, p.221

[195] Ibidem.

Figure 34. Scatter plot between mean age at childbirth and % of non-standard work among younger people, 2015



Source: *DG EMPL calculations based on Eurostat (variable "tps00017") and EU-LFS*
Note: *Non-standard work includes permanent part-time and temporary full-time and part-time work. Data for Lithuania, Latvia, Estonia and Romania was below the reliability limit and hence is not presented.*

3 EU COMPETENCE AND EU ADDED VALUE

3.1 Foundations of the right to act

- *Legal basis*

Directive 91/533/EU was adopted, prior to the creation of a social chapter under the Maastricht Treaty, under Article 100 of the EEC Treaty relating to the approximation of such legislative and administrative provisions of the Member States as have a direct incidence on the establishment or functioning of the Common Market.

In the current Treaty framework, the appropriate legal basis would be Article 153TFEU: 153(1)(b)" *With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: (b) working conditions*"; 153 (2) (b) "*to this end, the European Parliament and the Council may adopt (...) by means of directives minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings*.. Should workers' material rights be extended under a revised Directive to cover procedures applying to dismissal, the legal basis could be extended to Article 153 (1) (d) TFEU "protection of workers where their employment contract is terminated".

- *Political basis*

In his State of the Union Address, on 9 September 2015, President Jean-Claude Juncker announced his ambition to establish a European Pillar of Social Rights. Ensuring that our labour legislation maintains its relevance and effect in 21st century labour markets, where globalisation and digitalisation are changing the forms of employment and bringing in new work arrangements, is central to delivering on the Pillar.

President of the European Commission Jean-Claude Juncker declared that 'We have to step up the work for a fair and truly pan-European labour market (…). As part of these efforts, I will want to develop a European Pillar of Social Rights, which takes account of the changing realities of Europe's societies and the world of work (…). The European Pillar of Social Rights should complement what we have already jointly achieved when it comes to the protection of workers in the EU'. At the following State of the Union, on 14 September 2016, President Juncker confirmed: 'We have to work urgently on the European Pillar of Social Rights. And we will do so with energy and enthusiasm. Europe is not social enough. We must change that'.

As the extensive public consultation on the Pillar revealed, there is a growing challenge to define and apply appropriate rights for many workers in new and non-standard forms of employment relationships with a view to avoiding unfair practices and ensuring that workers' rights are safeguarded.

The need to ensure that workers and employers have clarity on their contractual relationship is at the core of the Commission's proposal for the European Pillar of Social Rights. The consultation confirmed the importance of providing this protection for all workers, irrespective of the type of contract, and including those in atypical and new forms of work.

Legal uncertainty also entails disadvantages and, in particular, litigation costs for employers. Sound working conditions moreover contribute to a committed, involved and healthy workforce and can foster productivity and competitiveness of individual companies and the EU economy as a whole. Better information obligations also help public authorities in the fight against undeclared work.

The Pillar explicitly addresses the challenges related to new forms of employment and adequate working conditions in atypical forms of employment.

Principle 5 '**Secure and adaptable employment**' states that '*a. Regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training. The transition towards open-ended forms of employment shall be fostered. b. In accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured. c. Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged. Occupational mobility shall be facilitated. d. Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts. Any probation period should be of reasonable duration.*'

Principle 7 ' **Information about employment conditions and protection in case of dismissals**' provides that ' *a. Workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including on probation period. b. Prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation.*'

The **European Parliament** has called on the European Commission to assess new forms of employment driven by digitalisation and for an assessment of the legal status of labour market intermediaries and online platforms and of their liability; it has called on the Commission to revise Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (the 'Written Statement Directive') to take account of new forms of employment; it has also called on the European Commission 'to tackle precarious employment, including undeclared work and bogus self-employment, in order to ensure that all types of work contracts offer decent working conditions with proper social security coverage, in line with the ILO Decent Work Agenda, Article 9 TFEU, the EU Charter of Fundamental Rights and the European Social Charter'.[196] The European Parliament has also called on the Member States and the Commission, in their respective areas of competence, to ensure fair working conditions and adequate legal and social protection for all workers in the collaborative economy, regardless of their status.[197]

[196] European Parliament Resolution of 4 July 2017 on working conditions and precarious employment

[197] European Parliament Resolution of 15 June 2017 on a European Agenda for the collaborative economy

3.2 Necessity and EU added value

Since the entry into force of the Directive in 1991 and the more recently as a result of the economic and financial crisis, diverging and/or insufficient working conditions and protection of workers can be observed across the EU (section 2 above explains the most recent trends). This widespread phenomenon more generally impacts the transparency of the labour markets and has varying and unequal effects for the workers, businesses, Member States, the internal market - as previously described.

In today's context, one of the main drivers for action is that with significantly changing labour markets, forms of employment relationships and evolving socio-economic and legal backgrounds both at national and EU levels the current Directive is no longer sufficiently effective to address today's and tomorrow's challenges. Currently, the Directive is inadequate and/or incomplete with respect to its scope, implementation or enforcement as not every worker can access the same basic rights everywhere and there is room left for preventing undeclared work conditions or situations. Furthermore a change to the Directive can only be made at EU level.

Consequently, EU action can work as a catalyst for a wider scale improvement of the employment relationship: for EU labour markets, employers, creating a level playing field; for workers, alleviating the 'burden of uncertainty' by providing enhanced workers' protection, less precariousness or market segmentation and easy and better mobility conditions (as such better quality and transparency in working conditions):

The growing heterogeneity and scale of new and atypical forms of work has not been equally beneficial for workers and the subsequent increasing precariousness and income inequality are common challenges across the EU, and generate scattered situations that could be better tackled collectively. Besides, in the long-term there is a 'societal cost' to lower working conditions and increasing precariousness (lower income has a wide causal chain of effects not only for workers and their households but for the economy at large including on public expenditure). In a wider perspective there are budgetary implications of reduced fiscal contributions and higher healthcare expenditure. These are a matter of common interest and concern for economies so interlinked as those of the EU Member States and, in particular, for those sharing the euro. With insufficient contributions, revenues paid, higher social expenditure, negative impacts on the stability of public budgets and consequently on the Eurozone will continue to increase.

In parallel while there is the risk of race to the bottom for new forms of work/employment, in the absence of common minimum standards Member States' efforts to ensure minimum protection of workers is likely to lead increasingly divergent national solutions that risk being contradictory, creating regulatory loopholes when viewed from an EU perspective, and leading to inequality in the protection of workers and their living conditions. Eventually it might affect the quality of the workforce, the relative competitiveness of employers, companies and Member States, the functioning of the EU Internal market.

By acting at EU level there is a possibility to take advantage of and build on Member States' recognised good practices and to create a momentum for Member States to advance together towards better outcomes. Consequently the EU could further encourage Member States to focus on the long-term bigger picture and the major socio-economic challenges related to the most casual and precarious forms of work.

While the EU is working to increase fair labour mobility in Europe by removing barriers that still hinder it the (potential of) labour mobility is not/cannot yet be exploited in full. Better information measures or new common minimum rights across the EU could contribute to improving internal market mobility as:

- For (some categories of) workers, the working relationship and their mobility would be facilitated thanks to greater clarity and transparency about their rights including means of redress in case they decide to move to work in another country.

- For businesses operating in different Member States, minimum standards would imply higher predictability and lower heterogeneity in the management of social standards and lower costs to adapt to less diverse rules/approaches, e.g. on the basis of a common definition of worker.

Economies of Member States are increasingly interlinked: it clearly appears that minimum harmonisation in the social field, in other words social convergence, is required, at least if the ambition for the EU is to go beyond free movement[198]. The specific EU added value lies and results in the establishment of minimum standards, below which Member States cannot compete, and the fostering of upwards convergence in employment and social outcomes between Member States. This is clearly reflected in the wording of the Treaty itself, which provides that only "minimum requirements" can be enacted at EU level in social policy (153 (2) (b) TFEU).

Consequently, having either a reinforced information package or a new common minimum rights at EU level could help increase both the workers' protection and mobility thereby ensuring effectiveness by means of a legal framework addressing the existing lack of consensus about labour contracts and the subsequent heterogeneity across the EU. Such a revision would have potential scope-scale-volume effects. Furthermore the society at large would gain in such a framework striving towards certainty, transparency and social convergence.

3.3 Coherence with other relevant EU instruments

A coherence analysis has been conducted as a part of the REFIT evaluation of the Directive[199] against a selected number of acts of primary and secondary EU legislation, the European Social Charter,[200] which is a Council of Europe Treaty, and a small number of policy measures related to the Directive's objectives.

Overall, the assessment did not identify any contradictions between the Directive's objectives and provisions and any of the selected legislation or policies. However, where other social legislation or policies also make reference to workers or employees, but use different definitions or defer to national ones, this introduces some complexity by creating different scopes of application.

[198] See Reflection paper on the Social Dimension of Europe, COM(2017) 206.

[199] Refit study supporting the evaluation of the Directive 91/533 –Final report

[200] Adopted at the meeting of the European Council held at Strasbourg on 9 December 1989

The analysis also identified three instances where the coherence between the provisions of the Directive and other Directives could have been more optimal:

(1) While the Written Statement Directive and Directive 96/71/EC on the Posting of Workers are generally aligned, further mutual reinforcement would have been achieved if: (i) Article 4 of Directive 91/533/EEC had been revised to include an explicit reference to the list in Article 3(1) of Directive 96/71/EC; or (ii) the Written Statement Directive directly included the requirement in Directive 96/71/EC on the host state rules (points (a)-(c) of the list).

The legal review conducted among the Member States revealed that currently none of the Member States requires employers posting workers abroad (in the EU) to notify them in writing of the host state rules that will apply to them.

(2) The assessment concluded that the Written Statement Directive could take better account of Directive 2008/104/EC on Temporary Agency Work, by having its scope expanded to explicitly cover agency workers and specify that the end-user employer has the obligation to inform the agency worker directly on the conditions of employment. An alternative way would be to amend Directive 2008/104/EC to require the service user to provide the agency worker with written information on the conditions of employment after a certain period of assignment (e.g. 6 to 12 months).

(3) Regarding trainees, there is a strong convergence of objectives between the Written Statement Directive and the 2014 Council Recommendation on a Quality Framework for Traineeships[201]. The main element of the Quality Framework is the requirement for a written traineeship agreement, which has information requirements somewhat similar to those laid down in Directive 91/533/EEC. Most Member States already have rules regulating the provision of written information to trainees or include trainees within the definition of employees in national law, and thus within the scope of Directive 91/533/EEC. Having the Directive cover trainees (at least those that are paid) could give a strong boost towards achieving the objectives of the Quality Framework for traineeships; on the other hand, the particular working context of trainees and apprentices may justify protection being promoted through specific policy initiatives.

Finally, regarding the EU action on tackling undeclared work,[202] the coherence analysis also confirmed that written statements in some countries serve as a means to achieve this objective: where no written statements are issued this is often a good indicator of other irregularities as well. As such, labour inspectorates view the written statement as a useful tool in their monitoring work.

To conclude, the Directive is globally coherent with other EU instruments, it fits well within EU policies and legislation. Nevertheless, there is scope for further convergence with the rules covering posted workers, temporary agency workers and trainees.

Some avenues for EU action examined in the following chapters, notably the right to predictability of work schedule for on-demand casual workers, would complement the protections from discrimination due to type of employment relationship created by

[201] http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/lsa/141424.pdf.

[202] Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work, OJ L 65, 11.03.2016, p. 12.

Directives 97/81/EC on part-time work, 99/70/EC on fixed-term work, and 2008/104/EC on temporary agency work.

Coherence with the Charter of Fundamental Rights of the EU

This initiative aims at strengthening the right to fair and just working conditions recognised in the Charter of Fundamental Rights of the EU (the Charter). Indeed, under the Article 31 (1) every worker has the right to fair and just working conditions, which respect his or her health, safety and dignity.

Furthermore, the initiative will support the freedom to choose an occupation, and right to engage in work, recognised in Article 15.

Different avenues for policy actions presented below provide different impact on these rights, with a positive impact on the right to fair and just working conditions expected to be ranging from medium to high.

The only right which might be negatively impacted is the freedom to conduct a business. Therefore possible avenues for action will be tested to ensure the proportionality principle is respected, and that the final proposal will aim at maximising the fundamental rights impact.

In addition to Article 31 and Article 15, other rights protected in the Charter could potentially be positively impacted by action aimed at an enhanced protection of working conditions of all workers, including those in new and non-standard forms of employment. Indeed it can support dignity in the workplace (Art 1), the fight against coerced work (Art 5), respect for family life (Art. 7), equality before the law of workers (Article 20), non-discrimination (as vulnerable groups are overrepresented in precarious employment – Article 21), equality between women and men (as women are overrepresented in precarious employment – Article 23), workers' right to information and consultation (Article 27).

4 POLICY OBJECTIVES

4.1. General and specific policy objectives

A revised Written Statement Directive would contribute to the Treaty-based goals of promoting employment and improved living and working conditions (TFEU Article 151). It would also address the rights set out in the Charter of Fundamental Rights of the European Union in relation to workers' right to information (Article 27) and their right to fair and just working conditions (Article 31).

Already in the first phase consultation, the Commission identified two main challenges that should be addressed:

- ensuring all workers get the right set of information about their working conditions in a written form
- reducing precarious employment relationships and achieving upward convergence towards equal access to a number of minimum rights for all workers.

These challenges are translated into a single overarching objective: ensuring that each worker receives a written confirmation of his or her working conditions and benefits from a set of basic rights.

The **general aim** is therefore to promote employment and to improve living and working conditions.

It is appropriate to reflect both elements from TEFU Article 151, as the goal of the revision is to secure improvements in working conditions, and thereby also the living conditions of workers and their families, while taking account of the need to promote employment and job creation.

The **specific objectives** through which the general objective would be addressed would be:

(1) Provide workers with improved protection against possible infringements of their rights.

(2) Create greater transparency on the labour market.

The following **operational objectives** would derive from these specific objectives, in the context of the revisions set out in the second phase consultation document:

(1) Ensure that every worker is provided with a written document containing information on the essential elements of the contract or employment relationship.

(2) Ensure that every worker is provided with information on any change in the essential elements of the contract or employment relationship.

(3) Ensure that expatriate workers are provided with relevant additional information before their departure.

(4) Ensure basic rights in employment contracts or relationships.

5 AVENUES FOR EU ACTION AND THEIR IMPACTS

As presented in the description of drivers and consequences, the growth of new and non-standard forms of employment has resulted in cohorts of workers finding themselves excluded from employment protection and welfare benefits.[203] This has major and long-term consequences for the labour market, as its legislative models have been framed around the concept of the standard employment contract and currently lead to the exclusion of increasing numbers of European workers.

As a result, EU labour law must now set out to oversee new and non-standard forms of employment. This is from both an equity perspective and a policy perspective, supporting flexible labour markets coupled with secure employment conditions and protection of all workers.

Given the drawbacks in the protection through the Written Statement Directive as well as the challenges related to the growth of new and non-standard forms of employment, the Commission is considering a range of legislative measures, as specified in the table below.

An eventual action at EU level could consist of all or some of these measures. Different combinations of the measures would be possible, resulting in different impacts on the ground.

Table 1. Overview of policy measures under consideration

	Specific policy measures under consideration
1. A scope of application encompassing all EU workers, in particular the most precarious	Confirming/ensuring that the following are also covered: 1.1: domestic workers 1.2: casual workers (i.e. on-demand workers and intermittent workers) and removing (by consequence) the existing provision allowing their exclusion 1.3: temporary agency workers 1.4: voucher-based workers 1.5: platform-workers Removing the possibilities to exclude: 1.6: people working less than 8 hours a week 1.7: people whose employment relationship will last less than one month 1.8: people having a contract or employment relationship of specific nature provided that the non-application is justified by objective considerations 1.9: confirming/ensuring that the Directive covers any person who for a certain period of time performs services for and under the direction of another person in return for which (s)he receives remuneration

[203] The latter is being addressed in a separate EU legal initiative on social protection for all.

2. A right to information on the applicable working conditions	Informing about: 2.1. the duration and conditions of the probation period (if any) 2.2. the normal working schedule or the principle that there is no predetermined and recurrent working schedule; in the latter case, the minimum advance notice the worker benefit from before a new assignment and the system for determining the work schedules 2.3. the amount of guaranteed paid hours or the principle that there is no guaranteed paid hours and criteria for identifying the paid hours 2.4. the training entitlement, if any, provided by the employer 2.5. the extent to which paid extra hours (overtime) can be requested on top of the amount of guaranteed hours and its remuneration 2.6. the social security system(s) receiving the social contributions attached to the employment relationship in respect of pension, sickness, maternity and/or family leave, unemployment benefit and any health and/or social security protection provided by the employer. 2.7. more comprehensive information on the national law applicable in case of termination of contract (beyond the mere mention of the notice period, which is already foreseen by the current Directive) 2.8. requiring Member States to develop, where this is not already the case, on-line standard 'Written Statements Models' or templates for employment contracts
3. Shortening of the two-month deadline	Shortening the deadline from 2 months to: 3.1. one month 3.2. fifteen days 3.3. first day of job 3.4. before labour contract is formed
4. New minimum rights for all workers	4.1: Right to predictability of work consisting in: - Right to define with the employer reference days and hours - Right to a minimum advance notice before a new assignment or a new period of work - Right a minimum of guaranteed hours set at the average level of hours worked during a preceding period - Prohibition of exclusivity clauses except in case of full-time relationships 4.2: Right to request another form of employment and receive a reply in writing 4.3: Right to a maximum duration of probation period

5. Enforcement	Requiring Member States to: 5.1: make sure that a 'competent authority' can find or impose a solution in case a worker does not receive a written statement; 5.2: set up a formal injunction system to the employer, possibly accompanied by a possibility of lump sum; 5.3: establish favourable presumptions for the employees as regards their working conditions in case of (unlawful) absence of written statements (proportionate to the missing elements).

5.1 A scope of application encompassing all EU workers, in particular the most precarious

i) Legal baseline

The scope of application of the Directive as it stands today is set out in its first Article and reads as follows:

> *"1. This Directive shall apply to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State.*
>
> *2. Member States may provide that this Directive shall not apply to employees having a contract or employment relationship:*
> *(a) with a total duration not exceeding one month, and/or with a working week not exceeding eight hours; or*
> *(b) of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.*"

This scope of application is *a priori* wide but Member States may in their transposing legislation narrow it in the three cases (derogations) specified in Article 1(2). It should be noted that the Directive applies only to employment contracts or relationships as they are defined and/or governed in the jurisdictions of the different Member States. The Directive does not define these concepts. However, the case-law of the CJEU set out in the section on regulatory drivers establishes principles for establishing worker status and restricts the degree to which national legislation or practice may limit the scope of application of different EU directives in the social field. Although there has not yet been a judgment of the CJEU on the scope of the Written Statement Directive, these principles are expected to be applied to it *mutatis mutandis*. The recent judgement *Ruhrlandklinik* C-216/15 confirmed and even extended this trend[204].

[204] This trend is applied for instance in the judgments in the cases Alonso C-307/05 to Directive 99/70/EEC on fixed-term work, Danosa C-232/069 to Directive 92/85/EEC on health and safety at work of pregnant workers, O'Brien C-393/10 on Directive 97/81/EEC on part-time work, Commission v. Italy C-596/12 on Directive 98/59/EC on collective redundancies, Fenoll C-316/13 on Directive 2003/88/EC working time (and Charter of Fundamental Rights Article 31(2)), Balkaya C-229/14 on Directive 98/59/EC on collective redundancies.

The three possible derogations

According to the study underpinning the REFIT evaluation, two thirds of the Member States analysed use at least one of the three derogations in their national legislation, as set out in the table below. Nine Member States[205] did not implement any derogation.

Table 2. Overview of countries using exemptions

Exemptions categories	Countries
Employment duration < 1 month	AT, CY, CZ, DK, EE, FI, DE, EL, HU, IE, IT, LT, MT, ES, SE, UK
Working week < 8 hours	CY, DK, HU, IT, LI, MT
Casual or specific nature employment relationship	AT, CY, DK, EL, ES, IE, IT, LT, LU, MT, NL, SK, UK

Most of the Member States using the third type of derogation apply it for **domestic workers**.

There are differences in the way the derogations are used. Sweden does not apply the Directive for employment relationships not exceeding 3 weeks whereas in Estonia the minimum required is 2 weeks. In Italy, the legislator has cumulated two derogations: workers working less than 1 month and less than 8 hours a week are not entitled to receive basic information about their employment relationship.

The table below summarises the existing derogations in each of the countries assessed:

Table 3. Overview of transposition with regard to derogations to the scope of application

Country	Use of derogations to the scope of application:
Austria	Under Article 1(2)(a) employment relationship lasting for one month or less. Under Article 1(2)(b) Agency workers
Belgium	None
Bulgaria	None
Croatia	None
Cyprus	The Law does not apply to employees whose total employment duration does not exceed one month. The Law does not apply to employees whose total employment duration does not exceed eight hours per week. The Law does not apply to employees whose employment is of a casual and/or specific nature, provided, in these cases that its non-application is justified by objective considerations.

[205] BE, BG, HR, FR, PL, PR, RO, SL, LV

Country	Use of derogations to the scope of application:
Czech Republic	Under Article 1(2)(a) employment relationship lasting for one month or less.
Denmark	Employees whose employment lasts for less than one month are excluded. Employees whose average working week does not exceed eight hours are excluded. Seamen covered by the Merchant Shipping Act are excluded. The Danish Minister for Employment may decide that employees having an employment relationship of a casual or specific nature shall not be subject to the ERCA.
Estonia	Under Article 1(2)(a) an employment contract does not have to be concluded between the employer and the employee, if the employment lasts less than two weeks.
Finland	Under Article 1(2)(a) Employees whose employment lasts for less than one month are excluded.
France	None
Germany	Under Article 1(2)(a) employees whose employment lasts for less than one month are excluded.
Greece	Under Article 1(2)(a) employees whose employment lasts for less than one month are excluded. Under Article 1(2)(b) Employees in temporary agricultural sector jobs
Hungary	The employment relationship does not exceed one month. The working time does not exceed eight hours per week.
Ireland	The Act does not apply to employment in which the employee has been in the continuous service of the employer for less than 1 month. The Act does not contain any explicit exclusion under Art 1(2)(b) but does empower the relevant Government Minister to exclude certain categories of workers for objectively justifiable reasons and only after consultation with employer and employee representatives.
Italy	Employees whose employment lasts for less than one month and whose working time is less than 8 hours per week are excluded. The two conditions must both be met in order for the Decree not to be applicable. Employees who are employer's wife/husband/relatives and live in the same house of the employer are excluded, as employees who are diplomats or work for a diplomatic mission abroad.
Latvia	None
Lithuania	Does not apply to higher state officials and the civil servants working in public administration under the Law on Public Service The LC draft provides some exemptions allowed by Article 1(2) of the Directive: (i) Article 43(5) provides that the employees, whose employment contract is concluded for a term shorter than one month, may be exempted from the application of the notification of the working conditions according Article 43; (ii) Article 108(1) provides that employers with an average number of employees that is less than ten employees shall be exempt from the application of provisions of information on the terms and conditions of employment of an employee for a period of one month (Article 43 of this Code). The employer shall provide such information within two months after the commencement of work.
Luxembourg	Excluded are individuals exercising an activity as sports coach when this activity is not practiced as a primary occupation and if the payment received is lower than the monthly legal minimum wage.
Malta	employees who are engaged by an employer for a total duration which does not exceed one month, employees who are engaged by an employer for a working week which does not exceed a total of eight hours employees who have been employed to perform a specific defined task, on condition that the non-application is justified by objective considerations.

Country	Use of derogations to the scope of application:
Netherlands	The derogations permitted under Art. 1(2)(b) of the Directive is only used in the Dutch transposition concerning domestic workers in the sense of the answer on Q1 d), viz. the derogation concerning domestic work in private households.
Poland	none
Portugal	none
Romania	none
Slovakia	Three types of agreements are excluded: work performed outside employment relationship, i.e. work performance agreement, agreement on temporary job of students and agreement on work activity.
Slovenia	None
Spain	Employees whose employment lasts for less than one month ("four weeks") are excluded by art. 1,2 Royal Decree 1659-98 transposing the Directive. Those works or activities are excluded as they are not considered a "labour relation". All tasks carried out further to a friendship, charitable act or good neighbour relationship are not considered to be a labour relation. Family jobs, unless those who are executing the job are proven to hold employee status. To this effect and subject to living with the business owner, the following shall be considered relatives: the spouse, descendants, ascendants and other relatives by blood ties or affinity, up to the second degree, inclusive, and those adopted into the family, as the case may be. Persons working at prisons are also excluded, as it is not considered a labour relation. Nevertheless prison regulations about the work to redeem condemns state the prisoners‟ rights and duties.
Sweden	The employer is not bound to provide such information if the period of employment is less than three weeks.
UK	Employees whose employment lasts for less than one month are excluded. Seamen under a „crew agreement‟ approved by the relevant Secretary of State are excluded.

Absence of a common definition of employment relation

As stated above, the Directive applies to 'every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State'.

The scope of application of the Directive therefore varies among Member States according to their own definitions of 'employee' or 'worker' (as well as of 'employment relationship' and 'employment contract').

The data gathered by the Commission[206] confirms that – beyond 'subordination' and 'remuneration' which are the two basic elements common to most (but not all) national approaches – there is significant divergence as to the concept of employee or worker. For example, persons in a management function are not considered employees in Sweden, and public servants do not fall within the definition of employee for the purpose of the Directive in Estonia, Lithuania, Austria and Belgium. In the UK, those falling into the

[206] See Table 1 in Annex 2.

category of 'workers' (neither self-employed nor employees) do not receive written statements. In several new Member States, the category of 'civil-law workers' is not or only partially protected by the relevant labour code.

The current scope is problematic

As confirmed by the REFIT evaluation, the current scope of the Directive is not satisfactory.

The use of the three derogations prevents the Directive from setting uniform minimum requirements on which workers receive information on their employment conditions. This variety leads to unequal treatment between EU Member States of workers within the same categories (e.g. domestic workers) and also among part time workers or those with short term employment relationships. It impacts the effectiveness of the Written Statement Directive, as people performing the same job are entitled to know their employment conditions in some Members States and not in other. In the absence of an appropriate objective justification, such differences may be discriminatory.

These concerns are becoming more extensive and more acute given the development of new forms of work, as set out in the section "Labour Market Drivers", notably the growth of types of work lacking often high levels of protection, including on-demand work, very short part-time, platform work and domestic work. Those workers might be excluded from the scope of the Directive not only because they may not be qualified as 'employees' or 'workers' under national legislation, but also by virtue of the three derogations set out in its Article 1(2). For instance, in UK zero hours contract workers having duration of continuous employment of less than 1 month fall outside the scope of the national definition of 'employee' and are also excluded by virtue of the derogation. An increasing number of workers are not protected by the Directive, so at risk of not being (fully) aware of their employment conditions or their rights, and this trend is growing.

In addition, in the differences in application of the Directive in national legislation generates differences between employers in the nature of their obligations vis-à-vis employees performing the same function across the EU.

Also, these disparities in its scope of application restrict the capacity of the Directive to increase transparency in the internal (labour) market and so free movement of workers.

The European Parliament as well has underlined the risk that new forms of employment emerging in the context of digitalisation and new technologies might be blurring the boundary between dependent employment and self-employment. They have called on Member States to take into account ILO indicators to determine the existence of an employment relationship.[207]

The European Parliament has as well underlined how some atypical forms of employment may entail greater risks of precariousness and insecurity, for example, involuntary part-time and fixed-term contract work, zero-hour contracts and unpaid internships and traineeships[208]

[207] European Parliament, European Parliament resolution of 4 July 2017 on working conditions and precarious employment

[208] European Parliament, European Parliament resolution of 4 July 2017 on working conditions and precarious employment

ii) Possible avenues for a revision

As shown above, the scope of application the Directive is a crucial aspect as regards its effectiveness. The table below shows the different possible measures for consideration. They all involve improving legal certainty by means of a clarification and/or a widening of the scope of the Directive.

Table 4. Possible measures for consideration

Possible measures for consideration	**Impacts**		
	Legal	**Economic**	**Social (including health)**
0. No change/ status quo	Growing unequal access to labour rights across Member States and employment relationships.	Unfair competition between undertakings based on unawareness of rights of some workers.	Growing cohorts of workers potentially continuing to be excluded from basic information rights and will have reduced awareness of working conditions.
1.1. confirming/ensuring that domestic workers are covered	Would require a change in some MS (e.g. IT, NL, SE). Increased convergence with ILO Convention n° 189 on Domestic Workers.	Cost per person of providing written statement calculated as appropriate (REFIT evaluation). Potential cost expected to be low on businesses and households relying already on declared work. Potential decreased unfair competition based on undeclared work or unawareness of labour rights. Would require further involvement of public authorities into domestic work.	Expected very positive impact on domestic workers' living and working conditions, physical and mental health. Expected positive impact on decrease of undeclared work and potentially forced labour or trafficking.
1.2. confirming/	Casual workers	Cost per person of	Expected positive

ensuring that casual workers are covered (including removing the existing provision allowing their exclusion)	are frequently excluded, partially or totally, from labour regulations or not covered in practice.	providing written statement calculated as appropriate (REFIT evaluation) Cost likely to be low for most businesses. Can however be higher for some employers making substantial use of casual work. Coverage would not entitle to higher remuneration but at least to a written confirmation of working conditions, which represent a small burden on businesses. Potential decreased unfair competition based on unawareness of labour rights.	impact on living and working conditions of casual workers from higher awareness of working conditions.
1.3. confirming/ensuring that temporary agency workers are covered	Member States already provide a written confirmation of working conditions, except in DK. Situation is however not clear in CY, EL, MT and UK.	Cost per person of providing written statement calculated as appropriate (REFIT evaluation). Most temporary agency workers already receive a written confirmation of working conditions and are covered by Directive 2008/104/EC). Potential decreased unfair competition based on unawareness of labour rights.	Expected positive impact on living and working conditions of temporary agency workers from higher awareness of working conditions.

1.4. confirming/ensuring that voucher-based workers are covered	Nine Member States seem not to possess a system of voucher-based work (AT, HR, CZ, DE, IE, LV, LU, RO, SE). In BE and ES those workers are receiving a written confirmation of their working conditions. In all the other Member States, the situation must be clarified or the workers are certainly not covered.	Cost per person of providing written statement calculated as appropriate (REFIT evaluation). Coverage would not entitle to higher remuneration. Potential decreased unfair competition based on unawareness of labour rights.	Expected positive impact on living and working conditions of from higher awareness of working conditions. Expected improved perspectives for career development (are generally low for voucher-based workers).
1.5. confirming/ensuring that platform-workers are covered	Regulation of platform work is still nascent in Member States.	Cost per person of providing written statement calculated as appropriate (REFIT evaluation). Potential decreased unfair competition based on unawareness of labour rights.	Expected positive impact on living and working conditions from higher awareness of working conditions. Likely to be positive if the persons covered are genuine workers, dependant on the work they provide through the platform for subsistence.
1.6. removing the possibility to exclude people working less than 8 hours a week	This possibility is used by 6 Member States (CY, DK, HU, IT, LI, MT).	Cost per person of providing written statement calculated as appropriate (REFIT evaluation). Potential decreased unfair competition based on unawareness of labour rights.	Expected positive impact on living and working conditions of very marginal part-time workers from higher awareness of working conditions.

1.7. removing the possibility to exclude people whose employment relationship will last less than one month	This possibility is used by 17 Member States (AT, CY, CZ, DK, EE, FI, DE, EL, HU, IE, IT, LI, LT, MT, ES, SE, UK).	Coverage would not entitle to higher remuneration but at least to a written confirmation of working conditions, which represent a small burden on businesses. Potential decreased unfair competition based on unawareness of labour rights.	Expected positive impact on living and working condition from higher awareness of working conditions. Likely to be positive as would help to secure transition towards a stable employment position.
1.8. removing the possibility to exclude people having a contract or employment relationship of specific nature provided that the non-application is justified by objective considerations	This possibility has been mostly used by Member States in order to exclude domestic work.	Cost per person of providing written statement calculated as appropriate (REFIT evaluation). Potential decreased unfair competition based on unawareness of labour rights.	Expected positive impact on living and working conditions from higher awareness of working conditions. For impact of covering domestic workers, see above. For other types of specific work, not know at this stage.
1.9. confirming/ensuring that the Directive covers at least any person who for certain period of time performs services for and under the direction of another person in return for which (s)he receives remuneration	Implies coverage of previous categories (domestic workers, temporary agency workers, voucher-based workers, casual workers and platform workers). Implies as well coverage of specific categories of workers in different Member States who currently are not / not entirely considered as	Cost per person of providing written statement calculated as appropriate (REFIT evaluation). Coverage would not entitle to higher remuneration but at least to a written confirmation of working conditions, which represent a small burden on business. Coverage of civil servants would have low impact as in general statute for civil servants entails similar	Expected positive impact on living and working conditions from higher awareness of working conditions. Expected positive impact in equal treatment of workers in the EU and social cohesion. All positive impacts of different previous suboptions would be cumulated.

	workers. For instance, in several Member States (BE, AUT, EE, FR, LT…), civil servants are not covered by general labour regulations, in other (BG, PL, CY, EE…) the so-called civil law workers are not covered neither. In UK, the so-called category of 'workers' (intermediate status between self-employed and 'employee' in UK sense) are deprived from the benefit of most social EU law.	protections. Coverage of civil law workers would change the nature of these employment relationships, impact is therefore likely to be medium/ high. Potential decreased unfair competition based on unawareness of labour rights. Potential positive impact in terms of level playing field across EU and consistency of legal framework in the internal market (legal clarity across MSs and for cross-border activity). Increased level playing field for employers: all workers have to receive a written confirmation of their working conditions.	

All of the measures set out above would ensure a wider scope of application of the Directive, in line with the Commission's stated policy objective: ensuring that each worker receives a written confirmation of his or her working conditions and, potentially, some additional minimumrights.

It follows from the analysis set out above showing the discrepancies in the personal scope of the Directive in different Member State jurisdictions that, as regards subsidiarity, the objectives of the proposed action cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level.

As regards proportionality, introducing clarification of the personal scope of application of the Directive will impact on national systems, by creating an obligation to transpose the relevant provisions into national law, which may involve amending existing

provisions or creating new ones. However, the choice of the instrument for the revision (i.e. a Directive) leaves a significant margin of manoeuvre to Member States to select the appropriate form for transposing its requirements.

The assessment of costs and benefits is a complex trade-off. Bringing more workers, and more vulnerable workers, within scope of the Written Statement Directive would increase compliance costs for employers who currently are not obliged to provide such statements. Those with a high proportion of excluded workers (e.g. casual or domestic workers) will be impacted most. If the current possibilities to exempt workers working less than 8 hours per week or on employment contracts of less than one month were replaced with a lower threshold, as proposed in the second phase consultation document, this could limit the impact on employers with a high incidence of marginal employment. To the degree that a revised Directive introduces new material rights (as set out in avenue 4 below), this would have an impact on the compliance costs for employers and, to a lesser degree, Member States. Against these costs must be set the benefits of increasing the level of protection for vulnerable workers, and reducing the negative consequences for the workers themselves, for business, for the Member States and for the EU as a whole.

iii) Other options suggested by Social Partners

Social Partners replying to the first phase consultation who commented on this point suggested the following.

Workers' organisations called for the broadening of the scope of the directive. ETUC called for including trainees/apprentices; Eurocadres for broadening to all workers including autonomous and self-employed workers; CESI for broadening to all workers and especially bogus self-employed; CEC called for including to new forms of employment in particular; EAEA called for new forms of employment, apprentices and interns to be covered; EFJ called for including trainees and apprentices.

CESI called for the definition proposed to serve as a reference point for all EU social and employment legislation and be defined in a separate and autonomous piece of legislation. EFJ called for the scope of the directive to be broadened and aligned with the case law of the EU court in the field of free movement of workers and ILO definition.

ETUC, EAEA, EFJ and Eurocadres called for removing the exemptions to scope contained in Article 1.

Some employers' organisations (Eurocommerce, CEEMET, ECEG, HOTREC, and the World Employment Confederation) stated their disagreement with introducing a definition of worker. CEEMET, HOTREC, CEMERindicated that the exemptions should remain. CEMER indicated the need for flexibility for both employers and workers to handle different categories of workers in different ways. HOTREC indicated that casual workers, trainees, and apprentices should not be covered. CEMER indicated that the self-employed should not be included within scope. COESS supports covering all forms of employment and simplifying the exclusion provisions.

5.2 Modification of the 'information package'

i) Legal baseline

The list of ‘essential aspects’ in Article 2(2) of the Directive — the standard package of information — is the core provision contributing to the Directive reaching its objectives.

It covers

(a) the identities of the parties;
(b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;
(c) (i) the title, grade, nature or category of the work for which the employee is employed; or
(ii) a brief specification or description of the work;
(d) the date of commencement of the contract or employment relationship;
(e) in the case of a temporary contract or employment relationship, the expected duration thereof;
(f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
(g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;
(h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;
(i) the length of the employee's normal working day or week;
(j) where appropriate;
— the collective agreements governing the employee's conditions of work;
or
— in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded.'

This list is not exhaustive and other element might be considered such as useful references helping to identify the employer (company register numbers, tax identification numbers…). In any case, all the essential aspects of the employment relationship should in principle be notified, not solely those listed in the Directive. In practice, however, this list is a key provision as it constitutes the standard package of information required.

Nine Member States have chosen to go beyond the requirements of Article 2(2) of the Directive by mandating the provision of additional information. A detailed overview is provided in Annex (Table 2, Annex 2). Additional information is required in the UK, PT, AT, IE, NO, RO, MT, FI, IS, IT, NL. In some cases, the national legislators have also laid down additional or specific information requirements for particular types of employment such as temporary agency work, homework, telework, etc., in separate legal acts dealing specifically with these types of employment.

ii) Possible avenues for a revision

Under the REFIT evaluation the information package was assessed by most stakeholders (employees, employers and government bodies) as being sufficient as a minimum standard. While there were some suggestions to add elements to the list from employees' organisations, the majority of stakeholders considered the list in the Directive adequate, with any changes to be made at national level.

However, given the very modest costs of providing a written statement,[209] and the changes to the types and diversity of employment relationships since the Directive was adopted in 1991 as described in the drivers section, highlighted clearly in the responses to the consultation on the European Pillar of Social Rights,[210] an adaptation of the list contained in Article 2(2) could be appropriate. The consultation process leading to the REFIT evaluation gave some indications of elements that could be added.

Among the respondents who viewed the current package as insufficient, several expressed the wish that employers would inform workers about the social security systems to which they contribute, especially during posting situations.

Another common concern is the need to provide more substantial information about working times, instead of simply indicating the length of the employee's normal working day or week.

Another set of respondents deemed it useful for employees to be informed in writing about the duration of the probation period (if any) and about dismissal rules. The current Directive only requires information to be provided on the length of notice periods to be observed by the employer and the employee.

This issue of the right to be informed is taken up in Principle 7a of the European Pillar of Social Rights: "Workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including on probation period"[211]

Furthermore, there is consensus that the jobs of the future will require increasingly high skills levels, and that there is a need for ongoing skills development at the workplace in order for companies and their workforce to adapt to these requirements, which is currently not being met.[212] The Commission's reflection paper on the social dimension of Europe highlights among the drivers of social change the trend towards dynamic careers with periodic training and lifelong learning.[213] Including an obligation in the information package for employers to inform employees about training entitlements within the undertaking would be a way to address this gap by increasing awareness and transparency.

Finally, the external study underpinning the REFIT evaluation drew attention to the practice in several Member States of providing a template to employers in order to reduce the burden of producing the written statement, and suggested that such a template could be produced at EU level.[214] While the Commission does not consider feasible a single template intended to apply in all Member State jurisdictions, given the diversity of

[209] These are estimated as less than EUR 60 per worker, see SWD(2017)205 final, page 28

[210] SWD(2017)206 final, pages 18-20

[211] C(2017)2600 Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights

[212] COM(2016)381 A new skills agenda for Europe, page 14.

[213] COM(2017)206, page 18.

[214] *Refit study to support evaluation of the Written Statement Directive (91/533/EC)*, Ramboll Management Consulting, March 2016, pages 101-102.

systems and approaches for which it would have to provide, it considers it would be helpful both to employers and to workers to establish such best practice as an obligation under a revised Directive, not only as a way of reducing the burden of compliance for employers but also of improving the quality and consistency of information provided to workers.

Table 5. Possible measures for consideration

Possible measures for consideration	**Impacts**		
	Legal	**Economic**	**Social (including health)**
0. Baseline	No action needed for MSs	Gaps in worker protection will persist if the areas set out below are not added to the information package, and are likely to grow in some (e.g. on working hours for on-demand workers).	The benefits of increasing employees' awareness of their rights and how to exercise them will not materialise, nor the indirect benefits for workers' physical and mental health and improved work-life balance.
2.1. Informing about the duration and conditions of the probation period, if any	4 MSs (FI, IT, MT, RO) currently require it. BE does not have probation periods. Legal change needed in 23 MSs.	Increasing transparency about probation conditions will help prevent abuse of excessively long probation periods, so reducing unfair competition among employers based on a race to the bottom in working conditions. Compliance costs for employers can be assessed as negligible.	Unfair treatment during probation can be expected to decrease, and working conditions at the beginning of the employment relation can be expected to be of higher quality.
2.2. Informing about the normal working schedule or the principle that there is no predetermined and recurrent	Legal change expected to be needed in most MSs.	Creating an information obligation in relation to workers without fixed working time (e.g. on-demand workers) will help reduce abuse of on-demand contracts	Increasing casual workers' awareness of their position in terms of working schedule and advance notice before an assignment can be expected to bring benefits for workers' physical and mental

working schedule; in the latter case, the minimum advance notice the worker benefit from before a new assignment and the system for determining the work schedules		and similar precarious forms of work, so reducing unfair competition among employers based on a race to the bottom in working conditions. Compliance costs for employers can be assessed as negligible.	health and improve work-life balance.
2.3. Informing about the amount of guaranteed paid hours or the principle that there is no guaranteed paid hours and criteria for identifying the paid hours	Legal change expected to be needed in most MSs.	Increasing transparency about guaranteed paid hours or criteria for establishing them could reduce unfair competition among employers based on abuse of unregulated casual work. Compliance costs for employers potentially negligible.	Increasing casual workers' awareness of their position in terms of guaranteed paid hours or criteria for identifying the paid hours can be expected to bring benefits for workers' physical and mental health and improve work-life balance.
2.4. Informing about the training entitlement, if any, provided by the employer	Legal change expected to be needed in most MSs.	Assuming that greater transparency about training entitlements will lead to increased take-up, this provision could potentially improve productivity and job retention. Apart from the direct compliance costs, it may lead to a greater demand for training supplied by employers and/or by the state, and so incur costs in providing training and in forgone	Increased awareness and take-up of training available can be expected in increased human capital, productivity and employability in case of change of work.

		working time	
2.5. Informing about the extent to which paid extra hours (overtime) can be requested on top of the amount of guaranteed hours and its remuneration	Legal change expected to be needed in most MSs.	Increasing transparency about overtime could reduce unfair competition among employers.	Increasing workers', in particular casual workers' or workers' in marginal part-time awareness of their position in terms of extra paid hours can be expected to bring benefits for workers' physical and mental health and improve work-life balance.
2.6. Informing about the social security system(s) receiving the social contributions attached to the employment relationship in respect of pension, sickness, maternity and/or family leave, unemployment benefit, and information on healthcare provided by the employer if any	2 MSs (NL, UK) require information about pension and/or sickness arrangements. Legal change needed in 26 MSs.	Increasing transparency about the social security system to which the employer contributes will help prevent incompliance with social security payment duties so reducing unfair competition among employers based on incompliance. Compliance costs for employers can be assessed as negligible.	Increasing employees' awareness of their rights and how to exercise them in relation to sickness and maternity / paternity and parental leave and pensions can be expected to bring benefits for workers' physical and mental health and improve work-life balance. It would also allow workers to have better awareness on social security status and improve long-term planning decreasing moral hazard.
2.7. Providing more comprehensive information on the national law applicable in case of termination of contract (beyond the mere mention of the notice period, which is already foreseen by the	3 MSs (IE, AT, PT) require. Legal change in 25 MSs.	Increasing transparency about conditions applying on termination of contract will help prevent abuse of dismissal, so might potentially reduce unfair competition among employers based on a race to the bottom in working conditions. Compliance costs potentially	Unfair dismissal can be expected to decrease, and working conditions can be expected to be of higher quality bringing benefits for workers' physical and mental health

current Directive)		negligible.	
2.8. requiring Member States to develop, where this is not already the case, on-line standard 'Written Statements Models' or templates for employment contracts	15 MSs already provide a template for a written contract or statement for use by employers (EL, LT, ES, LU, RO, FR, MT, FI, EE, CY, AT, IE, LV, PL, UK).	More extensive provision of a standard template by MS administrations would reduce the burden on employers, especially SMEs in particular if non-mandatory.	

All of the measures set out above would increase transparency and reduce the information disparity between employer and employee. None would add a substantial burden to employers of any size, given that they require no new action but simply extend the list of information to be provided in the written statement and depend on information that is readily available to the employer and would not require additional effort to acquire. The requirement for Member States to provide a template for the written statement would represent a modest burden on those that do not already do so.

To the extent that increased transparency about workers' rights may lead to a greater level of demand from workers to exercise them (notably in respect of training, sickness or maternity/parental leave), there may be an indirect impact increasing costs for employers and/or for the state. This is likely to be substantially outweighed by the benefits in productivity, worker retention, and health deriving from greater use of these rights.

To the extent that the provision of some types of information may constrain - by making visible and so potentially opposable in a court of law - unscrupulous employers' scope to use unfair or abusive practices (such as excessive probation periods, unfair dismissal, highly variable and unstable working hours), the extended information package would contribute to fulfilling Principle 5 "Secure and Adaptable Employment" of the European Pillar of Social Rights[215] and Article 31 "Fair and just working conditions" of the European Charter of Fundamental Rights. It would also help create a level playing field for competition among undertakings in the single market, by reducing the scope for competition based on "social dumping".

Action is required at EU level to prevent the existence of different regulatory requirements in individual Member State jurisdictions, which create scope for undertakings in some Member States to take advantage of weaker information

[215] C(2017)2600

requirements vis a vis employees, while those in others are prevented by law from doing so (regulatory arbitrage). Such an effect could not be achieved by Member States acting on their own. Given the modest cost of compliance for employers, and the ready availability of information to fulfil the additional information requirements, the measures are proportionate to the economic and social aims sought.

There is a strong interaction of this package with policy package 1 (clarification and extension of personal scope) – due to the need to adapt the information requirements to the specificities of a wider range of (atypical) employment relationships, should these be brought within scope of the Directive – and with policy package 5 (new minimum rights for all) – which would complement the obligation to provide information with a minimum standard to be observed with regard to several items on the list.

iii) Other options suggested by Social Partners

Social Partners replying to the first phase consultation who commented on this point suggested the following.

Workers' organisations agreed to the extension of the package outlined in the consultation document and ETUC considered that the information package should include also: rest periods, length of breaks, minimum and maximum working time, quantity of work expected, payment of overtime, bonuses, sick pay, name of contractors if applicable, right to access documents, duration of assignment and the name of the user undertaking for temporary agency work, information on equal pay rights, information for posted workers about their rights, payment of their social contributions, information about the law applicable for expatriates. For trainees : description of learning objectives, reimbursement of costs, evaluation criteria. CEC supported this avenue for action, including the name of the employer, and essential information on the employment relation that depend on the nature of the work notably for on call workers. Some employers' organisations indicated that the extension is not needed, while other suggested the inclusion of information on training entitlements combined with the obligation to follow the training itself,[216] and 'information about the probation period, if any' and 'information on the social security system'.[217] HOTREC welcomed the idea of templates.

5.3 Shortening of the two-month deadline

i) Legal baseline

According to the Directive, the information referred to in Article 2(2) shall be provided to the employee no later than two months after the commencement of the employment relationship. Member States therefore have a broad margin of discretion to define the point in time when employers are obliged to provide the written statement.

According to the study underpinning the REFIT evaluation, a vast majority of the countries surveyed have introduced more stringent deadlines for the employer to comply with his/her information obligation than that set by the Directive. Of these, eight Member States[218] have set the obligation at the beginning of the employment relationship.

[216] COESS

[217] Part of HOTREC membership.

[218] BG, HR, LV, LT, LU, PL, RO, SI

According to the national laws transposing the Directive in these eight countries, the employee is to receive the information required *before* the commencement of the employment.

Six Member States[219] transposed the obligation into national law without changes (two months). The remaining Member States have introduced deadlines which vary from eight days to one month from the commencement of the employment, the latter being the most common solution among Member States (ten Member States have opted for one month[220]).

Table 3 in Annex 2 provides an overview of the transposition with regard to means of information and deadline to comply for all countries.

ii) Possible avenues for a revision

The evaluation has shown that the relatively long deadline for employers to provide employees with a written statement reduces the effectiveness of the Directive. It was highlighted by stakeholders as an aspect of the Directive that does not support the objective of increasing transparency and may in fact increase the potential for undeclared work or abuse of employee rights.

In line with the principle 7.a. of the of the European Pillar of Social Rights according to which *'workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including on probation period*' it could be considered to modify this provision of the Directive. Building on the practice in the Member States a range of shorter deadlines could be analysed, such as one month, fifteen days, first day of job, or even before labour contract is formed.

Table 6. Possible measures for consideration

Possible measures for consideration	**Impacts**		
	Legal	**Economic**	**Social (including health)**
No change / *status quo*	No impact	Possible negative impact related to undeclared work.	Possible negative impact (unpredictability, lack of awareness of the contractual conditions, exposure to unfair practices).
Deadline of 1 month	Legal change in 6 Member States countries (BE, EL, ES, IE, PT, UK)	Potentially limited or no additional costs in terms of direct expenses for companies. However,	No negative impacts. The shorter the deadlines the more benefits in terms of increased transparency and

[219] BE, EL, ES, IE, PT, UK

[220] CY, CZ, DE, DK, FI, HU, IT, NL, NO, SE, SK

Deadline of 15 days	Legal change in 16 Member States (BE, EL, ES, IE, PT, UK, CY, CZ, DE, DK, FI, HU, IT, NL, SE, SK)	the shorter the deadline the more pressure/administrative burden and the more challenging for a company to comply with the requirement. Possible benefits relate to fairer competition and limitation of unfair practices leading to undeclared work. Those benefits are however expected to be most prominent in case the deadline is moved to the first day or before the start of the contract.	awareness of rights.
On the first day	Legal change in 20 Member States (no or little change in BG, HR, LV, LT, LU, PL, RO, SI)		
Before the start of the contract			

In terms of potential benefits – both economic and social – the shorter the deadline the greater the benefits. The provision of information at the commencement of the employment relationship or as soon as possible thereafter could contribute to both improved employee protection and the fight against undeclared work. It could also help workers who move between short-term jobs without ever receiving a written statement on their rights.

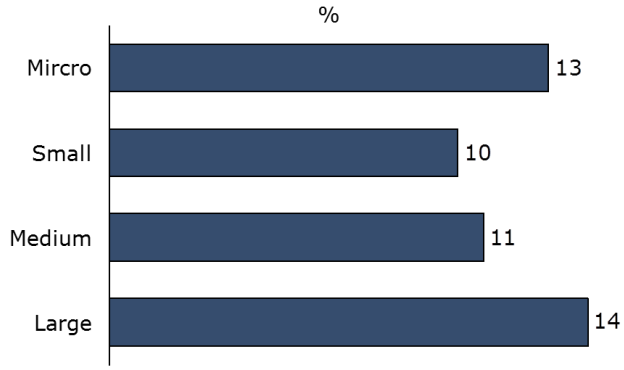
As an example, the recent legislative move made by Poland is worth highlighting. The country recently changed its legislation so that the written statement must now be provided before the start of the employment relationship, and not at the end of the first day, as was the case before[53]. According to the Polish authorities, under the previous approach, employers faced with an inspection could falsely argue that the worker had just been employed and that he/she would be provided with the written information by the end of the first working day. In practice, this rule tended to favour undeclared work.

At the same time, arguably, the shorter the deadline the more complicated it would be for employers to comply with the requirement. Already the two-month deadline was pointed out by the High Level Group on Administrative Burdens as a particular aspect of the Directive, which should be looked at with a view to further simplification[221].

The REFIT evaluation of the Directive paid therefore a particular attention to burdens related to the deadline but did not confirm the concerns of the High Level Group on Administrative Burdens. Figure xx shows that only a small share of respondents found the time limits particularly burdensome.

[221] European Commission, High Level Group on Administrative Burdens (2009): Opinion of the High Level Group. Subject: Stakeholders' suggestions ('offline-consultation') – V.

Figure 35. Share of respondents across the eight surveyed countries who found the time limits in which to provide the information to the employee particularly burdensome



Source: Survey, Ramboll calculations

Moreover, the timelines selected by national legislators are not considered to be a particular burden, even in cases where they are quite short. The employer survey showed that there are no major differences in how burdensome the time frame is, regardless of whether it precedes the commencement of employment (in PL and BG), is set at one month (DE, FR, SE, IT) or at the maximum two months as used in the UK.

Supporting measures could be considered to help employers in complying with a shorter deadline. For example, digital tools could enhance the possibilities for employers to inform workers in writing about their essential working conditions in a timely manner, including in employment relationships on digital platforms and other forms of ICT-mediated work, which are often of very short duration. Also, as in some Member States, the very short deadline could apply to some, most important, elements of the written statement.

The efficiency and effectiveness of shortening the two-month deadline could be influenced by some of the other considered policy measures. For example, if derogations from the scope of application of the Directive were to be removed, employers would need to produce written statements to a larger groups of workers and the shorter deadlines might results in some (albeit modest) increase in costs/burdens. Also, application of shorter deadlines may prove to be more challenging if the "information package" were to be extended.

The EU added value of the measure would consist in improved enforcement, and higher transparency in the labour markets, which in turn could support free movement of workers.

iii) Other options suggested by Social Partners

Social Partners replying to the first-phase consultation who commented on this point suggested the following.

Workers' organisations declared themselves in favour of change in the deadline. ETUC called for the written information to be given prior to the start of employment relationship. Eurocadres indicated that it should be given 'when signing the contract of employment '.

Employers' organisations expressing a view on this point indicated that the deadline should not be reduced, with the exception of HOTREC which supports a reduction to 1 month. CEEMET and COESS have indicated that a change can lead to additional burdens on employers.

5.4 New minimum rights for all workers in the EU

As shown in the sections on drivers and consequences, over the past few decades, the drive for flexibility in labour markets has given rise to increasingly diverse forms of employment which can differ significantly from the standard labour contract in terms of the degree of employment and income security and the relative stability of the associated working and living conditions.

Information provided to workers may not be sufficient in itself to address the precariousness of workers' rights under some atypical forms of work and the need to achieve upwards convergence in access to key rights for all workers, irrespective of the type of contract. Indeed, atypical forms of employment, such as casual work, pose challenges in terms of worker protection and towards more common standards in the internal market. The multiplication of forms of work requires an assessment of the need for common standards for working conditions to support equal treatment between workers, a level playing field across the EU, and upward convergence in employment and social outcomes.

The rationale for this avenue for a revision would be to support a modern, productive and adaptable organisation of work in terms of diverse forms of employment, but to avoid undesirable economic and social effects linked to the (mis)use of specific contractual arrangements and to avert deeper labour market segmentation.

For achieving this rationale, within the scope of the Directive applying to the bilateral relationship between worker and employer, two sets of minimum rights could complement the existing core rights contained in the EU social acquis, in view of developments in the labour market set out in section 2.2 above:

A. Right to limits to flexible work arrangements and to predictability of work
B. Right to limits to duration of probation

A. Limits to flexible work arrangements and right to predictability of work

i) Legal baseline

As described under the chapter on regulatory drivers, the different new forms of work are regulated in different ways across the EU, and the legal frameworks are in constant change to try to regulate these new phenomena.[222]

This **diversity of national provisions on non-standard new forms of work** causes a discrepancy of regulatory frameworks across the EU, which hampers the equal treatment between EU workers in the same situation, as people performing the same job might be protected in very different ways in different EU Member States.

[222] See Tables 4 in Annex 2.

On-demand work

With regards to **national legislation related to on- demand work and zero hours contracts**, Members States can be classified in three categories:

- The first one and most numerous one is constitutes by **Members States not regulating those types of employment relationship** such as PL, BE, FI, **CY, HR, GR, SL**. Either the casual work is not a common practice in the Member State, or those forms of employment exist without being regulated. For instance in **CZ**, agreement on working activities is allowed within a certain number of hours/year but not subject to regulation so leading to a very limited access to standard worker rights.
- In the second one, on demand work and zero hours contracts are considered illegal either by their national legislation or by case law[223] as not compliant with working time legislation. This is the case for **AT, FR, BG, LU, and LV**. For flexible working arrangements, they notably make use of part time work mechanisms. For instance in **Austria**, following a Supreme Court Decision in 2004 on on-demand work, every employment contract must include the number of hours the employee is expected to work. Zero-hour contracts are deemed illegal without the existence of explicit provisions in law. If the parties have not explicitly agreed on a specific working time, the employee is entitled to the remuneration for the hours of work he or she would typically work at the time of conclusion of the contract[224]
- Finally, some Members States have regulated zero hours contract and some types of casual work (**UK, HU**, **IT, DE, NL, ES, RO, IT, PT, IE**). For instance in **Germany**, an on demand work contract should specify the number of daily and weekly working hours; by default the amount of daily working hours is deemed to the three. In **Spain, Romania** and **Portugal** casual work is allowed in the agricultural sector or for seasonal activities. In the **Netherlands** zero hours clauses can only be concluded for the first 6 months of employment with the same employer.

In **Ireland**, Article 18 of the Organisation of Working Time Act 1997 regulates 'zero-hours working practices', whereby workers agree to be available to work a certain amount of hours or '*as and when* the employer requires' them to work or 'both a certain number of hours and otherwise as and when the employer requires' their work. Workers are not guaranteed hours of work; nonetheless they are entitled to be paid 25% of the working hours they agreed to be available for an employer (for a maximum of 15 hours) in a week. It has been recently reported, however, that these working arrangements are not extensively used: parties rather recur to so-called *'If and When'* contracts, whereby workers do not undertake to be available for work and the entitlement to be paid when employers do not call them is not applicable.[225,226]The Government is now proposing amendments to the 1994 and 1997 Acts. In **Germany**, the parties to the contract must

[223] ECJ c-313/02 Wippel and Austrian supreme court judgement (Oba 116/04y)

[224] Martin Risak, New Forms of Employment in Austria, in New Forms of Employment in Europe, Bulletin of Comparative Labour Law Relations – 94 (2016).

[225] University of Limerick, A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees (University of Limerick 2015).

[226] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

specify the number of daily and weekly working hours. In case that there is no such agreement, the amount of weekly working hours is deemed to be ten and the amount of daily working hours is deemed to be three[227]. **Italy** has very recently introduced a comprehensive legislation regulating the use of casual work (*lavoro occasionale*)[228.] **Hungary** regulates so-called 'simplified employment' (casual work) : the contract does not need to be entered in writing and working hours do not need to be allocated in advance.[229] [230] Workers in simplified employment are only entitled to a portion of the minimum wage and, in practice, are excluded from annual leave since periods of work cannot exceed five consecutive days and separate periods are not counted aggregately.[231] Always in **Hungary,** three new atypical employment forms are included in the new Labour Code that entered into force on 1 July 2012: call for work/on-demand work, job sharing and employee sharing. In *call for work* employers call part-time employees to work for 6 hours a day at most, according to the employment contract.

In **Sweden**, on-demand work (*kallas vid behov eller behovsanställning*) contracts can be open-ended or fixed-term. There is no guaranteed income and the employer does not have to pay during inactive periods.

Other forms of employment

In **Hungary**, besides the three new forms of atypical employment (call for work/on-demand work, job sharing and employee sharing), and previously existing types of employment (such as fixed term employment, teleworking, outworkers, simplified employment and occasional work relationships, employment relationship with public employers, agency work, executive employees and incapacitated workers)[232], civil law work contracts have provided an alternative since the 1990s.[233]

In **Slovakia**, the national law enables employers to conclude agreements with natural persons on work performed outside an employment relationship. The so-called *work agreements* are a specific form of intermittent employment found in the legal systems of the Czech and Slovak Republics. Although work agreements should be concluded in "exceptional cases" only, the Social Insurance Agency (SIA) statistics[234] point to a widespread use of the contracts. The **Slovak** Labour Code (§223–228a) regulates three different schemes of 'agreements of work performed outside the employment relationship' for 'work that is limited in its results' (so-called 'work performance

[227] For more details, please see Annex 2 Tables 4.

[228] Act 24 April 2017, n. 50, transformed into Act 21 June 2017, n. 96

[229] Labour Code, s 202 and 203.

[230] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[231] Tamás Gyulavári and Gábor Kártyás, The Hungarian Flexicurity Pathway? New Labour Code after Twenty Years in the Market Economy (Pázmány Press 2014).

[232] Ágnes Szent-Iványi, New atypical employment forms appearing in Hungary (2012)

[233] Tamás Gyulavári, Civil law contracts in Hungary, in New Forms of Employment in Europe, Bulletin of Comparative Labour Law Relations – 94 (2016)

[234] SIA statistics, compared to the LFS, provide exhaustive administrative data on the numbers of work agreements signed and on the numbers of persons working based on work agreements.

agreements') or 'occasional activities limited by the type of work' (so-called 'agreement on work activities' and 'agreements on temporary work for students'). Working hours cannot exceed 12 hours per day (eight hours for adolescents). A reform of §223 entered into force in 2013 extended to these workers the regulation of working time, the application of the minimum wage and the employer's duty to excuse the worker in case of absence for qualifying reasons (e.g. sickness, maternity or paternal leave, compassionate leave). The agreement on temporary work for students can be concluded with secondary school students or 'a student in full-time higher education' under the age of 26, and the amount of work cannot exceed twenty hours per week, whilst hours cannot exceed ten hours per week in the case of an 'agreement on work activities'; for both these contracts termination can be served without providing a reason with a reduced notice period of 15 days. [235]

In **Germany**, in the context of significant labour market reforms introduced in the early 2000s, a new employment contract for so-called "*mini-jobs*" was introduced, whereby workers were exempt from social security contributions if their earnings were less than 400 euros per month. The threshold was later increased to 450 euros and workers with mini-jobs are now covered by the pension system. In most cases, these jobs fall within the scope of marginal part-time employment.[236] The 'mini-job' can include 'work-on-demand' arrangements. If parties do not agree otherwise, at least ten working hours per week and three hours per shift must be paid, irrespective of the number of hours actually worked. Workers are entitled to both sick pay and annual leave and are obliged to accept work 'only if they receive notice a minimum of four days in advance'.[237] [238]

In the **Netherlands**, three types of intermittent work arrangements exist. Under the 'on – call' or 'stand-by' work with a preparatory agreement, workers do not undertake the obligation of accepting the work provided; when they accept the call, a new fixed-term contract will start for each period of work. Only three of these contracts can be entered into with the same worker as the fourth contract must be a permanent one, in accordance to the provisions regulating the use of fixed-term contracts. Under 'zero-hour contracts' no minimum hours of work are guaranteed to the worker, who is instead expected to accept the employers' call, and only hours effectively worked are paid. This is only possible for the first six months of work; after this period, the worker is guaranteed to receive pay for the average working hours per month worked over the three preceding months in accordance with the ordinary regulation of employment contracts.[239] Under '*minimum-maximum contracts*', instead, a minimum amount of working hours is guaranteed to workers and must be paid even if no work is provided. Whenever the number of weekly working hours agreed is below 15, workers will be entitled to at least

[235] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[236] ILO Non Standard

[237] Messenger and Wallot (n. 7), 4–5.

[238] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[239] Civil Code, Arts. 7:610b and 7:610a.

three hours' pay every time they are called in, even if they actually work for less than three hours or do not work.[240] [241]

Under **Italian** law, at the time of writing, two types of *contratto di lavoro intermittente* exist.[242] Under the first type, the worker is not bound to accept calls, and the employer to offer a minimum amount of work. In the second type, the worker undertakes to accept the calls. The employer still does not guarantee a minimum amount of hours but has to pay a monthly 'availability indemnity' for periods in which the worker is not called in. In case of a call, a minimum notice of one working day is required. Workers receiving the availability indemnity are bound to report to the employer any reason that could prevent them from answering calls (e.g. sickness): during the relevant period, the payment of the indemnity is suspended; failure to report can be sanctioned with the loss of the indemnity for 15 days. Unjustified refusals to accept a call may constitute grounds for dismissal. During periods of work, the worker has the right to receive wages and accrue other entitlements (e.g. holidays) that must be not less favourable relative to those of comparable full-time workers, on a pro-rata basis. Social security contributions are charged on actual wages and on the availability indemnity, when this is due. These contracts are normally allowed only for discontinuous or intermittent work, in order to respond to the needs identified by collective bargaining agreements or for predetermined periods during the week, month or year. This restriction, however, does not apply to workers who are over 55 or under 24 years of age. [243] Under a reform passed in 2013, on-demand workers effectively working for more than 400 working days over three years are reclassified as permanent, full-time employees.[244]During the parliamentary procedure of conversion into la of DL 50/2017 new provisions have been introduced new rules concerning the *lavoro occasionale accessorio* (art. 54-bis, A.S. 2853) after LD 17 March 2017 n. 25 eliminated the whole legal framework on *lavoro accessorio* and *voucher* included in the Jobs Act (artt. 48, 49 and 50 of D. Lgs. 15 June 2015, n. 81).

In **France**, Article 60 of the law on labour, modernisation of social dialogue and securing professional paths promulgated on 8 August 2016 introduces in the Labour code a set of principles applying to electronic collaborative platforms, "Social liability of platforms". It foresees notably: (i) A participation of the platforms to work accidents insurance coverage, (ii) The financing by the platforms of compulsory contribution to vocational training applying to independent workers (iii) Guarantee of rights to contest and demonstrate (iv) Right to set up or participate to a trade-union. An implementing Decree of 4 May 2017 specifies the conditions of application of such principles, and most

[240] Article 7:628a, Civil Code, the Netherlands: '1. Where a period of less than fifteen working hours per week has been contracted and the working times have not been fixed or where the amount of working hours has not or not clearly been fixed, the employee is for every period of less than three hours in which he has performed work, entitled to wages to which he would have been entitled if he had performed work for three hours. 2. It is not possible to derogate to the disadvantage of the employee from the present Article.'

[241] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[242] Decreto Legislativo, 15 June 2015, no. 81, Arts. 13–18.

[243] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[244] An exception to this rule applies to the tourism, pubblici esercizi (e.g. bar, restaurants) and entertainment sectors.

specifically as of which amount of turnover made on one or several combined platforms, the contribution of the platform is compulsory (13% of yearly social security ceiling).

In **Lithuania**, the new Labour code adopted on 6 June 2017 entered into force on 1 July 2017. It introduces new sorts of labour contracts (such as "project work", "job sharing"). The **Latvian** Labour Law covers casual work under art.12.44. *Employment contract for a Specified Period*.

In **Slovenia**, one form of atypical work is that of *civil law contracts.* Since the work contract falls under the civil law, there is no obligation from the client to report about the signature of the contract. One of the newest forms of atypical work is *personal supplementary work* through vouchers**.** Personal supplementary work through vouchers was introduced in the beginning of 2015 as an opportunity to legalize some forms of occasional work as: help in the household, picking wild berries, making products arts and crafts, etc.

In **Cyprus**, since austerity measures in 2012 and 2013, a rapid expansion of different forms of employment took place: crowd employment, casual work; portfolio work, labour pooling, interim management; ICT-based mobile work and specific employment statuses. [245]

Where Member States have acted to limit the flexibility of some new forms of work such as casual employment, they have done so with provisions including measures **to limit abuse of the contract type, to support the predictability of working patterns or of the income, or to clarify the reciprocal duties to offer work and to perform work.**

Anti-abuse – limitation of total length

In 2011, **Romania** introduced regulation of day labour for the performance of 'unskilled working activities of an occasional nature'.[246] The 'employer cannot employ daily labourers 'to undertake activities for the benefit of a third party'. It is not possible to engage the same day labourer for more than ninety days per year. Daily labour is only allowed in some sectors (e.g. agriculture, waste management, entertainment, sport, organisation of exhibitions and fairs). In 2014, the law was amended to increase the protection of daily labourers and tackle some abuses in their utilisation, by tightening up the Occupational Health and Safety obligation of employers and providing for the payment of the hourly minimum wage. [247]

In **Hungary** 'simplified employment' when outside the sectors of agriculture and tourism is limited to five consecutive days, 15 days per month and ninety days per year; an employer cannot employ more than a certain ratio of causal workers relative to the

[245] Nicos Trimikliniotis, New Forms of Employment in Cyprus, in New Forms of Employment in Europe, Bulletin of Comparative Labour Law Relations – 94 (2016).

[246] Law 52/2011, Article 1, where 'occasional activities' are defined as those carried out 'incidentally, sporadically or accidentally' (Article 1, (1), d)).

[247] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

number of full time employees employed on average in the previous six months. [248] The employer may use a maximum four month reference period. In **Slovakia** the 'work performance agreement' cannot be concluded for working activities that are in excess of 350 hours in a calendar year. In **Italy** on-demand workers effectively working for more than 400 working days over three years are reclassified as permanent, full-time employees.

In the **Netherlands**, only three 'on –call' or 'stand-by' work with a preparatory agreement contracts can be entered into with the same worker as the fourth contract must be a permanent one, in accordance to the provisions regulating the use of fixed-term contracts. After six months of 'zero-hour contracts' the worker is guaranteed to receive pay for the average working hours per month worked over the three preceding months in accordance with the ordinary regulation of employment contracts. Workers that qualify for this entitlement are only those that have worked at least once weekly or for at least twenty hours per month for 3 consecutive months.[249] Collective agreements were allowed to derogate to the abovementioned six-month rule and to allow zero-hours contract to last for longer periods. Pursuant to a 2014 reform, however, collective agreements entered after 1 January 2015 can derogate to the six month rule only for incidental works and under particular circumstances.[250]

In **Italy**, intermittent work contracts are normally allowed only for discontinuous or intermittent work, in order to respond to the needs identified by collective bargaining agreements or for predetermined periods during the week, month or year. This restriction, however, does not apply to workers who are over 55 or under 24 years of age. [251] Under a reform passed in 2013, on-demand workers effectively working for more than 400 working days over three years are reclassified as permanent, full-time employees.[252]

Notice in case of unpredictable job schedules

The minimum advance notice period before a new assignment or work in the legislation varies from 1 day to 20 days according to the MS legislations concerned.

In **Hungary** in so called *call for work contracts* the law requires the employer to inform the employee at least three days prior to the day of work. In **Germany** workers are obliged to accept work 'only if they receive notice a minimum of four days in advance'. In **Italy**, a minimum notice of one working day is required for intermittent work.

[248] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[249] Civil Code, Arts. 7:610b and 7:610a.

[250] Transitional provisions were put in place allowing derogations under collective agreements already in force on 1 January 2015 to operate under July 2016.

[251] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[252] An exception to this rule applies to the tourism, pubblici esercizi (e.g. bar, restaurants) and entertainment sectors.

Minimum paid hours irrespective of work performed

In **Romania** for 'unskilled working activities of an occasional nature' even if a lower number of hours is agreed between the parties, no less than eight working hours per day can be paid by the 'employer'. [253]

In **Germany** 'mini-job' can include 'work-on-demand' arrangements, in which case if parties do not agree otherwise, at least ten working hours per week and three hours per shift must be paid, irrespective of the number of hours actually worked.[254] [255]

In **Ireland** zero hour contracts workers are entitled to be paid 25% of the working hours they agreed to be available for an employer (for a maximum of 15 hours) in a week. Only if workers do not undertake to be available for work (If and When Contracts) the entitlement to be paid when employers do not call them is not applicable.

In the **Netherlands** under 'minimum-maximum contracts', a minimum amount of working hours is guaranteed to workers and must be paid even if no work is provided. Whenever the number of weekly working hours agreed is below 15, workers are entitled to at least three hours' pay every time they are called in, even if they actually work for less time or do not work at all.

In **Italy** for intermittent work when workers undertake to accept the call, the employer has to pay a monthly 'availability indemnity' for periods in which the worker is not called in. Workers receiving the availability indemnity are bound to report to the employer any reason that could prevent them from answering calls (e.g. sickness): during the relevant period, the payment of the indemnity is suspended; failure to report can be sanctioned with the loss of the indemnity for 15 days.

Average working hours or transformation of contract

In the **Netherlands** after the first six months of work as zero hours contract workers, the worker is guaranteed to receive pay for the average working hours per month worked over the three preceding months in accordance with the ordinary regulation of employment contracts. Workers that qualify for this entitlement are only those that have worked at least once weekly or for at least twenty hours per month for 3 consecutive months.[256] Collective agreements may derogate from the abovementioned six-month rule and allow zero-hours contracts to last for longer periods. Pursuant to a 2014 reform, however, collective agreements entered into after 1 January 2015 can derogate from the six month rule only for incidental works and under particular circumstances. The presumption is a reversible legal presumption: the employer may prove that the number of hours worked in the previous 3 months is not representative. In **Austria** if the parties

[253] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[254] Messenger and Wallot (n. 7), 4–5.

[255] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[256] Civil Code, Arts. 7:610b and 7:610a.

have not explicitly agreed on a specific working time, the employee is entitled to the remuneration for the hours of work he or she would typically work at the time of conclusion of the contract. In **Ireland** under the ongoing reform of the 1994 and 1997 Acts it is proposed that in circumstances where employees regularly work more hours than their contract states, such employees will have the right to move to a band of hours that better reflects the actual hour worked over an 18 month reference period.

In Italy under a reform passed in 2013, on-demand workers effectively working for more than 400 working days over three years are reclassified as permanent, full-time employees.[257]

Guarantee of provision of work

Many Member States (**Germany, Latvia, Poland, Romania, Slovakia, Slovenia**) recognise a minimum guaranteed amount of fixed working hours to be an essential element of an employment contract. Consequences are provided for in some cases if the employer does not meet this requirement.

Regarding the obligation of the employer to regularly provide the worker with work, there are two main categories of Member States. The first category of Member States[258] imposes to employers to regularly provide the worker with work. The second category of Member States[259] gives employers the flexibility to call on them when needed.

Under **Italian** law, in both types of *contratto di lavoro intermittente* the employer is not bound to guarantee a minimum amount of hours.

Obligation to accept work

Regarding the obligation for the employee to accept any work that is offered, most Member States have either no regulation[260] or explicitly mention that employees are entitled to refuse work that is offered. The **Czech Republic, Germany, Hungary, Poland, Slovenia, Sweden** require workers in ad-hoc employment to accept any work that is offered.

Indeed, in the **Czech Republic**, national case law recently confirmed that if the employee refuses to perform work for the employer, it constitutes a breach of obligation. If such refusal is wilful, the employee's conduct is deemed so grave that it usually justifies an immediate termination of the employment relationship.

[257] An exception to this rule applies to the tourism, pubblici esercizi (e.g. bar, restaurants) and entertainment sectors.

[258] Bulgaria, Poland, Slovakia, Slovenia Denmark, Greece, Latvia, Malta and Spain, France, Luxembourg, The Netherlands, Romania Estonia.

[259] Austria, Czech Republic, United Kingdom, Germany, Ireland, Hungary, AustriaSweden.

[260] France, Lithuania, Luxembourg, Romania, Spain, Denmark, Greece, Latvia, Malta

In **Ireland**, for 'zero-hours working practices', workers are entitled to be paid 25% of the working hours if they agreed to be available for an employer (for a maximum of 15 hours) in a week. In 'If and When' contracts, whereby workers do not undertake to be available for work,the entitlement to be paid when employers do not call them is not applicable.[261] [262]

In the **Netherlands**, under the 'on –call' or 'stand-by' work with a preparatory agreement, workers do not undertake the obligation of accepting the work provided; when they accept the call, a new fixed-term contract will start for each period of work. Under 'zero hours contracts' no minimum hours of work are guaranteed to the worker, who is instead expected to accept the employers' call, and only hours effectively worked are paid.[263][264]

Italy has regulated two types of intermittent work (casual work) in which the employee's availability to work for the employer differs: in the first form, the worker is not bound to accept calls, and the employer, to offer a minimum amount of work. In the second type, the worker undertakes to accept the calls. The employer still does not guarantee a minimum amount of hours but has to pay a monthly 'availability indemnity' for periods in which the worker is not called in. Workers receiving the availability indemnity are bound to report to the employer any reason that could prevent them from answering calls (e.g. sickness): during the relevant period, the payment of the indemnity is suspended; failure to report can be sanctioned with the loss of the indemnity for 15 days. Unjustified refusals to accept a call may constitute grounds for dismissal. Ongoing legal changes might be modifying the situation.

In **Denmark**, casual workers are exempt from the White Collar Workers Act since they are under no duty to perform work upon the employer request.

In **Germany**, "mini-jobs" workers are obliged to accept work 'only if they receive notice a minimum of four days in advance'.[265] [266]

Exclusivity clauses

With regards to exclusivity clauses, mainly two situations can be observed:

[261] University of Limerick, A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees (University of Limerick 2015).

[262] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[263] Article 7:628a, Civil Code, the Netherlands: '1. Where a period of less than fifteen working hours per week has been contracted and the working times have not been fixed or where the amount of working hours has not or not clearly been fixed, the employee is for every period of less than three hours in which he has performed work, entitled to wages to which he would have been entitled if he had performed work for three hours. 2. It is not possible to derogate to the disadvantage of the employee from the present Article.'

[264] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

[265] Messenger and Wallot (n. 7), 4–5.

[266] De Stefano, Casual Work beyond Casual Work in the EU, European Labour Law Journal, Volume 7 (2016), No 3.

- either Member States do not regulate exclusivity clauses due to the fact notably that either on demand work is not allowed in their countries or is not a common practice
- or they do not allow exclusivity clauses forbidding the worker to accept work from another employer. In the UK, exclusivity clauses have been deemed abusive and have become unenforceable since May 2015**.** In Spain, Romania, Italy, Germany, they are considered as illegal as in breach with the principle of freedom to work or right to employment**..** See Table 4A and 4B in Annex 2.

ii) Possible avenues for a revision

As shown in the sections on drivers and consequences, while flexibility is an important driver for job creation and growth, extreme flexibility of work arrangements without protection of basic standards for workers has created situations which jeopardise working and living conditions, equal treatment, fair competition between employers across the EU and overall social cohesion and equity.

Indeed, a minimum level of predictability can prove extremely important for very flexible and casual workers' living and working conditions, work-life balance and health.

This could include:

- Right to define with the employer reference days and hours

- Right to a minimum advance notice before a new assignment or a new period of work

- Right a minimum of guaranteed hours set at the average level of hours worked during a preceding period

- Prohibition of exclusivity clauses except in case of full-time relationships

Furthermore, a right for a worker not employed on a permanent basis to request another form of employment after achieving a certain degree of seniority with his/her employer and receive a reply in writing could ease the transition from extremely flexible forms of atypical work to other forms of work (e.g. full time, or permanent work).

4.1: Right to predictability of work

Right to define with the employer reference days and hours in which working hours may vary

The extent to which flexible working arrangements effectively help workers balance work and family life depends on the control they have over their use on a regular or occasional basis. Flexibility in work schedules are entirely set by employers for about two-thirds of workers in Europe.[267]

For casual workers, working schedules vary and cannot be fully predicted. Nonetheless, workers and employers could be obliged to agree on reference days (e.g. Monday to

[267] Eurofound, sixth European Working Conditions Survey, 2016

Friday, or week-end, or any mix of days) or hours (e.g. 8 to 17 or 13 to 24 etc.) in which the worker might be called to perform work. A worker would in this way know the days and times in which he or she can organise other engagements. This would limit the detrimental effects or even the impossibility to plan other engagements of a professional or private nature, improving work-life balance and potentially allowing additional work to be taken on.

Right to a minimum advance notice before a new assignment or a new period of work

The scheduling of hours or assignments is a recurrent issue for part-time and on call workers. In some MS social partners negotiate reasonable scheduling notice and - where possible - secure and regular shifts.

For casual workers, work assignments or periods of work are not predictable but are rather on-demand depending on needs of the employer. Setting a minimum advance notice period, as done in some countries[268] would allow a minimum level of predictability and a minimum planning of work needs also in undertakings which make extensive use of casual work. This would limit the detrimental effects or the impossibility to plan other engagement of a professional or private nature, improving work-life balance and potentially allowing additional work to be taken on.

Right a minimum of guaranteed hours set at the average level of hours worked during a preceding period

Casual workers or workers with very marginal part time might in reality perform substantial amounts of work cumulatively.

Having the right, after a certain qualifying period, of guaranteed working hours equivalent to an average of the actual worked hours during that period recognised in the employment relationship could have important effects in stabilising working conditions where the worker is meeting an ongoing business need.

Setting minimum working hours on the basis of a 'look-back' average over a preceding work period could provide more income security and stability to individuals and households, allowing them to enter into economic or social commitments (e.g. taking out a mortgage) from which they would otherwise risk being excluded.

The minimum of hours set in a contract is further often a determining factor for whether or not a worker is eligible for various social benefits or credit.

Prohibition of exclusivity clauses except in case of full-time relationships

While usual employment relationships are based on the duty to perform work placed on the worker, and the duty to provide work (and the inherent remuneration) placed on the employer, casual work is a type of work where the employment is not stable and continuous, and the employer is not necessarily obliged to provide the worker with work

[268] Germany, Hungary, Italy.

(and therefore income). Exclusivity clauses impede workers to work with other employers ('work providers').

Exclusivity clauses, when not coupled with employment relations allowing the worker to fully sustain himself or herself solely with the work provided by the employer (as one could expect to be a full-time relationship) can put a disproportionate burden on the worker who has limited possibilities for ensuring not only income security and stability, but also to seek further work to reduce the risk of poverty.

An obligation to be exclusively available to the employer for casual 'on-demand' workers on not only places stress on individuals and households, but brings a serious risk of insufficient income. In economic terms, casual work exclusivity clauses potentially exacerbate situations of underemployment.[269]

4.2 Right to request a different form of employment and receive a reply in writing

Many workers in non-standard work and in new forms of work are often involuntarily in this situation leading to precariousness, underemployment and segmentation of the labour market. A right to request another form of employment (e.g. longer hours for very marginal part-time, or a part-time contract for casual workers) after achieving a certain degree of seniority with his/her employer and receive a reply in writing with the corresponding duty to reply in writing could create space for dialogue between worker and employer on career possibilities in the undertaking and stimulate changes in employment statuses.. Such a right might also support social dialogue to ease transitions form very precarious jobs to more stable work for workers that have proven their working skills and have developed on the job skills.

The EU social acquis already includes similar provisions; under the Part-Time Directive, employers should give consideration, as far as possible, to (a) requests by workers to transfer from full-time to part-time work that becomes available in the establishment, (b) to requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise; (c) he provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa.[270] The Fixed Term Work Directive provides that employers shall inform fixed-term workers about vacancies which become available in the undertaking or establishment to ensure that they have the same opportunity to secure permanent positions as other workers. Such information may be provided by way of a general announcement at a suitable place in the undertaking or establishment.[271] Member States have transposed those provisions in their national legislation but few of them have implement more favourable measures such as obliging the employer to provide a reasoned reply to this request or granting a priority for part-time workers to access available full time positions in the undertakings. The Parental Leave Directive already provides for the possibility to ask for two types of flexible

[269] EP-IPOL Economic and scientific policy, *Precarious Employment in Europe: Patterns, Trends and Policy Strategy*, 2016

[270] Clause 5, Directive 97/81 on Part Time Work.

[271] Clause 6, Directive 1999/70 on Fixed Term Work

working arrangements (working patterns and working hours) for parents returning from parental leave.[272]

The proposal for a Directive on Work-Life Balance for parents and carers introduces a proposed right, for workers with children up to at least 12 years old, to request flexible working arrangements for caring purposes; employers would have then a duty to consider and respond to requests for flexible working arrangements, taking into account the needs of both employers and workers, and justify any refusal of such a request. Employers would also have the obligation to consider and respond to requests to return to the original working pattern.[273]

Table 7. Possible measures for consideration

Possible measures for consideration	**Impacts**		
	Legal	**Economic**	**Social (including health)**
No change / *status quo*	Increasingly heterogeneous labour contracts, with some contractual arrangements insecure/deficient in terms of working conditions and social rights.	Overly flexible labour contracts potentially a drag on human capital development, hampering innovation and inducing a wage penalty, with knock-on effects on social security and growth.	Unequal security in terms of employment, income and well-being of individuals and households, with risks of unequal and limited labour and social rights for workers.
4.1: Right to predictability of work consisting of: **- Reference days and hours** **- Minimum advance notice before a new assignment or a new period of work** **- Minimum of guaranteed hours set at**	Expected required legal change in a vast majority of MS.	Expected overall economic benefit of increased predictability for work bringing along increased productivity, innovation, human capital development, reduces risks of underemployment. Expected cost to employers due to reduced access to extremely flexible working arrangements	Increased levels of predictability would highly improve living and working conditions in particular of workers in extremely unpredictable working arrangements. This would positively impact on employment and income security (incl. financial planning) and stability of individuals and households.

[272] Directive 2010/18

[273] Article 9, Proposal for a Directive on Work-Life Balance, COM(2017) 253

the average level of hours worked during a preceding period **- Prohibition of exclusivity clauses**		and need to set minimum levels of predictability of work needs would be high only in undertaking relying highly on casual work (which risk need to modify the business model). Expected positive outcome for employers retaining workforce with normal amounts of flexibility due to decreased unfair competition from undertaking abusing flexible working arrangements balancing cost of reduced flexibility.	Access to minimum level of predictability can have positive impact on demographic and household creation. Information as to anticipated hours/income is expected to reduce uncertainty as to eligibility for various social security benefits and credit. Scheduling minima as to temporal work flexibility are to help improve work-life balance of individuals and households. A prohibition of exclusivity clauses is to help reduce the hazard that insufficient income can be generated by workers on call and lessen the risk that non-compliance by a on-demand worker is penalised by a withholding of offers of casual work.
4.2: Right to request another form of employment and receive a reply in writing	Legal provision in terms of requesting flexible working arrangements exist in only a minority of MS.	Cost to employers of responding, depending on the volume of requests and the periodicity. . Potential benefits for retention of workforce and limit to underemployment in case the right to request stimulates improved dialogue between worker and employer.	Potential benefits for workers in involuntary working arrangements to initiate dialogue between worker and employer.

iii) Other options suggested by Social Partners

Social Partners replying to the first phase consultation who commented on this point suggested the following:

Workers' organisations advocated a right to reference hours in which working hours may vary under very flexible contracts. Eurocadres proposed a right to decent working hours, including limitations of overtime.

Workers' organisations advocated a right to a contract with a minimum of hours set at the average level of hours worked during a preceding period for flexible contracts. ETUC also called for a minimum hours threshold.

Workers' organisations advocated a right to request another form of employment. ETUC called for a right to change from part time to full time, from insecure to an open ended contract.

Employers' organisations opposed the creation of any material rights under a revised Written Statement Directive.

B. Probation

i) Legal baseline[274]

The use of probation periods remains widespread across the EU. All but one Member State, Belgium, allow it. [275] Most Member States require a written agreement by both parties to be included in the employee's contract. In **Greece**, the probation period is automatically included when an employee contract is signed whereas in **Cyprus** it is only required if the probation period exceeds 24 weeks.

When it comes to the length of probation periods and the category of workers to whom it applies, Member States have **divergent policies.** This can be deducted for example by the probation periods that can be found across the European Union **ranging from one month in Austria to two years in Cyprus.** A substantial part of Member States, however, has established a **general maximum duration for probation periods at three months**[276]**, six months**[277] **or somewhere in between**[278]**.** The probation period is generally simply included in the employment contract and commences at the start of the employment. **Poland** is the only Member State who has created a separate type of employment contract, namely the contract for probation which can be concluded for a period of no longer than three months. A subsequent contract for probation can be

[274] See Table 5 in Annex 2.

[275] A few exceptions remain such as contract of employments for students and temporary agency workers. The probation period clause in an employment contract whose execution commenced before 1 January 2014 retains its legal value.

[276] Denmark, Hungary, Latvia, Poland, Slovakia, Czech Republic, Lithuania, Portugal

[277] Bulgaria, Croatia, Italy, Luxembourg, Malta, Slovenia and Germany

[278] Estonia, Finland

concluded if the employee is expected to carry out another type of work, or where at least three years have elapsed since the termination of an employment contract between the parties.

Despite these general periods, **various derogations can be retrieved for certain categories of workers.** Most derogations apply to managerial positions which often are double the standard probation period[279]. The other derogations are aimed to give more protection to less stable categories of workers such as students, temporary agency workers and low-skilled workers. Five Member States have made a distinction between employees with indefinite contracts and fixed-term employees in order to increase the protection of the latter group. The possibility to deviate from the general provision through collective agreements varies greatly from one Member State to another[280]. **Austria, Luxembourg** and **Slovakia** do not provide this possibility. The largest group of Member States[281] only allow social partners to reduce the probation periods through collective agreement. Few Member States (**Finland, France, Italy, Sweden** and **Hungary**) have permitted Social Partners to extend the general provisions on probation.

ii) Possible avenues for a revision

4.3. Right to a maximum duration of probation where a probation period is foreseen

During probation periods, the employment contract can be easily terminated and some protective measures that normally apply in case of dismissal are absent (e.g. notice period and severance pay). A maximum duration of probation periods would prevent abuse of overly long probation periods, in which employment rights are inferior to standard employment.

Table 8. Possible measures for consideration

Possible measures for consideration	**Impacts**		
	Legal	**Economic**	**Social (including health)**
No change / *status quo*	In MS, maximum probation periods span from no probation, to 12 months. In a majority of MS it is between 3 and 6 months, with	During probation periods, the employment contract can usually be terminated at no costs - notice period and severance pay generally do not	Unequal situation of workers across EU in terms of employment rights and potentially pay and income security during the first year on the job.

[279] This is the case for the Czech Republic, Luxembourg, France, Malta and Slovakia with the exception of Romania where the probation period is only extended with a third.

[280] The information regarding the role of social partners is quite vague. The information request for the social pillar does not provide this information for all Member States. Moreover, it is not always clear for some Member States if social partners can't deviate at all from the general provisions or if they are only allowed to reduce the probation periods.

[281] Bulgaria, Croatia, Greece, Lithuania, Slovenia, Romania, Portugal, Poland, Germany and Malta only allow social partners to reduce the probation periods through collective agreement.

	possible derogations.	apply. Unequal treatment across MSs and types of contract in terms of duties of employers, with unfair competition. Cost of social protection for workers dismissed due to easy dismissal during probation.	
4.3: Right to a maximum duration of probation period	Requires legal change in a number of MS (depending on the length defined).	During probation periods, the employment contract can usually be terminated at no costs - notice period and severance pay generally do not apply.	A maximum duration of probation periods is to stem abuse in terms of overly long probation periods, in which employment rights and pay might be inferior.

iii) Other options suggested by Social Partners

Social Partners replying to the first phase consultation who commented on this point suggested the following.

Workers' organisations advocated a right to maximum duration of probation. ETUC and Eurocadres indicated 3 months as maximum duration. Employers' organisations opposed the creation of any material rights under a revised Written Statement Directive.

E. Considerations on the rights for precarious workers

i) Subsidiarity and proportionality

While the regulation of labour market flexibility through contractual arrangements remains a national competence, a minimum approximation at EU level of certain employment conditions relating to workers in precarious situations could help limit developments that are economically or socially damaging and create scope for a race to the bottom between Member States, or which are at odds with EU treaty objectives.

From a subsidiarity perspective, a minimum approximation of certain employment conditions in Member States could be justified on three counts: i) extending EU labour law to workers excluded from existing employment protection; ii) avoiding harmful social competition within and across Member States, and iii) supporting upward labour market convergence in the EU. Where new or non-standard forms of employment relationships may be putting at risk the health and safety of workers, there is reason to expect a common action at EU level.

A minimum approximation of certain employment conditions in Member States would be proportionate in the sense that it does not seek to prohibit the different and varyingly used non-standard labour contracts in the Member States, but to condition their use in the EU in terms of equal treatment and level playing field.

ii) Other options suggested by Social Partners

Social Partners replying to the first phase consultation suggested additional rights:

ETUC called for a right to social protection; right to at least the minimum wage; right to be represented by a union.

Eurocadres called for the presumption of employment and reverse burden of proof: when an employment relationship of limited period has been allowed to continue beyond duration it should be regarded as permanent; right to decent wages.; right to join and be represented by a trade union; right to disconnect; prohibition of zero hours contract.

EAEA and EFJ called for a right to freedom of association; right to collective bargaining; right to social protection.

5.5 Enforcement

i) Legal baseline

The Directive, in its Article 8, establishes the right for employees who consider themselves wronged by an employer's failure to comply with their obligations arising from its provisions to be able to pursue their claims by judicial process. Member States may also establish two steps that would precede a judicial process: (i) possible recourse to a competent authority such as a labour inspectorate or an administrative body; (ii) a formal notice given to the employer calling on it to issue the written statement within 15 days.

The REFIT evaluation conducted by the Commission services has confirmed that all Member States provide for access to the relevant domestic jurisdiction which is in general the Labour Court[282].

In most Member States, a competent authority has the power to intervene in order to identify or impose a non-judicial remedy. This intervention is not necessarily a pre-condition for further judicial recourse. The competent authority is generally, but not always, the labour inspectorate. In **Ireland**, for instance, employees may submit their complaints to a 'Rights Commissioner'. Trade unions also play an important role. They can help employees to fill in a complaint and are sometimes members of the competent authority. In **Sweden**, a dispute resolution mechanism is available involving negotiation between the employer and the trade union. However, this is subject to the employee being a member of a trade union.

Only three countries (**Estonia, Croatia** and **Slovenia**) have opted for a 'formal notice mechanism'. However, in **Slovenia**, the employer has only 8 days (and not 15) starting from the employee notification in which to comply. In **Italy**, under the national decree transposing the Directive, an employee may ask the Territorial Office of the Ministry of

[282]SWD 2017(2611) Refit evaluation of the Written Statement Directive

Labour ('DPL') to order the employer to comply within 15 days if it fails to meet the obligations set out in the decree, delays fulfilling them or fulfils them in an incomplete or inaccurate manner. In this case, the labour inspectorate formally notifies the employer and imposes an economic sanction if the order is not complied with within 15 days.

One desired outcome of these forms of redress is of course that the employer issues a written statement. However, sometimes this written statement is never issued or issued too late. The study supporting the REFIT evaluation examined the sanctions that national legislation currently imposes on employers who fail to comply with the requirement. It seems possible to distinguish between: (i) a majority of Member States where financial compensation can be granted only to employees who prove that they have suffered damage; and (ii) a minority of Member States where sanctions such as lump sum penalties or loss of permits can be imposed in addition on the employer for failure to issue the written statement.

Further information is presented in the Table 9 in Annex 2 "Overview of enforcement mechanisms".[283]

The study supporting the REFIT evaluation concluded that redress systems based only on claims for damages are less effective than systems that also provide for sanctions such as lump sum penalties. The limited extent of case law indicates that workers whose rights under the Directive have been infringed are reluctant to pursue litigation while in employment. Generally any litigation is related to the working conditions themselves not to the absence of information about them.

Therefore, adequate enforcement is needed to achieve the goal of the Directive including by setting up appropriate recourse via enforcement authorities and appropriate and dissuasive sanctions. The various ways to improve the enforcement of the written statement directive would contribute to the protection of workers in respect of their rights.

Member States fall into two categories: (i) those where financial compensation can be granted only to employees who prove they have suffered damage; and (ii) those where sanctions (such as lump sums or loss of permits) can be imposed in addition on employers who fail to issue the written statement.

Redress systems based only on claims for damages are less effective than systems that also provide for sanctions such as lump sum penalties. Indeed, as the very limited amount of national case-law shows, most employees are reluctant to use this recourse during their employment relationship. In addition, the written statement is a tool to prevent litigation (thanks to the clarity it brings).

The European Parliament has as well underlined the importance of enforcement, calling on the Member States to provide labour inspectorates with adequate resources to ensure effective monitoring and underlining that labour inspectorates should focus on the goal of monitoring, ensuring compliance with and improving working conditions, workplace health and safety, and combating illegal or undeclared work.[284]

[283] Table 9 in Annex 2

[284] European Parliament, European Parliament resolution of 4 July 2017 on working conditions and precarious employment

ii) Possible avenues for a revision

The evaluation of the Directive showed some shortcomings in effectiveness notably due to a lack of effective enforcement despite the provisions of the article 8, as described above.

Therefore the enforcement of the Directive could be improved by revising the means of redress and sanctions in cases of non-compliance. To achieve this objective, various measures could be explored:

- Members States could ensure that a competent authority can find or impose a solution which is not based on litigation, which tends to be a costly and lengthy process, in case a worker does not receive a written statement or receives an incomplete one. This authority could be labour inspectorate or another enforcement authority such as the administrative bodies (e.g. the 'rights commissioner in Ireland).

- The Directive could impose to set up a formal injunction system applicable to the employer, possibly accompanied by the option to levy a lump sum fine. The amount of the lump sum could be fixed at national level but should be dissuasive enough to ensure that employers provide the required standard information about the employment relationship. For instance in Norway, the Norwegian labour authority can issue orders to employers to comply with the information obligation and can impose fines.

- Finally the possibility to establish favourable presumptions for the employees as regards their working conditions in case of absence of written statement, proportionate to the elements that are missing. For instance some Member States have set up a favourable presumption, such as France: fixed term workers not receiving written statement could claim a right to open ended contract in such cases.

Table 9. Possible measures for consideration

Possible measures for consideration	**Impacts**		
	Legal	**Economic**	**Social (including health)**
No change / *status quo*	No impact	Possible negative impact related to undeclared work Less transparency of the labour market and less harmonisation of the playing field for the business.	Workers' rights less respected in terms of information of their working conditions. Increase risk of precarious workers.
3.1. make sure	Limited legal impact for	Human capital	Better

that a 'competent authority' can find or impose a solution in case a worker does not receive a written statement	some MS in setting up competent authority or enlarging their attributions.	impacts and functioning costs for some MS in setting up and maintain those competent authorities, or enlarging attributions for existing ones. Limited compliance cost for employers. Less burden and for companies due to less litigation.	enforcement of workers' rights. More clarity for the worker to address their claim to the relevant authority. Less litigation cost for the worker.
3.2. set up a formal injunction system to the employer, possibly accompanied by a possibility of lump sum;	Limited legal impact in MS to set this formal injunction system.	Less litigation cost. Less burden and for companies due to less litigation. Reducing unfair competition among employers based on a race to the bottom in working conditions. Impact on human capital of enforcement authorities. Positive impact on public finances for those MS. Gain in the public budget with the fines	Better enforcement of workers' rights. Dissuasive sanctions for employers that lead to inform in writing the worker about their employment conditions.

		received.	
3.3. establish favourable presumptions for the employees as regards their working conditions in case of (unlawful) absence of written statements, proportionate to the missing elements.	Legal impacts in MS to include those favourable presumptions.		Improve rights and working conditions for workers.

The measures as set out above could reinforce enforcement of workers' rights regarding their employment relationship, improve their right to redress in case of non-compliance, and avoid long and costly litigation that could be unproductive at the start of employment relationship for a worker and burdensome for the employers.

Measures 3.1 and 3.2 would add burden on Members States by requiring additional means to ensure the functioning of labour inspectorates or enforcement agencies when obliging the employers to provide those information to the worker. This approach would require legal changes in Member States where those authorities are not authorised to impose fines on employers. Such a provision is already in place in Portugal, Slovakia Norway, Belgium. Consequently administrative and enforcement costs would be generated, however the Member States concerned would also benefit from the fines received in case of non-compliance by the business as well as improved industrial relations and labour market transparency due to greater compliance.

This approach is linked with the option 4 to shorten the two months deadline for providing information at the start of the employment. Option 4 would imply that employers in some Member States would have less time to comply with their obligations and may potentially find themselves in breach of the workers' rights more easily.

iii) Other options suggested by Social Partners

Social Partners replying to the first stage consultation who commented on this point suggested the following.

ETUC called for standard and progressive penalties to be set up (lump sum) and restriction of article 8(2) to be removed. Eurocadres indicated that the directive should include sanctions comparable to those used concerning dismissals. CESI indicated the need to improve redress and sanction measures. EAEA favoured changes in this area. ETUC also indicated that the written statement should also be communicated to the relevant public administration and to workers' representatives.

Amongst employers' organisations, CEEMET indicated that the topic should be left to Member States; Eurocommerce, ECEG and CEMER indicated their disagreement with changes in this area. The World Employment Confederation indicated that better enforcement would be more useful than revision of the Directive.

6 CONCLUSIONS

The analysis contained in this document demonstrates that there is a growing divergence between the protection provided by the Written Statement Directive and the rest of the EU social acquis, and longer-term and more recent key developments on the labour market, notably the growth of casual, involuntary and short part-time, platform work and a blurring of the distinction between workers and the self-employed. Forms of atypical employment have developed such as zero-hours contracts, which are not covered by the directives dedicated to protecting atypical workers (those on part-time work, fixed-term work, temporary agency work). The definition of the personal scope of the Written Statement Directive permits it not to be applied to vulnerable workers such as domestic workers or those working short hours, however regularly and over however long a period. There is considerable divergence between Member States in the coverage of the Directive, which creates uneven protection for workers in the same situation depending which jurisdiction they are in. The REFIT evaluation has identified a range of further deficiencies in the implementation of the Directive, such as the length of time permitted before the employer provides written information about working conditions, the limited effectiveness of redress systems, certain omissions in the list of information to be provided.

This document describes these labour market trends and regulatory gaps, and outlines their consequences for workers, for businesses and for Member States. It examines the scope for EU added value in a revised Directive and the justification for action at EU level, and its subsidiarity and proportionality aspects. It outlines the content and potential impact of the five avenues for action set out in the second phase consultation paper, as well as the reactions of EU level social partners and, where these exist, their proposals for further action in reaction to the approaches set out in the first phase consultation.

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ANNEXES

Annexes

1 ANNEX 1 – TERMINOLOGY

a. Employee, worker, employment contract/ labour contract, employment relationship/ labour relationship, self-employed

Under the applicable terminology where the term '**employee**' is used without specifically referring to the national contexts or to specific legal texts, it means: **any person who for a certain period of time performs services for and under the direction of another person in return for which he/she receives remuneration**. This definition is derived from the case-law of the Court of Justice of the EU within the field of free movement of workers[285]. Under this definition, **the term 'worker' and 'employee' can be used as a synonym**.

Similarly, the terms '**labour relationship**' and '**employment relationship**' can also be used as synonyms and designate the relationship between a worker or an employee, as defined here above, and an employer.

The terms '**labour contract**' or '**employment contract**' are used as synonyms as well and designate a contract that establishes a labour relationship or an employment relationship. However in some cases an employment relationship may exist without parties having formally concluded a labour/ employment contract.

Consequently, a '**self-employed person**' will be understood as any person on the labour market who cannot be considered as an employee/worker.

b. Part-time worker, fixed-term worker,

Under the applicable terminology, '**part-time worker**' refers to an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker (source: Directive 97/81/EC, Annex clause 3).

'**Fixed-term worker**' means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event (source: Directive 1999/70/EC, Annex clause 3).

c. New and atypical forms of work

In addition to open-ended work and well-known forms of atypical work such as fixed-term work and part-time work, new forms of employment have appeared or developed. Under the applicable terminology, the term 'new and atypical forms of work' designate, among others, the forms of work and related definitions below:

'**Temporary Agency Work**': Form of work where the worker has a contract of employment or an employment relationship with a temporary-work agency with a view to

[285] Case 66/85, *Lawrie-Blum*, 3 July 1986.

be assigned to a user undertaking to work temporarily under its supervision and direction (source: Directive 2008/104/EC, Article 3 (1) (c)).

'**Casual work**' is not formally defined at EU level. Nevertheless, under the applicable terminology, the definition produced by Eurofound is appropriate : 'casual work' is '*a type of work where the employment is not stable and continuous, and the employer is not obliged to regularly provide the worker with work, but has the flexibility of calling them in on demand*'[286]. Casual work covers on-call /on-demand work[287] (such as zero-hours contracts) and intermittent work[288].

'**Voucher based-work**' is not formally defined at EU level. Nevertheless, under the applicable terminology, the definition produced by Eurofound is appropriate 'voucher-based work' is '*a form of employment where an employer acquires a voucher from a third party (generally a governmental authority) to be used as payment for a service from a worker, rather than cash*'[289].

'**Telework**': Form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employers' premises, is carried out away from those premises on a regular basis (source: European Framework Agreement on Telework (ETUC, UNICE, UEAPME, CEEP), Section 2).

'**ICT-based mobile work**' is not formally defined at EU level. Nevertheless, under the applicable terminology, the approach of Eurofound is appropriate :Eurofound sees 'ICT-based mobile work' where work patterns are characterized by the worker or self-employed operating from various possible locations outside the premises of their employer (for example, at home, at a client's premises or 'on the road'), supported by modern technologies such as laptop and tablet computers. This is different from traditional teleworking in the sense of being even less 'place-bound'.

[286] Eurofound (2015), New forms of employment, Publications Office of the European Union, Luxembourg, p.46.

[287] Eurofound (2015), ibid, p. 46: "On-call work involves a continuous employment relationship maintained between an employer and an employee, but the employer does not continuously provide work for the employee. Rather, the employer has the option of calling the employee in as and when needed. There are employment contracts that indicate the minimum and maximum number of working hours, as well as so-called 'zero-hours contracts' that specify no minimum number of working hours, and the employer is not obliged to ever call in the worker. This employment form has emerged or been of increasing importance over the last decade in Ireland, Italy, the Netherlands, Sweden and the UK". Since the issue of the qualification of on-call time as working time is a separate issue dealt with in the context of the Directive 2003/88/EC on working time, for ease of understanding this document will use 'on-demand work' instead of 'on-call work'. Eurofound meaning does apply.. Indeed, in the framework of working time,on-call time refers to any period where the worker is not required to carry out normal work with the usual continuity, but has to be ready to work if called upon to do so.

[288] Eurofound (2015), ibid, p. 46: "Intermittent work involves an employer approaching workers on a regular or irregular basis to conduct a specific task, often related to an individual project or seasonally occurring jobs. The employment is characterised by a fixed-term period, which either involves fulfilling a task or completing a specific number of days' work. This employment form was found in Belgium, Croatia, France, Hungary, Italy, Romania, Slovakia and Slovenia".

[289] Eurofound (2015), ibid, p. 82.

'**Platform work**' is not formally defined at EU level. Nevertheless, under the applicable terminology, the definitions contained in the Commission Communication *A European agenda for the collaborative economy*[290] shall be used. In the latter, the Commission defines the concept of collaborative economy, the presence of an online platform being a necessary element of the definition[291]. Platform work is carried out by service providers who can be professional or not. Where it is carried out by professional services providers, these can be self-employed persons or workers[292].

d. Domestic workers, traineeships

Under the applicable terminology, '**Domestic worker**' means any person engaged in domestic work within an employment relationship; domestic work meaning work performed in or for a household or households (Source: ILO Convention n° 189, Article 1).

'**Traineeships**' are understood as a limited period of work practice, whether paid or not, which includes a learning and training component, undertaken in order to gain practical and professional experience with a view to improving employability and facilitating transition to regular employment (Source: Council recommendation on a Quality Framework for Traineeships, 10 March 2014).

e. Observation

The definitions and categories spelled out above are not exclusive. Some workers might belong to two or several. For instance, a worker performing work corresponding to the legal definition of part-time work might be considered also as performing casual work (because, for instance, he/she has highly variable working time).

[290] Communication of 2.6.2016, COM(2016) 356 final, A European agenda for the collaborative economy.

[291] See p. 3: "For the purposes of this Communication, the term "collaborative economy" refers to business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time and/or skills — these can be private individuals offering services on an occasional basis (‘peers’) or service providers acting in their professional capacity ("professional services providers"); (ii) users of these; and (iii) intermediaries that connect — via an online platform — providers with users and that facilitate transactions between them (‘collaborative platforms’). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit".

[292] See section 2.4 of the Communication COM(2016) 356 final.

2 ANNEX 2 – TABLES

TABLE 1. NATIONAL LEVEL LEGAL DEFINITIONS OF EMPLOYEE, EMPLOYMENT CONTRACT AND EMPLOYMENT RELATIONSHIP (SOURCE: RAMBOLL STUDY)

	Employee	Employment contract	Employment relationship
Austria	No definition is provided in the law. No legal definition in national law. According to the interpretation of Section 1151 of the Civil Code in case law an employee is a person who performs **services for and under the direction of** another person for a certain period of time.	No definition is provided in the law. No legal definition in national law. A legally binding agreement where one person agrees to carry out services for and under the direction of another person for a certain period of time is a contract of employment.	No definition is provided in the law. No legal definition in national law. The legal relationship between the parties of a contract of employment.
Belgium	No definition is provided in the law. There exists only an indirect definition for employees (workers) in Belgian law, which refers to the status of "a person working **under the authority** of another person (employer) in the framework of a labour contract relationship" (article 1 of the Social security Law of 29.06.1981).	An employment contract is a contract between employee and employer, in which the employee binds themself to the employer to perform labour under the authority of the employer in exchange for a salary. For an employment contract to exist, four elements have to be met: a contract, work, wages, authority (a relationship of subordination). Working under authority is what distinguishes the employee from the self-employed. The Court of	No definition is provided in the law.

	Employee	Employment contract	Employment relationship
	The same indirect definition is found in article 16 of the Social Penal Code: an employee (worker) is "he who works under the authority of another person in the framework of a labour contract". The definition of employees (workers) depends on the fulfilment of the conditions for the legal existence of a labour contract). The Social Penal Code extends this definition also to the persons working under the authority of another person but without the existence of a labour contract (and its constituent elements, e.g. salary). The Belgian law does not distinguish between "workers" and "employees". According to the law they are all employees and these terms are synonyms.	Cassation describes the exercise of authority as "an essential element of the employment contract, which implies for the employer the right to give directions and the right to control the work of the employee". Authority implies in other words the competence of the employer to give orders to the employee (right to command) and to supervise the execution of the orders (right to control and punish). Authority does not necessarily have to be explicit or permanent. It suffices that the employer has the legal possibility to effectively exercise authority at any given moment, without it being necessary to do it strictly and uninterruptedly. The relationship of authority exists from the moment authority can effectively be used. (Law of 03.07.1978 concerning employment contracts, Art 2 to 5; Employment relationship law of 27.12.2006; Article 16 of the Social Penal Code)	
Bulgaria	No definition is provided in the law. There is no legal definition of the concept "employee". This concept is established by the	No definition is provided in the law. There is no legal definition of the concept	Employment relations are relations related to the supply of labour power. (Art. 1 (2) of LC)

	Employee	Employment contract	Employment relationship
	legal theory and accepted by the judicial practice, as a natural person providing manpower under employment relationship.	"employment contract". Employment relations are relations related to the supply of labour power. (Art. 1 (2) of LC) The employment contract is one of the sources of employment relationships together with employment ensuing from a process of competition or election.	
Croatia	An employed natural person performing certain works for an employer, pursuant to Article 4, paragraph 1 of the Labour Act.	A contract of service, whether express or implied and if it is express, whether writing or in oral. pursuant to Article 10, paragraph 2 of The Labour Act.	No definition is provided in the law. An employer is required to establish an employment relationship through an employment contract or through a confirmation of employment status (so called the letter of engagement). Both documents must be produced in writing. Preference should be given to the employment contract. Both the contract and the confirmation must contain particular information prescribed in the Labour Act.

	Employee	Employment contract	Employment relationship
Cyprus	Any person protected as an employee under the applicable labour legislation, pursuant to S2 of Law 100(I)/2000. No definition within the legislation.	No definition is provided in the law. No definition within the legislation.	No definition is provided in the law.
Czech Republic	The Labour Code s. 6 defines an employee as an individual who has committed to the performance of dependent work in a basic employment relationship. "Dependent work" („závislá práce") means work that is carried out within the relationship of the employer's superiority and his employee's subordination in the employer's name and according to the employer's instructions (orders) and that is performed in person by the employee for his employer. Dependent work is performed for wage, salary or other remuneration for work done, at the employer's cost and liability, at the employer's workplace or some other agreed place within the working hours.	The Labour Code s. 34 defines an employment contract as a written agreement between an employer and an employee establishing an employment relationship. The contract contains the type of work, place of work and a commencement of work and must have a written form.	According to the Labour Code, section 1, the legal relations arising in connection with the performance of dependent work between employees and their employers are referred to as "labour relations" (or "labour relationships", or "industrial relations" or "employment relations"; in Czech „pracovněprávní vztahy").
Denmark	Employees shall be taken to mean persons who receive remuneration for personal services. (ERCA § 1 (2)) No definition in the ERCA.	No definition is provided in the law. No definition in the ERCA.	No definition is provided in the law. No definition in the ERCA.

	Employee	Employment contract	Employment relationship
Estonia	On the basis of an employment contract a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer. The employer pays to the employee remuneration for such work. (TLS §1 (1))	On the basis of an employment contract a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer. The employer pays to the employee remuneration for such work. (TLS §1 (1))	No definition is provided in the law.
Finland	No definition is provided in the law.	The Act applies to contracts (employment contracts) entered into by an employee, or jointly by several employees as a team, agreeing personally to perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration (ECA 1:1).	No definition is provided in the law.
France	An employee is any person who carries out paid work in the context of a relationship of subordination. Whoever classifies as "employee" is protected by the employment law codes. A person may qualify as an employee notwithstanding any provision to the contrary agreed upon between the company and the concerned individual. (Labour Code (R3243-1 LC))	No definition is provided in the law. There is no legal requirement for an employment relationship to be formalized by an employment contract. Only open ended – full time contracts can be produced in written or in oral, but the normal practice is to produce them in written form. Additionally, the collective agreement applicable to the contract of employment may require a written form. In any case, an employment contract not in written form is considered to be a full-time and indefinite-term contract. Therefore, all fixed-term	No definition is provided in the law. The existence of an employment relationship does not depend on the will expressed by the parties or the name they have given their agreement but the factual conditions in which the activity is exercised by the worker (Soc., 19 December 2000; Soc, 1 December 2005 (cassation), Soc June 3, 2009).

	Employee	Employment contract	Employment relationship
		contracts and part-time contracts need to be formalised in writing.	
Germany	No definition is provided in the law. Case law however establishes that an employee is an individual who has entered into a contract of employment, i.e. a contract by which an individual (employee) is obliged to perform his work under the control of the other party to the contract (employer).	No definition is provided in the law. Case law however establishes that an employment contract is the corresponding binding will of at least two parties, whether express or implied and if it is express, whether oral or in writing.	No definition is provided in the law. Case law however establishes that an employment relationship is the sum of the legal relations between an employer and an employee.
Greece	Any wilful and conscious productive human activity, which is considered as such according to the prevailing perception in transactions (Law 4345/1964, Art. 7).	An employee is obliged to provide, for a definite or indefinite period, his/her work for employer. The employer has to pay the agreed salary to the employee. An employment contract exists when the salary is calculated per unit of the work or flat, if the employee is hired or employed for a fixed or indefinite period (Civil Code, Art 648).	No definition is provided in the law.
Hungary	An employee is any natural person who works under an employment contract. The definition of the employment contract (Labour Code, Section 42) also refers to the concept: "the employee is required to work as instructed	Contracts concluded under the Labour Code constitute the outcome of an agreement resting on mutual consent of the parties. Under an employment contract:	An employment relationship is deemed established by entering into an employment contract. Under an employment contract:

	Employee	Employment contract	Employment relationship
	by the employer".	a) the employee is required to work as instructed by the employer; b) the employer is required to provide work for the employee and to pay wages Contract (agreement) (L. C., Section 14).	a) the employee is required to work as instructed by the employer; b) the employer is required to provide work for the employee and to pay wages.
Iceland	No general statutory definition, but based on case law. An employee is a person who is employed for and under the supervision of another person, and receives salary or remuneration for his work.	No general statutory definition. Definition based on case law. A Contract is a legal instrument based on mutual or closely related Memoranda between two or more parties, which is intended to tie them both or all under law.	No statutory definition. The definition of who is regarded as an employee and is in an employment relationship with the employer has evolved through judicial decisions. In the absence of an employment contract the courts look at different factors as to determine whether an employment relationship has been formed or not. These are factors like the duration and continuity of the task, separation from general operations, wage related expenses, facilities, provision of tools and materials, responsibility and risk of the task in

	Employee	Employment contract	Employment relationship
			question, relationship between the negotiating parties, union affiliation, type of remuneration, sick days, if the work is carried out personally, independence, vacation pay, tax payments, work supervision and work hours.
Ireland	A person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment. (ToEA 1994, s1(1))	An employment contract is: (a) a contract of service or apprenticeship, or (b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of either the Employment Agency Act 1971 or the Protection of Employees (Temporary Agency Work) Act 2012 and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract), whether the contract is express or implied and if express, whether it is oral or in writing. (ToEA 1994, s 1(1))	No definition is provided in the law.
Italy	According to Article 2094 of the Italian Civil Code, an employee is a person who agrees to collaborate with an enterprise for remuneration, carrying out intellectual or manual labour in the employment of and under the direction of the entrepreneur.	The Italian Civil code (Article 1321) provides a general definition of contract, as an agreement among two, or more parties, aiming to set up, regulate or annul a patrimonial (economically valuable) relationship among themselves. No specific definition of the employment contract is provided. The Civil Code, other laws and case law regulate the employment relationship.	No definition is provided in the law.

	Employee	Employment contract	Employment relationship
Latvia	In the Latvian legal system, an employee is a natural person who, on the basis of an employment contract for an agreed work remuneration, performs specific work under the guidance of an employer (Article 3, *Darba likums*, OG No.105, 6 July 2001).	In the Latvian legal system, an employer and an employee shall establish mutual employment legal relationships by an employment contract. With an employment contract the employee undertakes to perform specific work, subject to specified working procedures and orders of the employer, while the employer undertakes to pay the agreed work remuneration and to ensure fair and safe working conditions that are not harmful to health (Article 28, *Darba likums*, OG No.105, 6 July 2001).	No definition is provided in the law.
Liechtenstein	An employee is an individual working under a contract of employment, pursuant to § 1173a Art. 1 para. 1 ABGB.	An individual contract of employment according to § 1173a Art. 1 para. 1 ABGB obliges an employee for a defined or undefined period of time to provide services for an employer for remuneration. It applies equally to part-time employees (§ 1173a Art. 1 para. 2 ABGB). The services regularly have to be provided in person (§ 1173a Art. 3 ABGB). Furthermore a certain degree of subordination is an essential element of the employment contract: the employer has to have the power to decide on how, when and where services are provided (especially § 1173a Art. 7 ABGB). Loyalty of the employee	No definition is provided in the law. No specific definition is laid down by statute although the term is used in the ABGB. The definition can be deduced from the definition of the contract of employment.

	Employee	Employment contract	Employment relationship
		towards his employer is required (§ 1173a Art. 4 para. 3 ABGB). The work equipment has to be made available by the employer (§ 1173a Art. 4 para. 2 ABGB).	
Lithuania	According to the Labour Code, an employee is a natural person having general legal capacity in employment relationships and employed under a contract of employment for remuneration. (LC, Art. 15)	According to the Labour Code , an employment contract shall be an agreement between an employee and an employer whereby the employee undertakes to perform work of a certain profession, speciality, qualification or to perform specific duties in accordance with the work regulations established at the workplace, whereas the employer undertakes to provide the employee with the work specified in the contract, to pay him the agreed wage and to ensure working conditions as set in labour laws, other regulatory acts, the collective agreement and by agreement between the parties (Article 93).	No definition is provided in the law. No definition in the Labour Code or other legal acts. In practice an employment relationship is defined as "employment under a contract of employment".

	Employee	Employment contract	Employment relationship
Luxembourg	L.121-1 defines an employee as an individual who has entered into a contract of employment.	L.121-4 defines an employment contract as a document written the first day of work for every employee individually, two originals stating the rules between employee and employer.	No definition. Court decisions would analyse the relationship with reference to a possible subordination but of course the relationship is the one related to a contract of employment.
Malta	In the Maltese legal system, an employee is defined as any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service 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. (Employment and Industrial Relations Act – Chapter 452 Article 2.; Employment Status National Standard Order - Subsidiary Legislation 452.108)	A "contract of service" and "contract of employment" means an agreement, (other than service as a member of a disciplined force) whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for wages, and, in so far as conditions of employment are concerned, includes an agreement of apprenticeship (Employment and Industrial Relations Act – Chapter 452 Article 2).	Chapter 452 of the Employment and Industrial Relations Act speaks of this definition in the context of a trade dispute and states that, in relation to a trade dispute, includes any relationship whereby one person does work or performs services for another (other than a service as a member of a disciplined force).
Netherlands	Art. 7:610 DCC states that "a contract of employment is a contract whereby one party – the employee – undertakes to perform work in the service of the other party – the employer – for remuneration during a given period."	In The Netherlands there are no other definitions for "employee" and "contract of employment" than those in Art. 7:610 DCC, which states that "a contract of employment is a contract whereby one party – the employee – undertakes to perform work in the service of the other party – the employer – for	No definition is provided in the law.

	Employee	Employment contract	Employment relationship
		remuneration during a given period."	
Norway	In Norway, "[…] employee shall mean anyone who performs work in the service of another." (WEA 2005, Section 1-8 (1)).	There is no definition of employment contract in Norway. According to the WEA the employer is obligated to draft a written contract of employment in accordance with Section 14-6 (Section 14-6 contains the elements listed in Article 4 of the Directive). According to case law and custom, a written contract of employment is not a condition precedent for an employment relationship to exist. Thus, an employment relationship can exist based on oral agreement or performance of work.	No definition is provided in the law. Whether or not an employment relationship exists is decided in relation to the definition of an employee and the definition of an employer ("[…] employer shall mean anyone who has engaged an employee to perform work in his service). Typically, the employment relationship is determined on the basis of the following seven evaluation points: the employer is obligated to personally perform the tasks and cannot use helpers on his/her own account; the employee is obligated to submit to the employer's direction and control of the work; the employer makes available working space, machinery, equipment, tools, materials or other aids necessary to perform the work; the employer bears the risk of the work result; the employee receives remuneration in some form of salary; the relationship between the parties has a fairly stable

	Employee	Employment contract	Employment relationship
			character and is terminable with specific deadlines; the work is performed mainly for one employer/principal. The list is not exhaustive with regard to the factors that may be relevant. The factors are not absolute evidence, but guidelines for assessing whether there is an employment relationship or not.
Poland	An employee is a person who is employed under a contract of employment, is summoned, is selected, gets a nomination or is employed under a cooperative contract of employment. (Article 2 of Labour Code; Chapter 1 - Preliminary provisions)	A contract of employment may be concluded for: an indefinite period of time, a time - limited period, or a duration of performing a specific job. If it turns out necessary to hire a substitution when an employee is granted a leave of absence, an employer may conclude a time-limited contract of employment with such a candidate for a period comprising the length of absence of the employee subject to the substitution. (Article 25. §1. of Labour Code; Section 1, Concluding a contract of employment; Chapter 2 – Contract of Employment)	By way of entering into an employment relationship an employee obliges himself to performing a specific job for the benefit of an employer and under his management as well as at a place and time given by an employer who on the other hand is obliged to hire an employee for remuneration. (Article 5 of Labour Code; Chapter 1 - Preliminary provisions)
Portugal	No definition is provided in the law. In Portugal, an employee is an individual performing manual or intellectual work for an	An employment contract is a contract between and individual person that performs manual or intellectual work for one or more employers, under remuneration, inside the employers' organisation and under the employers' authority. (Article 1152 of the Civil Code (CC); Article 11 of the Labour Code	No definition is provided in the law. The employment relationship is the relationship that stems from an

	Employee	Employment contract	Employment relationship
	employer, under remuneration and in a subordinate way (meaning under the orientation and subjected to the disciplinary power of the creditor).	(LC))	employment contract.
Romania	An employee is a person, part of an individual employment contract or employment relationship, who works for and under the authority of an employer and has the rights levels forecast by the law, and the provisions of collective labor contracts or agreements applicable (Art.3, lit.c Law no.476/2006; Art.1, lit.g Law no.62/2011).	An employment contract is a convention under which a person, called the employee undertakes to perform work for and under the authority of an employer, natural or legal person, for remuneration called wages (Art.10, Law no.53/2003 – Labour Code).	There is no definition of employment relationship in the Romanian labour legislation. The specialist Romanian doctrine defines the employment relationship, as a social relationship governed by a legal regulation of Labour law.
Slovakia	An employee is a natural person who as part of labour-law relations and, if stipulated by special regulation also in similar labour relations, performs dependent work for the employer. (§ 11 Labour Code) A state employee is every natural person who performs state service within a state service relationship in a specific service office and within the respective field of state service.	No definition is provided in the law. However, the Labour Code states that an employment relationship shall be established by a written employment contract between the employer and the employee. (Note: oral and tacitly concluded contract of employment are also valid). (§ 42 (1) Labour Code.)	No definition is provided in the law.

	Employee	Employment contract	Employment relationship
Slovenia	An employee is any natural person who has entered into an employment relationship on the basis of a concluded contract of employment (Art. 5/1 of the ERA-1).	Slovene labour legislation does not define the term employment contract.	An employment relationship is a relationship between a worker and an employer whereby the worker integrates voluntarily in the employer's organised working process and in which he, in return for remuneration, continuously carries out work in person according to the instructions and under the supervision of the employer (Art.4/1 of the ERA-1).
Spain	An employee is a person who voluntarily provides remunerated services on account of a third party and as part of the structure and management of another individual or legal entity, referred to as an employer or business owner. (Article 1, 1 Labour Code (LC, Workers' Statute))	A labour contract shall be deemed to exist between anybody who is providing a service on account of and within the structural and management scope of another party and the party that is receiving such service in exchange for remuneration to the former. (Art. 8, 1 LC)	The rights and obligations derived from a labour contract between the employer and employee, which can be defined by law, collective agreements and written contract or consuetudinary relation.
Sweden	The concept of employee is not defined in legislation. The status of employee is determined on a case-by-case basis with an overall assessment of the circumstances in the individual case.	There is no special legal definition regarding employment contracts. All employment contracts – both for private and public service - are considered to be contracts under private/civil law, and civil contracts are regulated by the 1915 Contracts Act. The contract of employment is a contract between an employer and an employee, whereby the employee undertakes to perform work for the	There is no legal definition. A relationship created between an employer and an employee by the conclusion of a contract of employment.

	Employee	Employment contract	Employment relationship
		employer in exchange for pay. Work can be an obligation in many other types of contracts. Attention here is drawn to the position of the party who performs the work. If he/she is deemed to be an employee according to the above mentioned definition, the contract is one of employment. A contract for the performance of work which is not classed as a contract of employment is usually considered to be a service contract performed by an independent contractor.	
United Kingdom	An employee is an individual who has entered into or works under (or, where the employment has ended, worked under) a contract of employment.	An employment contract is defined as a contract of service or apprenticeship, whether express or implied and if it is express, whether oral or in writing.	No definition in the ERA 1996. Although, 'employment' is defined as 'employment under a contract of employment'.

TABLE 2. OVERVIEW OF NATIONAL PROVISIONS EXTENDING THE INFORMATION PACKAGE IN ARTICLE 2(2) OF THE DIRECTIVE

Austria	§ 2 AVRAG requires that the applicable collective agreements must be available for inspection by the employees at the company's premises and the written statement must name the place where this inspection is possible. Also the written statement must contain the name and address of the employee's severance fund.
Finland	In Finland the list of essential aspects includes the trial period and a more detailed regulation of the information provided in case of temporary work.
Ireland	The Irish legislation also obliges employers, within 28 days of the commencement of the employment; give new staff a written summary of the procedures that would be used should it become necessary to dismiss them, pursuant to the Unfair Dismissals Acts 1977-2007.
Italy	The Italian Decree transposing the Directive lists among the elements to be included in the written statement also information on the trial period. This can also be provided through reference to collective agreements.
Malta	The Maltese transposition requests that also that the written information includes the period of probation, overtime rates, the conditions under which fines may be imposed by the employer.
Netherlands	In the Netherlands there are two other aspects which must be contained in the written or electronic statement: - Whether the contract is a contract of secondment referred to in art. 7:690 Dutch civil code (Art. 7:655 (1)(m) DCC) - Whether the employee will join an occupational pension scheme (Art. 7:655 (1)(j) DCC)
Portugal	As indicated above, aside from the elements indicated in the Directive, Portuguese legislation indicates three other issues where an information from the employer is required: 1) If the employer is integrated in a group of undertakings, the identification of the other companies in the group is mandatory (this indication may be useful for the employee for the purpose of future creditor claims, that under domestic law can be addressed not only against the employer but also against other companies of the group); 2) The indication of the insurance company of the employer that should be held responsible in case of occupational accident affecting the worker; 3) The indication of the Trust entity to which the employer belongs, which will be held responsible for the payment of a part of the damage compensation due to the employee, in the event of dismissal for economic or other objective reasons.
Romania	The Labour Code introduces additional regulatory elements that the employer must notify the employee of. Thus, article 17, paragraph 3 mentions professional activity evaluation criteria applicable to the employee by the employer, job-specific risks and the duration of the probationary period. When the work is abroad, the employee, according to article 18 paragraph 1, will be informed of the arrangements for payment of salary rights, climate conditions, the main labour law regulations in that country and local customs whose breach would jeopardize the employee's life, liberty or personal safety. In the event of a temporary employment contract between the temporary employment agency and temporary employee, the latter must be further informed about the conditions in which the temporary work assignment is to be conducted, duration of the assignment, identity and location of the user and the amount and modalities of remuneration. (Article 94 al.2).

	In the case of contract work at home, the employee must be informed about the additional program under which the employer has the right to monitor employee activity and the actual method of control and the employee must further be informed of the employer's obligation to carry raw materials to the domicile of the employee and pick up the finished products.
UK	Additional information required by the ERA 1996 includes any terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay (ERA 1996, s 1(4)(d)(ii)) and pension and pension schemes (ERA 1996, s 1(4)(d)(iii)).

TABLE 3. MEANS OF INFORMATION AND TIMELINE TO COMPLY

Country	Means of information	Deadline to comply
Austria	Written employment contract or written statement (Dienstzettel)	To be assessed in the individual case
Belgium	In all instances, the employer must provide the employee with: (1) Individual accounts; (2) The payslip from the first payment; and (3) A copy of the working rules applicable.	Respectively: (1) Within 2 months (2) Within 7 days (3) When the employee enters into services
Bulgaria	Written employment contract	Before the commencement of employment
Croatia	Written employment contract	Before the commencement of employment
Cyprus	The employer may comply by providing the information in: (1) Written employment contract; or (2) A letter of engagement; or (3) Another document, signed by the employer provided that it includes all terms mentioned in Article 2(2) of the Directive.	One month after commencement of employment
Czech Republic	Written employment contract; or when not available/complete, a written statement	1 month after commencement of employment

Country	Means of information	Deadline to comply
Denmark	The employer may comply by providing the information in: (1) Written employment contract (2) A letter of engagement, or (3) One or more other documents, provided that at least one of these contains all the information referred to in Article 2(2)(a) to (d), (h) and (i) of the Directive, or (4) A written declaration that contains information on all essential conditions applicable to the employment relationship apart from the information that may be given in one of the documents above.	1 month after commencement of employment
Estonia	Written employment contract, with the exception of the information referred to in Article 2 (2) (g), (j), and (i), for which one or more other written documents can be used.	2 weeks after commencement of employment
Finland	Written employment contract or statement, or reference to laws and collective agreements	1 month (first payslip) after commencement of employment
France	The employer has to provide the information through: (1) The pay slip at the end of the first month of employment; and (2) A document of engagement "upon engagement" (within 8 days before employment).	8 days before/1 month after commencement
Germany	Written employment contract, or when not available/complete then written statement	1 month after commencement of employment
Greece	Written employment contract or other document, which will include all the information mentioned in Article 2(2)	2 months after commencement of employment
Hungary	Written employment contract	15 days after commencement of employment
Ireland	Written statement (no specific requirements)	2 months after commencement of employment
Italy	The employer may comply by providing the information in: (1) Written employment contract; (2) A letter of engagement; or (3) Any other written document; or (4) Declaration ex article 9-bis of Law Decree No 510/1996, as converted in	1 month after commencement of employment

Country	Means of information	Deadline to comply
	Law.	
Latvia	Written employment contract	Before the commencement of employment
Lithuania	Written employment contract	Before the commencement of employment
Luxembourg	Written employment contract	First working day at the latest
Malta	Written employment contract, or letter of engagement, or a signed statement	8 days after commencement of employment
Netherlands	Written or electronic statement with all the particulars, when the contract does not specify the information	1 month after commencement of employment
Poland	Written employment contract (or failing this a non-signed written confirmation of the contract)	First working day of the employee
Portugal	Same wording as the Directive	2 months after commencement of employment
Romania	A written statement, other written documents, or a draft of a written employment contract. The same information is to be included in the individual employment contract.	Before entering in the employment contract
Slovakia	Written employment contract or written statement	1 month after commencement of employment
Slovenia	Written employment contract	Before the commencement of employment
Spain	Written employment contract, or when this is lacking/incomplete, a written statement or one or more other written documents, provided that of these documents contains at least all the information referred to in Article 2(2)(a)-(d), (h), and (i) of the Directive.	2 months after commencement of employment
Sweden	Written statement (no specific requirement)	1 month after commencement of employment
UK	One or more written statements, provided that certain particulars are contained in a single document (referring to information in Article 2(2) (a)-(d), (h), (i), and (f) of the Directive)	2 months after commencement of employment

TABLES 4: NATIONAL PROVISIONS ON NEW FORMS OF WORK

4.A. FIXED WORKING HOURS, OBLIGATIONS TO PROVIDE AND TO ACCEPT WORK

Member State	No fixed working hours	Obligation of the employer to provide work	Obligation to accept work
Austria	Zero-hours contracts are illegal without the existence of any explicit provisions. If the parties have not explicitly agreed on a specific working time, the employee is entitled to the remuneration for the hours of work he/she would typically work at the time of the conclusion of the contract.	the employee usually does not have the right to actually be provided with work but only to be paid for the hours the parties have agreed in the employment contract. Exceptions to this rule are employees with a special interest in their actual employment, such as apprentices, pilots or surgeons.	The employee may refuse to work extra hours if his/her personal interests prevail (e.g., taking care of a child and having nobody else available). If the employee does not have any obligation to work but may freely choose what work to accept and is not in a state of subordination, and the relationship is usually not considered an employment relationship but a so-called "free service contract" that does not fall within the scope of employment laws.
Belgium	In Belgium, very few, if any, forms of on-call employment contracts exist. The situation is legally very confusing. Parties can occasionally conclude a framework agreement first which in itself is not an employment contract per se, but a basis for a later contract, of which certain conditions are already determined in the framework agreement. Such a 'framework agreement' for on-call work may also be considered a statement of intent which lacks any legal enforceability. In addition, zero-hours employment contracts are contrary to the Labour Code, which in principle envisages minimum working time of three hours (Art. 21 Labour Code of 16 March 1971). (a) employee sharing: The employees must be given a contract of employment in writing. The employment contract can be	N/A	N/A

	concluded for an indefinite period, for a fixed term or for a specific assignment. The minimum weekly working hours must be at least 19 hours, which means that the conclusion of a part-time contract is possible. (b) voucher system		
Bulgaria	There is no legal regulation and no forms of zero hours work or other forms of work exist in Bulgaria, which guarantee minimum work hours (i.e., work without a fixed number of working hours).	There is no legal regulation and no forms of on-call work or other forms of work exist in Bulgaria without the employer's obligation to regularly provide the worker with work and the flexibility to call on them when needed.	There is no obligation of the employee to accept any work that is offered.
Croatia	**There is no legal framework for such non-standard forms of employment. Only intermittent work in seasonally occurring jobs in agriculture (voucher-based work) is covered by legislation.** Its aim is to facilitate the employment of seasonal workers in agriculture on a temporary/intermittent basis. By purchasing a voucher, an employer of a seasonal worker pays social insurance contributions on a daily basis in advance. The employment contract for seasonal work in agriculture on a temporary/intermittent basis must be concluded by purchasing a voucher before the worker commences work. This voucher must be registered in a contract. The content of this contract is regulated and cannot be modified by agreement between the contracting parties. Seasonal workers in agriculture may be employed up to 90 days within a calendar year and the work can be performed with interruptions, i.e., this 90-day period does not have to be continuous.		
Cyprus	There is no specific regulation on fixed working hours. The matter is generally regulated by the usual employment contractual relationship in employment law, as amended and adapted by the provisions provided in the EU labour law acquis for various forms of casual and precarious labour.	no obligation of the employer to regularly provide the worker with work, but with the flexibility to call on the employee(s) when needed. In such situations, there is no contract of employment until a specific offer by the employer is made, which the employee may accept or reject. If however, there is an agreement that the employer has the flexibility to call on the employee to work as needed and the worker is contractually required to accept this request for work, but the employer, on the other hand, is not obliged to regularly provide the worker with work, this aspect should be taken into consideration. Otherwise, there is no contractual obligation to accept the employer's offer to work.	

Czech Republic	In Czech Republic weekly working hours must be either agreed in the employment contract or set by the Labour Code. The employer must determine these weekly working hours according to the rules contained in the Labour Code. If the weekly working hours are not determined by the employer, it is considered an obstacle to work on the part of the employer and the employee is entitled to receive wage reimbursements. In the case of homeworkers, they set their weekly working hours themselves, but these must be set in advance.	A scheme based upon flexible provision of work by the employer is possible under an agreement to carry out work or an agreement to perform services, where no regulation exists on the employer's obligation to provide the employee with work.	Under Czech law an employee would breach his/her obligations by not accepting the work being offered and would be liable for any damages caused. The employment relationship may be terminated by the employer in such a case (depending on the severity of the breach of obligations, which is determined by the court in each individual case).
Denmark	This special form of agency work is regulated in legislation, whereas other forms are not. It is unusual to use a standardised type of classification for these different kinds of work forms. The most common description is typically "casual work" or "temporary work". Unfixed working hours schemes are not regulated in legislation, but not unusual in practice. Some rules might be included in collective agreements.	The issue concerning the obligation of the employer to regularly provide the worker with work is not regulated in legislation, but not unusual in practice. Some rules might be included in collective agreements.	The issue concerning the employee's obligation to accept any work that is offered is not regulated in legislation, but not unusual in practice. Some rules might be included in collective agreements.
Estonia	The new forms of employment are not regulated in law (with the exception of telework and agency work). According to the ECA, it is not possible to conclude an employment contract that does not stipulate the exact working hours. This requirement is checked by the labour inspectorate. In case the employment contract does not contain this information, an employer can be fined. Therefore, a situation in which no fixed working hours are determined cannot arise.	Theoretically, it is possible to agree in an employment contract which work the employer will provide to the employee, when the employer needs the employee to work and the amount of remuneration that will be paid for the hours the employee has worked. This would, in practice, cause additional complications for the employer. According to ECA § 35, if the employer cannot provide the employee with the work agreed in the employment contract, the employer will have to pay	The employment obligations shall be agreed in the employment contract or in the work description, which is usually an important element of the employment contract. An employee is not required to fulfil any of the tasks and orders requested by the employer, which are not connected with the employment contract or with its fulfilment. The employer is only required to perform work in connection with the employment contract.

		the employee's average wage.	
Finland	Zero-hours contracts are legal in Finland. In principle, all the terms of the employment contract apply to such contracts. The problem is that no legislation exists for such practices. If the employer violates employee rights, employee protection is quite weak.	employers must inform the workers of the commencement date of the work well in advance.	The majority of employees also have the right to refuse the work request.
France	These types of contracts do not exist in France.		
Germany	Temporary agency work may, in principle, also take the form of on-call work employers and employees may agree that the employee will perform work according to the employer's actual needs. The agreement must state a specific duration of weekly and daily working hours. If the duration of weekly working hours is not fixed by the parties, ten weekly working hours are deemed to have been agreed	If the duration of daily working hours is not fixed by the parties, the employer is required to call on the employee to work at least three consecutive hours per day (section 12(1) sentence 4 of the Act). If the employer calls on the employee to work for less than three consecutive hours, the employee can claim pay for three hours of work.	the employee is required to perform work if the employer requests him/her to work at least four days in advance.
Greece	No special legal framework exists that regulates the abovementioned forms of work. Casual work is common in Greece. No special legal framework, however, exists that regulates such work.		
Hungary	casual work refers to fixed-term employment between the same employer and employee: - for not more than five consecutive working days in total; - within a calendar month, for not more than fifteen calendar days in total; - within a calendar year, not more than ninety calendar days in	The employer has an obligation to inform the employee of the working time at least three days in advance.	The employee has the obligation to accept the employer's request to work.

	total. To update		
Ireland	in the event of an employer failing to require an employee to work at least 25% of the time the employee is required to be available to work for the employer, the employee is entitled to payment for 25% of those hours or 15 hours, whichever is less.	an employer shall give notice of at least 72 hours to an employee (and those with non-guaranteed hours) of any request to perform any hours of work, unless there are exceptional and unforeseeable circumstances. If the individual accepts working hours without the minimum notice, the employer will pay them 150% of the rate they would have been paid for the period in question.	
Italy	The legislator has, however, regulated two types of on-call work (casual work) in which the employee's availability to work for the employer differs: in the first form of on-call work, the worker is required to work for the employer upon request, while in the second form, there is no obligation on the part of the worker to work for the employer and he or she is free to accept the request to work or not.		in the first form of on-call work, the worker is required to work for the employer upon request, while in the second form, there is no obligation on the part of the worker to work for the employer and he or she is free to accept the request to work or not.
Latvia	Latvian law does not regulate any non-standard forms of employment, although they exist in practice. For example, in the retail sector, sales persons are occasionally employed on the basis of an employment contract laying down a low number of working hours while working full-time in practice. In Latvia, all mandatory minimum rights are applicable to those with the status of employee, while those with the status of self-employed workers have no employment rights		
Lithuania	There are no such types of arrangements		
Luxembourg	There is no contract in-between an employment contract and a service contract for independent workers. Flexible forms of work simply do not exist, and there is no legal framework for them.		

Malta	There is no ad hoc legislation for atypical work contracts. Instead, the regulatory framework applied to typical work contracts is used for atypical work contracts. The Employment and Industrial Relations Act (Chapter 452 of the Revised Edition of the Laws of Malta) together with the relative subsidiary legislation is applied to these contracts.		
The Netherlands	As of 1 January 2015, the provision containing the right to continuation of wages (Art. 7:628 Netherlands Civil Code) has been amended. This provision entitles workers to receive wages if and when the lack of work is attributable to the employer. Economic reasons (economic downturn, lack of clients, production difficulties) are considered attributable to employers under established case law. So-called zero-hours contracts are seen as deviations from Art. 7:628A general duty to provide work has not been recognised (yet) in the case law of the Supreme Court, however, under Art. 7:611 Netherlands Civil Code, lower courts consistently hold that work may not be withheld for arbitrary reasons.		
Poland	In general, Polish labour law is rigid and focuses on the traditional employment contract. Only two new forms employment contracts are expressly regulated in national law, namely temporary agency work and telework (see request 1). There are neither other specific forms of employment, nor judicial developments in this respect. No specific rules on fragmented, unpredictable or predictable work exist. An employment contract that does not stipulate fixed working hours (zero-hours contract) would be inadmissible under Polish law.	There are no regulations on on-call work. An employer is required to provide the employee with work on a continuous and regular basis.	Under an employment contract, an employee is required to follow the employer's instructions. Refusal to perform the work agreed in the contract constitutes a violation of employee obligations.
Portugal	Intermittent work is also regulated in the PLC (since 2009) as a specific type of employment. Previously, it was only foreseen for artistic activities in accordance with the special employment legal regime set forth in Law No. 4/2008 of 7 February. Intermittent work is regulated in Articles 157 to 160 of PLC and requires the conclusion of a contract of indefinite duration (thus, excluding fixed-term or temporary employment contracts), where periods of work (minimum of 6 months per year) are followed by periods of inactivity – throughout these periods, the employees are, nevertheless, entitled to compensation paid by the employer. Such employment contracts are mostly applicable to employers with variations in activity throughout the year		
Romania	Romanian labour law is fairly inflexible, and discourages the development and proliferation of atypical forms of employment contracts. Moreover, most of the "very atypical" contracts (e.g., zero-hours contracts, job sharing, etc.) are illegal. There is however, a special piece of legislation on casual work. The minimum duration of work is one day,		

	corresponding to 8 hours of work. A day labourer can work for the same beneficiary for up to 90 days (not necessarily continuously) within a calendar year. The duration of the work day may not exceed 12 hours. Minors can work up to 6 hours per day, but for no more than 30 hours per week and in no case at night.		
Slovakia	The system of "No fixed working hours" is unknown in Slovak labour law.	Furthermore, Slovak labour law is not aware of the system that there is no obligation of the employer to regularly provide the worker with work, but has the flexibility to call on them when needed.	The employee has no obligation to accept any work that is offered to him/her.
Slovenia	. "On-call contracts" as described in the "Eurofound project" and "zero-hours contracts" are not covered by legislation. In case only one hour of work per week or per day is required, a part-time contract can be concluded. If no permanent and uninterrupted work is required or if the work is only required for a short period of time, the conclusion of a civil law contract (contract for services and/or contract for /labour/work) may be concluded.	The employer's obligation to regularly provide the worker with work is expressly laid down for the employer as a party to the employment contract	In principle, the worker must perform the work for which the employment contract has been concluded. The ERA-1, nevertheless, contains some provisions pursuant to which this basic rule does not apply
Spain	In a strict sense, on-call work is not covered in Spanish labour law, but several instruments exist that might play a similar role. Specifically, in the context of part-time employment contracts, under which it is possible for the employer to request the employee to work in accordance with its preferred working time distribution without a predetermined timetable and practically at will, the employee is not informed of the precise commencement of the assignment until three days in advance (i.e., the employer only has to notify the employee three days in advance). Spanish labour law does not cover zero-hour work. It is not explicitly prohibited, but the conclusion of such contracts is not possible. Casual work is not explicitly regulated in Spain, either. However, its legal status is described in more traditional labour standards. For example, seasonal jobs can be classified as discontinuous permanent contracts. It should be noted that no legal provisions exist on new types of work, such as the voucher system, a form of work which does not seem possible in Spain.		

Sweden	No fixed working hour contracts are legally concluded for a very short term and fixed-term contracts fall under the Employment Protection Act (5 §) as "general fixed-term contracts". They can be successively concluded, but will eventually be transformed into a permanent contract if the employee has been employed for a total of two years (counted in terms of days, i.e., 365 days + 365 days) within a five-year period.	Since every new day would constitute a successive fixed-term contract, the employee could refuse to agree to such a new day-long contract.	This also goes for any obligation of the employee to accept any work that is offered.
UK	Zero-hours contracts (ZHC) have long been a feature of the UK employment scene.	If the employer has no obligation to offer work, the individual may not be an 'employee' in between periods of work, as the arrangement would lack mutuality of obligation. However, if in practice the individual does not generally turn down work when it is offered, and even more so, if they work regular hours, it may be possible to infer the kind of reciprocity needed to establish mutuality, and, under certain circumstances, for the court to disregard the formal contract terms as a 'sham'.	

4B. PROVISIONS REGARDING EXCLUSIVITY CLAUSES

Country	Prohibition of exclusivity clauses provisions
AT	Prohibition does not exist in statutory law but exclusivity clauses are considered not compliant with national legislation due to the disproportionality between interest of the employer and the employee.
BE	Exclusivity clauses are considered illegal as in breach with the principle of freedom of employment and freedom of enterprise.
BG	No existing legislation
HR	No existing legislation
CY	No regulation in Cypriot law prevents the use of exclusivity clauses to prevent a contracted worker, who is not guaranteed a minimum number of work hours, from seeking additional work elsewhere.
CZ	The employee is only limited to perform work for the employer with the same or similar objective of the activity as his main employer has, he could do so only with prior written approval for his employer.
DK	No existing legislation,but could be contrary to unwritten labour law principles or unreasonable according to section 36 of the Act on Agreements.
EE	No existing legislation, however such a clause would worsen the position of the employee in relation to the law (ECA) and would therefore be null and void. It is possible to restrict additional employment to avoid unfair competition.
ES	Exclusivity clauses are considered as not compliant with the constitutional right to freedom work
FI	No existing legislation - The employee may not carry out competing activity, but, in practice, employers who conclude zero-hours contracts usually allow employees to work for other employers.
FR	Zero hours and on demand work prohibited.
DE	No explicit prohibition of exclusivity clauses but contractual arrangements aiming to prevent the employee from entering into secondary employment is in breach of freedom of occupation (art 12 of Constitution), they could be justified by a proper business interest.
GR	No existing legislation
HU	No prohibition of exclusivity clauses
IE	*No info*
IT	Exclusivity clauses are prohibited for on demand workers by article 15 of decree n81 of 2015.
LV	No existing legislation
LT	No existing legislation
LU	No existing legislation

Country	Prohibition of exclusivity clauses provisions
MT	No legislation
NL	No legislation
PO	No legislation
PT	No explicit prohibition of exclusivity clauses.
RO	Exclusivity clauses are forbidden for all employees as considered as violating the constitutional right to work. For independent workers there is no prohibition in the legislation.
SV	No legislation
SL	No explicit prohibition.
Sweden	No legislation on prohibition of exclusivity clauses but case law using various criteria: remuneration of the employee, sensitivity of employer's business, duration of the clause.
UK	Exclusivity clauses are prohibited in the small business enterprise and employment Act of 2015. The law of 26 May 2015 was indeed introduced for preventing employers from enforcing 'exclusivity clauses' in a zero-hours contract restricting workers from working for other employers. This was included in s.27A Employment Rights Act 1996. Under the subsequent Redress Regulations: - any dismissal of a zero-hours contract employee is automatically unfair, if the principal reason is that s/he breached a contractual clause prohibiting him/her from working for another employer - no qualifying period is required to bring such an unfair dismissal claim; and, - it is also unlawful to submit a zero-hours worker (note: worker, not only employee) to detriments if they work for another employer in breach of a clause prohibiting them from doing so.

4.C.PROVISIONS ON ON-DEMAND WORK/ZERO HOURS PROVISIONS

Country	On demand work /zero hours provisions
AT	No explicit statutory provision on on-demand work and this form of work actually is deemed illegal by the jurisprudence. In a case that also went up for a preliminary hearing to the European Court of Justice (C-313/02 – Wippel) the Austrian Supreme Court (8 ObA 116/04y) decided that arrangements under which hours of work and the organisation of working time are dependent upon the quantity of available work and are determined only on a case-by-case basis by agreement between the parties are contravening working time laws.
BE	No existing legislation regarding on demand work.
BG	On demand work is not allowed.

Country	On demand work /zero hours provisions
HR	No existing legislation regarding on demand work.
CY	No existing legislation regarding on demand work.
CZ	There are two special agreements outside of employment law relationship where working time could not be determined: agreement on working activities and an agreement on work to perform. Both agreements have only limited hours per calendar years (week) and employee had no rights for benefits, holiday and very limited protection against dismissal. There is no legislation for those types of employments.
DK	Regulated by sectoral collective agreement
EE	No existing legislation regarding on demand work. According to the Estonian Employment Contracts' Act, section 5 the working time has to be agreed in an employment contract. It is not possible to agree only the minimum or maximum working-time, also it is not allowed to agree working time as the certain period e.g. 25 – 35 hrs in a week. In case the agreement on working time is not clear enough, the ECA will be applied. According to the ECA section 43 1) the presumption is, that working time is 40 hours during 7 days period or 8 hours per day.
ES	On demand work, zero hours contract are not allowed. Casual work is not regulated but seasonal work is considered as discontinuous permanent contract, contract are concluded for indefinite duration but worker is awaiting employer demand (art 16 of the Labour code).
FI	No existing legislation regarding on demand work.
FR	On demand work and zero hours contract are prohibited. (mechanism of on demand time is existing)
DE	On-demand work is regulated in section 12 of the Part Time and Fixed-Term Contracts Act (Teilzeit- und Befristungsgesetz).The parties to the contract must specify the number of daily and weekly working hours. In case that there is no such agreement, the amount of weekly working hours is deemed to be ten, and the amount of daily working hours is deemed to be three .
GR	No legislation
HU	On demand employment is regulated in national provisions as special kind of part time work with a maximum daily working time of 6 hours.
IE	The Government is now proposing amendments to the 1994 and 1997 Acts which will include imposing an obligation on employers to provide information on five core terms of employment within five days of the employee commencing work, one of which is what the employer reasonably expects the normal working day and working week duration to be. Zero hour contracts are to be prohibited except in the case of genuine casual work or emergency cover or short-term relief work. In circumstances where employees regularly work more hours than their contract states, such employees will have the right to move to a band of hours that better

Country	On demand work /zero hours provisions
	reflects the actual hours worked over an 18 month reference period.
IT	On demand work is regulated by article 15 of decree n81 of 2015. New legislation on casual work Act 24 April 2017. Article 54-bis of Act n. 96 of 2017 allows casual work as for activities that, within the year, produce: a) a remuneration that does not exceed Euro 5.000 per worker with reference to all his or her contractors; b) a remuneration that does not exceed Euro 5.000 for each contractor as far as the overall use of casual work is concerned; c) a remuneration that does not exceed Euro 2.500 for each worker in favour of the same contractor. In any case, activities in favour of the same contractor cannot exceed 280 days per year. In case of violation of the provisions under c), the worker may lodge a claim in court asking for the recognition of a subordinate employment relationship with the relevant contractor.
LV	On demand work is not allowed, only part time work is allowed and regulated.
LT	
LU	On demand work is not allowed, only part time work is allowed and regulated.
MT	No legislation
NL	Under art. 7:628 Netherlands Civil Code (BW) zero-hour clauses can only be concluded for the first 6 months of employment with a particular employer.
PL	No legislation related to on demand work and zero hours contract
PT	Intermittent work is regulated (art 157 to 160 of labour code) and requires the conclusion of an open ended contract with a minimum of 6 months of work /year (including 4 months continuous), mostly applicable in seasonal activities.
RO	Draft law on casual work in agriculture ' day labourer ', those workers could carry out 180 days per year on the basis of this type of contract.
SK	On demand work is not regulated as such however the Slovak Labour Code regulates not only the labour (employment) contract (and employment relationship) but also “agreements on work performed outside employment relationship” (Articles 223 – 228a). According to the Article 223/1 of the Labour Code in order to perform their tasks or to provide for their needs, employers may conclude agreements with natural persons on work performed outside an employment relationship („work performance agreements“, „agreements on work activities“ and „agreements on temporary jobs for students“) for work that is limited in its results („work performance agreement“) or occasional activities limited by the type of work („agreement on work activities“, „agreement on temporary work for students“). These agreements have only supplemental character (considering the common past with the Czech republic (Labour Code Nr. 65/1965 Coll.)
SL	No existing legislation on demand work (only call time mechanism regulated).
ES	Zero hours contract and on demand work are not allowed but casual work is existing for seasonal jobs and regulated as "discontinuous permanent contract". These employment contracts can be signed when the activity takes place on predetermined dates (and it would be part-time work, under Spanish Law), but also for seasonal activities with uncertain dates. The workers conclude a contract of indefinite duration, but they only work when called on by the employer (article 16 of the Labour Code).

Country	On demand work /zero hours provisions
Sweden	No statutory legislation but could be regulated in collective agreements.
UK	The employement right act 1996 regulates zero hours contract and defines it as follow :' contract of employment or orther work contract under wich the undertaking to do or perfom work or services un an undertaking to do conditionally on the employer making work or services available to the worker and there is no certainty that any such work of services will be made available to the worker .

4.D. PROVISIONS REGARDING MINIMUM ADVANCE NOTICE PERIOD BEFORE A NEW ASSIGNMENT / WORK PERIOD

Country	Minimum advance notice before a new assignment or a new period of work
AT	No explicit statutory provision on on-demand work and this form of work actually is deemed illegal by the jurisprudence. If the employer wants to allocate the agreed number of hours in a irregular manner (e.g. if 20 hours per week are agreed upon and the employee is to work 35 hours in one week and 5 weeks in another) pursuant to § 19c Working Time Act this has to be done with a two weeks' notice and the employee may refuse to work these hours if prevailing interest forbid him/her to do so (e.g. obligations to care for a child). The possibility to change the allocation of the agreed working hours unilaterally (e.g. by fixing a shift schedule) also has to be included in the employment contract otherwise the agreement of the employee is necessary.
BE	No legislation for on demand workers but legislation for part time workers with variable schedule.
BG	No legislation for on demand workers
HR	No legislation for on demand workers
CY	No legislation for on demand workers
CZ	The general practice for advance notice is 14 days which could be shorter based on agreement between employer and the employee. However, this rule applies only for employment contracts; there is no such a rule for agreements outside of employment law relationship.
DK	Regulated by sectoral collective agreement
EE	No legislation for on demand workers

Country	Minimum advance notice before a new assignment or a new period of work
ES	Only for part time workers, the employer may require additional hours with 3 days' notice.
FI	No existing legislation
FR	On call work and zero hours are prohibited.
DE	The employer shall respect a minimum advance notice period of four days. The parties to a collective agreement may set aside the above-mentioned statutory provisions as long as they include according provisions (on minimum daily and weekly working hours as well as on an advance notice period) in their agreement).
GR	No legislation for on demand workers
HU	The employer shall inform the employee before his assignment at least 3 days in advance.
IE	Draft bill aiming to prohibit zero hours contract in except in the case of genuine casual work or emergency cover or short term relief work.
IT	For the on call workers there is a right to a minimum advance notice of 1 day before a new assignment or a new period of work.
LV	On call work is not allowed
LT	No legislation
LU	On call work is not allowed
MT	No legislation
NL	No legislation
PL	No legislation
PT	For intermittent workers the employer should respect a notice of 20 days for each period of work.
RO	No legislation for on demand workers
SK	No legislation
SL	No legislation for on demand workers
Sweden	No specific legislative provisions but collective agreements regulations.
UK	No legislation

4.E. PROVISIONS REGARDING MINIMUM HOURS SET AT THE AVERAGE LEVEL OF HOURS WORK DURING A PRECEDENT PERIOD

Country	Minimum of hours set at the average level of hours worked during a preceding period
AT	No explicit statutory provision on on-demand work and this form of work actually is deemed illegal by the jurisprudence. In Austria employment contracts have to include an amount of regular working time. If not, then an appropriate amount of working hours is deemed to be included that conforms to the normal amount of working time to be expected at the time of the conclusion of the contract. A change of this amount in working hours has to be agreed on explicitly in writing otherwise the original agreement is still in force meaning that if the worked hours are underneath it the employee still has to be paid the hours originally agreed upon and hours exceeding it at subject to a 25 % extra time premium.
BE	No legislation
BG	On call work is not allowed
HR	No legislation
CY	No legislation
CZ	No legislation
DK	No statutory legislation however from case law if the employee works more the duration notified in the written statement, the employee is entitled to receive a new written statement with the new average weekly working hours.
EE	No legislation
ES	No legislation
FI	No existing legislation
FR	Zero hours and on call work prohibited.
DE	The parties to the contract must specify the number of daily and weekly working hours. In case that there is no such agreement, the amount of weekly working hours is deemed to be ten , and the amount of daily working hours is deemed to be three (section 12 of the part time fixed term act).
GR	No legislation.
HU	On demand work is regulated as a specific kind of part time work , the reference period does not exceed 4 months.
IE	Draft bill aiming to prohibit zero hours contract in except in the case of genuine casual work or emergency cover or short term relief work.

Country	Minimum of hours set at the average level of hours worked during a preceding period
IT	No legislation.
LV	On call work is not allowed
LT	
LU	On call work is not allowed
MT	No legislation
NL	Under art. 7:610b BW the average number of hours worked in a 3 month period is presumed to be the number of working hours set in the contract. It is a reversible legal presumption; the employer may prove that the number of hours is not representative. E.g.: the worker was called upon more often due to exceptional circumstances, such as illness of colleagues or extreme weather.
Pl	No legislation
PT	No legislation
RO	No legislation
SK	No legislation
SL	No legislation
Sweden	No legislation but could be regulated in collective agreements.
UK	No legislation

4.F. PROVISIONS REGARDING REFERENCE HOURS

Country	Reference hours in which working hours may vary
AT	No explicit statutory provision on on-demand work and this form of work actually is deemed illegal by the jurisprudence. In a case that also went up for a preliminary hearing to the European Court of Justice (C-313/02 – Wippel) the Austrian Supreme Court (8 ObA 116/04y) decided that arrangements under which hours of work and the organisation of working time are dependent upon the quantity of available work and are determined only on a case-by-case basis by agreement between the parties are contravening working time laws. Employment contracts have to include an amount of regular working time. If this is not the case then an appropriate amount of working hours is deemed to be included that conforms with the normal amount of working time to be expected at the time of the conclusion of the contract. This information also has to be provided for in written statement of the of the conditions applicable to the contract (§ 2 Act on the Adaption of Employment Contract Law – Arbeitsvertragsrechtsanpassungsgesetz – AVRAG). The breach of this obligation though does not result in a fixed number of hours or similar but only in a right of the employee to demand this information.

Country	Reference hours in which working hours may vary
BE	No legislation for on demand workers. Legislation for part time workers with the variable schedule
BG	No legislation
HR	No legislation
CY	No legislation
CZ	Reference period of 26 weeks which could be extended to 52 weeks by collective agreements.
DK	Regulated by sectoral collective agreement or employment contract.
EE	No legislation
ES	No legislation
FI	No existing legislation
FR	Zero hours and on demand work prohibited.
DE	The parties to the contract must specify the number of daily and weekly working hours. In case that there is no such agreement, the amount of weekly working hours is deemed to be ten and the amount of daily working hours is deemed to be three (section 12 of fixed term part time act)
GR	No legislation
HU	No legislation
IE	Draft bill aiming to prohibit zero hours contract in except in the case of genuine casual work or emergency cover or short term relief work.
IT	No legislation
LV	On demand work is not allowed
LT	
LU	On demand work is not allowed.
MT	No legislation
NL	No legislation
PL	No legislation
PT	No legislation
RO	No legislation

Country	Reference hours in which working hours may vary
SK	No legislation
SL	No legislation
ES	No legislation
Sweden	No legislation
UK	No legislation

4.G. PROVISIONS RELATING TO THE RIGHT TO REQUEST OTHER EMPLOYMENT RELATIONSHIP

Country	Right to request another form of employment
AT	Not existing
BE	Only part time workers could benefit from a priority in obtaining employment in a full time or part time position with higher number of working hours
BG	Not existing
HR	Employer is obliged to inform fixed term employees about potential open ended contract. The employer is obliged to take into consideration the request of a full time employee for a part time employment contract and vice versa (art 62(7) of 2014 labour act). The workers with a partial loss of work capacity have the right to request another form of employment (from part time to full time).
CY	Not existing
CZ	Only in special circumstances such as pregnancy or dependants carers.
DK	Legislation exists for part time workers including specific measures to ease their access to full time jobs (provide timely information to available positions)
EE	Not existing
ES	The employer must inform temporary workers of permanent vacancies, part time workers of full time vacancies.

Country	Right to request another form of employment
FI	No existing legislation
FR	Employer is obliged to inform atypical workers of available open ended contract in the company (only information obligation without obligation to reply to request). However, part time workers willing to be employed full time benefit from a priority in their employment, also for night worker willing to return to day work.
DE	The part time worker benefits from a priority to full fill a full time position if they will.
GR	The right to request another form of employment and the obligation for the employer to reply is recognized for part time workers willing to be employed full time and vice versa under certain conditions. If the employer does not reply in 30 days in a written form to such demand it is considered as accepted.
HU	The employer shall inform the employee on the possibility to change a new form of employment for part time workers and vice versa.
IE	No general right, employees returning from parental leave are entitled to change in working pattern, this request should be considered by the employer but might not be granted.
IT	Only right for full time workers to reduce working hours for workers affected by oncological pathologies.
LV	The right to request a part time job for full time workers in case of pregnancy, return from maternity leave, dependant carers is recognized with the obligation for the employer to grant it.
LT	
LU	Only for employee returning from parental leave, the employer has obligation to provide a reasoned reply.
MT	No legislation
NL	No legislation
PL	Only right for part time workers to request a modification of the working time duration but no obligation for the employer to grant it.
PT	The employer has the obligation to reply to a request a part time for parents of child below 12 years old.
RO	Employers are obliged to inform fixed term workers about full time vacancies. No general right to request other form of employment and the obligation to reply it.
SK	Employers are obliged to inform fixed term workers about full time vacancies. No general right to request other form of employment and the obligation to reply it.
SL	No specific right to request another form of employment
Sweden	Employers are obliged to inform fixed term workers about full time vacancies. If a fixed term contract exceeds the statutory provisions on maximum duration, the fixed term contract is automatically transformed into a permanent contract.
UK	No legislation

TABLE 5: PROBATION IN EU MEMBER STATES

Member State	Length of probation period	Particularity	Termination
Austria	A probation period may only last for **one month** and cannot be extend by collective agreement. A probation period has to be agreed by both parties or must be included in a collective agreement.	Only in special Acts such as the Act on Vocational Training, the probation is longer (no longer than three months).	All parties may terminate the employment relationship without any notice period or reason.
Belgium	The probation period has been **abolished**.	Exceptions are made for students and temporary agency workers.	N/A
Bulgaria	The maximum duration is **six months**. The exact duration shall be specified in the employment contract.	Collective agreements cannot deviate from the legal provisions.	All parties may terminate the employment contract without prior notice.
Croatia	The probation period may not exceed **six months**.	Collective agreements cannot introduce less favourable agreements.	The period of notice is a minimum of seven days. In case the worker fails ro fulfil the requirements of the post, the dismissal procedure, severance pay and collective redundancies is not applicable.
Cyprus	The probation period is limited to six months in Cypriot law.	Any probation period longer than longer than 26 weeks must be agreed in writing by the two parties at the commencement of the employment.	The contract may be terminated at any time by the employer without notice or compensation.
Czech Republic	The maximum duration is **three months** for ordinary employees and **six months** for	For fixed-term employees, the probation period may not exceed one half of their term of employment. It is not possible to derogate from the legal provisions	Both the employer and employee may terminate the employment relationship without stating a reason; however, it must be made in writing. An employer

	managerial employees.	through collective agreement. The employer may commit in a collective agreement to not implement probation periods, but would breach the collective agreement and be liable for damages to the trade unions (if any damage occurs) if a probation period is then implemented. The probation period would nonetheless be valid.	cannot terminate an employment relationship during the first 14 days that an employee is temporary incapacitated to work. The probation period is, however, extended for the duration of this period.
Denmark	According to the White Collar Workers Act, the duration of the probation period may not be longer than **three months**.	It is not possible to derogate from this provision through collective agreement	The employer is entitled to terminate the relationship with a notice of 14 days.
Estonia	The length of the probation period is four months unless a shorter period is agreed by both periods.		The employment contract can be terminated by both parties. The notice period is 15 days and a reason must be presented.
Finland	The maximum period is **four months.** If the employer provides specific, work-related training to the employee for a continuous period of over four months, a probation period of no more than six months may be agreed upon. For many civil servants, the maximum probation period is six months.	For **fixed-term employees**, If an employment relationship is shorter than eight months, the probation period may not exceed 50 per cent of the duration of employment.	During the probation period, both parties can terminate the employment contract with immediate effect. The only restriction is that the grounds therefore may not be discriminatory or inappropriate.
France	According to Article L. 1221-19 of the French Labour code, the probation period is:	For **fixed-term employees**, the probation period is of one day per week whilst not exceeding two weeks (less than six months) and one day per week whilst not	The notice period for an employer is: - 48 hours during the first month of employment

	- Employees: 2 months - Supervisors: 4 months - Executives: 4 months	exceeding one month (more than six months). If provided for by collective agreements, these periods may be doubled.	- 2 weeks after one month of employment - 1 month after 3 months of employment The employee must respect a notice period of 48 hours in ech case.
Germany	According to the courts, the period of probation must not exceed **six months**.	A collective agreement cannot exceed this period.	A notice period of two weeks applies. As the Act on Dismissal Protection does not apply in most cases, the employer is in principle free to give notice at his/her volition.
Greece	There is no mentioning of a probation period, however, employees with less than one year of service are subject to similar conditions.	It seems possible to determine shorter periods of probation via collective agreements.	No notice of termination is required in the event of breach of the employment contract.
Hungary	Parties may agree on a probation period no longer than **three months**.	The probation period may be extended once to six months. Collective agreements can extend the duration to six months, albeit there is no possibility to extend it.	Both parties can terminate the employment contract without prior notice or providing reasons. This has been contested by the national trade unions.
Ireland	The length of probation period is not regulated, however, an employee has to be employed for at least **twelve months** before he or she can bring an unfair dismissal complaint.		There is no need to provide a reason within the first twelve months.
Italy	A maximum duration of six months is indirectly laid down in Article 10 of Act 604 of	The probation period for domestic workers is of one month.	Each party can terminate the contract without a term of notice and without any justification. According to case law, the employee may challenge the dismissal on

	1966.		discriminatory grounds or because the probation period was completed or did not take place.
Latvia	The probation period may not exceed **three months**.	The probation period must be agreed in the employment contract.	Both parties can terminate the contract without a term of notice or justification.
Lithuania	A probation period should not exceed **three** months.	Collective agreements can establish shorter periods.	Both parties can terminate the employment contract with a notice of three days.
Luxembourg	The maximum duration is **six months**. The minimum period is two weeks.	- If the worker's qualification does not go beyond the level of CATP-diploma, the period is three months. - If the employee's monthly wage is higher than a certain amount (ca. 4,000 Eurosà, the period is 12 months. - For interim workers, the probation period may not exceed three days (if less than a month), five days (if more than a month) or eight days (if more than two months). It is not possible to extend the admissible durtion through collective agreement.	Dismissals may not be unfair. The duration of the period of notice depends on the duration of the probation period: - 2 days if the probation period is 2 weeks - 3 days if the probation period is 3 weeks - 4 days if the probation period is 4 weeks - 15 days if the probation period is 1-3 months - 16 days if the probation period is 4 months - 20 days if the probation period is 5 months - 24 days if the probation period is 6 months - 28 days if the probation period is 7 months - 1 months if the probation period is longer than 7 months
Malta	The first **six months** of any employment relationship under	For technical, executive, administrative or managerial posts and whose wages are at least the double of the	Any party may terminate the employment contract. If the employee is employed for more than one month, a

	a contract of service is probationary.	minimum wage, the probation period is one year. There is the possibility to derogate via collective agreement or by means of individual contract employment.	one week notice shall be given to the other party.
Netherlands	A probation period has a maximum period of two months.	For fixed-term employees with an contract of less than two years, the maximum period is of one month. Collective agreements can deviate from the one-month term but cannot exceed it above two months.	Employers are free to dismiss employees except when it is on discriminatory charges.
Poland	Under Polish law, a separate type of employment contract exists, namely the contract for probation. This contract can be concluded for a period of no longer than three months. A subsequent contract can be concluded if the employee is expected to carry out another type of work or when at least three years has elapsed since the termination of an employment contract between the parties.	Parties are free to reduce the probation period.	Each party can terminate the contract for probation with a period of notice of: - three working days if the period does not exceed two weeks - one week if the period is longer than two weeks - two weeks if the period is three months.
Portugal	The probation period for regular employees is 90 days	- The probation period for qualified employees is 180 days - Administrative or supervising personel: 240 days For **fixed-term employees** with a contract of less than six months, the probation period is 15 days. If more	- 7 days if the probation period is longer than 60 days - 14 days if the probation period is longer than 60 days

		than six months, the probation period is 30 days.	
Romania	The probation period is no more than 90 calendar days for operational positions and 120 days for management positions.	Collective agreements can reduce the probation periods, however, this is rare. A draft amendment proposes to include a shorter probation period when hiring unskilled workers.	Both parties can terminate the employment contract without any notice period or motivation
Slovakia	The maximum period is three months and must be agreed in writing.	The maximum probation period is six months for executive positions. There is no possibility to derogate via collective agreements. It may be extended in case of absence	Both parties can terminate the employment contract without any reason with a notice period of three months. If a mother who has given birth less than nine months ago can only see her employment contract be terminated in exceptional cases unrelated to the pregnancy and must be duly justified.
Slovenia	The probation period may not last longer than six months.	Collective agreements may derogate from the general provisions as long as it Is in compliance with the upper limit. The probation period may be extended in cases of absence from work.	Employees are entitled to a severance payment upon termination of the employment contract. The may also agree on an adequate compensation instead of enforcing the notice period.
Spain	The probation period may not exceed six months for qualified technicians and two months for other types of workers.	The probation period may not exceed three months for workers who are not qualified technicians and are employed in a company with less than 25 employees. For **fixed-term** employees, the probation period may not exceed one month for contracts of six months or less, unless otherwise provided in a collective agreemetnt. The probationary period may not exceed one month for	Both parties may terminate the employment contract without period of notice or reason except on discriminatory grounds.

		training contracts with workers of medium-level qualification, or two months for workers with high-level qualification, unless otherwise provided in in collective agreement.	
Sweden	The probation period is not regulated but both parties can agree on a probation period of maximum six months.	This period can be extended or reduced through collective agreements.	The employment contract can be terminated without any specific reasons or period of notice.
U.K.	UK law does not contain any specific regulation on probation periods. Usually, the probation period in a contract is shorter than the two-year rule for claiming unfair dismissal.		If a contract of employment is terminated before the expiry of two years, the individual cannot claim unfair dismissal (unless the termination is for an 'automatically' unfair reason, such as pregnancy, in which case there is no service requirement and protection begins from day one).

TABLE 6. OVERVIEW OF ENFORCEMENT MECHANISMS

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
Austria	There are no special means of enforcement regarding the right of the employee to a written statement. As with any claims resulting from the employment relationship the employee can file a law suit with the competent labour court (Arbeits- und Sozialgericht). The panel consists of one professional judge and two lay judges. The lay judges are elected by the legal bodies representing the employers (economic chambers) and the employees (labour chambers).	Judicial resolution (Labour Court)		
Belgium	The employee can rely on the labour inspection to take care of their complaints about the application of and the respect for their essential labour conditions. The Inspectorate has extensive competences: it has the power to give injunctions to the employer for a regularization or back-payment within a certain time limit, in the worst case, to draw up a penal report that may lead to a prosecution. The individual employee can always, on his own or with help of a trade union, initiate legal proceedings before the labour tribunal in order to enforce his essential labour rights. The employment tribunal is fully competent. Such a	Judicial resolution (Labour Court)	Labour Inspectorate	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	lawsuit is not bound by the requirement of prior proof of default or a complaint filed. The usual rules of proof apply in the procedure, but the employee can base his complaint on a report made up by the inspection as a proof. In extreme cases the Public Prosecutor can, when he is informed by the inspection of abuses, institute a "class action" on behalf of a collective of employees who are in the same situation.			
Bulgaria	Every employee has the right to inform the Labour Inspectorate for violations of labour legislation. In such cases the Labour inspection has the right to require from the employer to provide explanations, information and to produce all documents, papers and certified copies thereof as may be necessary in connection with the exercise of control. In cases of violation of the obligation, the Labour inspectorate may give mandatory prescription to employer, user undertaking and officials for elimination of the violation. The employee is entitled also to defend his/her right before the court. This will be a labour dispute under Art. 357 (1) LC - a dispute between an employee and an employer regarding the formation or performance of employment relationship.	Judicial resolution (Labour Court)	Labour Inspectorate	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
Croatia	The employee who considers that his employer has violated any of his rights may require the employer to comply within fifteen days following the receipt of a decision violating this right, or following the day when he gained knowledge of such violation. If the employer does not meet the mentioned worker's request, the worker may within another fifteen days seek judicial protection before the court having jurisdiction (Labour Court). A worker who has failed to submit the request to his employer, may not seek judicial protection before the competent court, except in the case of the worker's claim for indemnification for damages or another financial claim pertaining to the employment. When the laws, regulations or administrative provisions, collective agreement or working regulations provide for an amicable dispute resolution, the deadline of fifteen days for filing a request with the court starts as of the date when the procedure for such resolution ended.	Judicial resolution (Labour Court) after notification procedure fails		Amicable resolution mechanisms can be in place
Cyprus	Redress can be sought before the Labour Court.	Judicial resolution (Labour Court)		
Czech Republic	When a trade union is operating in the undertaking, the employee refers his/her complaint to its representatives who are to solve them with the employer. In addition, employees	Judicial resolution (Ordinary Civil Court)	State Labour Inspection Office (SUIP)	Trade Union conciliatory power

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	have the opportunity to make a complaint to the public supervisory body, the State Labour Inspection Office (SUIP). SUIP may impose sanctions on the employer. In case of further or continuing disagreement, the employee can go to court.			
Denmark	According to the national legislation transposing the directive, questions as to whether the employer has complied with his/her obligation to provide information shall be decided by the National Social Appeals Board´s Employment Committee (a commission whose members are appointed by the minister of Labour after recommendation of social partners and the union of Danish municipalities). Where the employer has failed to comply with his/her obligation to provide information, the employee may be awarded compensation by the courts.	Court (damages award)(Ordinary Civil Court)	Social Appeals Board´s Employment Committee	
Estonia	According to the Estonian legislation transposing the Directive, If the information has not been communicated to the employee before commencement of work, the employee may demand it at any time. The employer is then be obligated to provide the information within two weeks from such a request. In addition, the fulfilment of the requirements stemming from the Directive is subject to State	Judicial resolution (not at the same time as resolution in front of a Labour Dispute Committee)	Labour Inspectorate (monitoring and enforcement)	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	supervision, exercised by the Labour Inspectorate. The failure of the employer to comply with his information obligation is punishable with a fine (up to 100 fine units or, for legal persons, to Euro 1300) by the Labour Inspectorate (According to the Code of Misdemeanour Procedure). The employee may also address the employer's alleged violation pursuant to the rules applicable to individual labour disputes. These can be resolved by a procedure before a *labour dispute committee (*for disputes not over financial claims exceeding EUR 10,000) or before a court. The employee (as the employer) has the right of recourse to a labour dispute committee or to a court, but concurrent filing is prohibited.			
Finland	The occupational safety and health authorities are responsible for monitoring employers' compliance and impose sanctions. If an employer or its representative intentionally or through negligence do not comply with the information obligation, the occupational safety and health authority can impose a fine on the employer for his/her violation. The authority can require the employer to furnish copies of documents and detailed reports on agreements concluded orally.	Judicial resolution (Ordinary Civil Court)	Occupational safety and health authorities (monitoring and sanctions)	
France	The lack of the document of engagement and the	Judicial resolution	National Commission to	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	pays slip (the two means of information provided for by French law for the employer to comply with his/her informative obligation) can be pursued as fraud. National Commission to Combat Illegal Employment (CNLTI) is responsible to investigate and monitor employers' fulfilment of their legal obligation and to combat undeclared work (which normally implies a lack of employment contract, social security registration and thus no document of engagement, lack of pay slips). The employee can always submit his/her claim with regard to the existence and content of the employment relationship to the labour tribunal.	(Labour court)	Combat Illegal Employment (CNLTI)	
Germany	Where no written statement has been furnished by the employer or the statement is incomplete, the employee is entitled to sue the employer for specific performance. Generally the labour inspection authorities do not enforce the NachwG.	Judicial resolution (Labour court)		
Greece	The Greek Labour Inspectorate (SEPE) is competent to monitor employers' compliance and impose sanctions in cases relating to the employment relationship (including the lack of compliance with the obligation discussed here). The employer is first heard by the inspectorate.	Judicial resolution (Ordinary Civil Court)	Greek Labour Inspectorate (SEPE) (monitoring and sanctions)	
Hungary	Where no written statement has been	Administrative	Labour Inspectorate	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	furnished by the employer or the statement is incomplete, the employee may initiate a court procedure. Similarly, if the notification contains any false facts the employee may bring action before the court for having such facts abolished or revised. In the case of individual labour disputes, competence lies with the so-called *administrative and labour courts* ("közigazagatási és munkaügyi bíróság") for the first instance. In principle, courts may also award compensation for breach of the written statements requirement. The labour inspectorate is also responsible for collecting employees' complaints.	and labour courts	(monitoring and enforcement)	
Iceland	Alleged violations of the information obligation (as stemming from collective agreements) can be brought by the employee before to the Labour Court (Félagsdómur) and may lead to compensation.	Labour Court (Félagsdómur)		
Ireland	When the employer has not fulfilled his obligation, the employee may present a complaint to a 'Rights Commissioner' (a service provided by the Labour Relations Commission) within 6 months from the moment of the breach. The Rights Commissioner must (1) give the parties an opportunity to be heard and to present any evidence relevant to the complaint, and (2) provide the parties with a written recommendation in relation to the complaint. The recommendation may:	Employment Tribunal (second instance), High Court (on point of law - third instance)	Rights Commissioner' (a service provided by the Labour Relations Commission)	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	declare that the complaint unfounded or; confirm that there is an omission or inaccuracy in the statement and/or; require the employer to fulfil his obligation and/or; order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but in any case not exceeding four weeks remuneration. An appeal against a recommendation of a Rights Commissioner may be taken to the Employment Appeals Tribunal within 6 weeks. A further appeal, on a point of law, may be taken to the High Court.			
Italy	The Italian Decree transposing the Directive establishes that in case of failure or delay, incomplete or inaccurate fulfilment of the obligations set out in the Decree, the employee may require the Territorial Office of the Ministry of Labour ('DPL') to order the employer to comply within fifteen days. In case of failure to do so, the employer is condemned to pay an economic administrative sanction. In addition, the DPL (which is in charge of monitoring employers' compliance on this and other matters) shall order the employer to rectify any breach of law detected, without a prior request from the employee (according to the so called 'mandatory notifying mechanism' - *diffida obbligatoria*). In this case,	Judicial resolution (Labour Court)	Territorial Office of the Ministry of Labour ('DPL') (monitoring and sanctions)	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	the employer is also condemned to an economic administrative sanction (the amount is reduced if the employer complies within a set time limit from the notification). The employee can always bring a claim in front of the employment tribunal to determine what particulars should have been included or referred to in the written statement, so as to comply with the requirements of the legislation.			
Latvia	The State Labour Inspectorate has the competence to supervise the observance of individual employment rights. The Inspectorate may try solving a dispute by the means of (1) a settlement between an employee and an employer, (2) issuing an order to an employer stating the obligations (provided by the law) an employer has to comply with (for example, amend employment agreement if all information required by the law is not provided), (3) by applying administrative penalties to the employer. In addition, the employee may bring a claim before a court. No mandatory requirement exists for the employee to use pre-litigation procedures (like labour dispute settlement within an undertaking or complaint to the State Labour Inspectorate).	Judicial resolution (not necessarily only in second instance)(Ordinary civil Court)	State Labour Inspectorate (monitoring, resolution, enforcement)	Dispute Settlements mechanisms within the undertaking
Liechtenstein	Judicial enforcement can be pursued through	Judicial resolution		

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	individual civil law instruments.	(Ordinary Civil Court)		
Lithuania	The State Labour Inspectorate monitors whether employers comply with regulatory provisions of laws regulating labour relations. In general, a violation of labour laws (thus also of the information obligation discussed here) can be punished with a fine. Employees, whose rights to be informed are violated, may initiate labour disputes investigation in the Labour dispute commission under the State Labour Inspectorate (the pre-trial stage) or later to appeal to the court.	Judicial resolution (Labour Court, second instance)	State Labour Inspectorate (monitoring and sanctions)	
Luxembourg	The public administration ITM (Inspection du Travail et des Mines) acts on behalf of the Ministry of Labour with regard to the enforcement and control of the regulations concerning the working conditions and the security of the employee. It supports employees (and employers) with regard to legal issues and registers violations, which can be transmitted to the State Prosecutor. The employee has furthermore the possibility to establish in Court the existence and the content of his labour relationship.	Judicial resolution (only existence and content relationship)	Inspection du Travail et des Mines (monitoring and sanctions)	
Malta	The Inspectorate Section of the Department of Industrial and Employment Relations (DIER) is responsible for monitoring conditions of employment and processing employees' complaints. Inspectors may	Industrial Tribunal	Inspectorate Section of the Department of Industrial and Employment Relations (DIER)	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	institute proceedings in case of infringements but these are used as a last resort. Oral notices or recommendations can be used to correct any breaches found, as well as written orders or warnings. The employer is punishable with a monetary penalty.			
Netherlands	Judicial mechanisms are available to the employee, but limited. According to the Dutch legislation, "an employer who refuses to provide a statement or includes incorrect particulars in it is liable to the employee for the resulting damage caused". In scholarly writing it has been observed that the verb "refuses" in the text of Art. 7:655(5) may be an obstacle for the employee to see his rights recognised.[293]	Judicial resolution (District Court competent to hear individual labour disputes)		
Norway	The Norwegian Labour Inspection Authority supervises compliance with the provisions of the WEA. The authority is entitled to is entitled to issue orders to comply the information obligation and to impose coercive fines if the orders are not complied with within a set time limit (depending on the gravity of the breach). Judicial resolution is to be sought for matters relating the existence of an employment relationship and the terms of said	Judicial resolution (only existence and content relationship)	Norwegian Labour Inspection Authority (monitoring and sanctions)	

[293] G.J.J. Heerma van Voss, De informatieplicht van de werkgever: een papieren tijger of een nieuwe rechtsbron in het arbeidsrecht?, Sociaal Recht 1994, p. 67.

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	relationship (as the Inspection Authority has no final saying with regard to these aspects).			
Poland	The employee can pursue its claims before the court or through amicable mechanisms. Both the employer and the employee are required to use all formal means available to settle a dispute regarding the employment relationship in an amicable manner. A conciliatory procedure before a special commission is regulated in the Labour code. The Commission is appointed jointly by the employer and an enterprise trade union, and in the absence of trade union, then by the employer, after receiving a positive opinion from the employees. If this mechanism fails, the Commission, upon demand of the employee filed within 14 days from the end of the conciliatory proceedings, immediately transfers the case to the competent Labour Court. The employee may also bring its claim in front of the labour court according to general procedures without failing such request to the Commission. The proceedings in front of the court - which is a separate organisational unit of a district court specialising with labour issues - are also regulated by the Labour Code.	Labour Court (amicable mechanisms should be favoured)		Conciliatory Procedure (special commission)
Portugal	The Labour Inspection Services ensure the compliance with the obligation and impose fines in case of breaches	Judicial resolution	Labour Inspection Services (monitoring	

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	identified during inspective actions procedures (these are considered administrative offences). This can be the result of the Services' own initiative or of a complaint made by the employee, by the workers council or by the trade unions. The employee has the right to bring the issue before the Court.		and sanctions)	
Romania	The employee may seek redress through judicial action before the competent court within 30 days from the date of non-fulfilment of the employer obligation.	Courts as established by the Civil Procedure Code		
Slovakia	Disputes over claims deriving from employment relations are heard and decided by courts. As no labour court exists in Slovakia, these disputes are decided by civil senates of the national courts. The court can only impose an obligation on the employer to provide/adjust and supplement the written statement. In addition, the Labour Inspectorate has the power to impose fines on the employer who disrespects the obligations ensuing form the Labour Code. Civil servants, members of the fire-fighter and security forces, professional soldier have the right to file a complaint where they consider themselves wronged in their rights and may furthermore take action judicially.	Civil senates of the national courts (ordinary courts)	Work inspection (sanctions)	
Slovenia	The employee may find redress through judicial	Labour Court (if the employer does		

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	action before the competent labour court, subject to the failure of the employer to comply with his/her prior written request to fulfil the obligations arising from the employment relationship. The employee has 30 days to refer the case to the court from the expiry of the time limit (8 days from the request) stipulated for the employer to fulfil his/her obligations.	not comply after the employee's written notification)		
Spain	The employment administration is responsible for monitoring employers' compliance and sanctioning the lack of it. It may do so as a result of a complaint from the affected employee, or because the labour inspectors have noticed employers' omissions. Judicial action is also possible, but no specific rules are laid down with regard to the enforcement of the Directive.	Judicial resolution is possible (Labour court)	Employment administration (monitoring and sanctions)	
Sweden	Subject to the employee membership to a trade union, a dispute resolution mechanism is available through negotiation between the employer and the union. Judicial resolution is available for employees who are not members of trade unions or when the parties to the negotiations cannot reach an agreement. The process is better explained below. If the employee is member of a trade union, dispute resolution mechanisms are in place. In this case, after notification from the	Ordinary district court (first instance non-members of Trade Unions), Labour Court (second instance, also in case of failure of alternative mechanism)		Subject to membership, dispute resolution mechanism through trade unions

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	employee, the trade union will start the conciliation process with the employer who has the obligation to enter the negotiations. If the parties agree that the employer has failed to fulfil his/her duties, damages may be awarded (to the employee and to the trade union, if the rules about the written information also is found in the collective agreement). If there is a lack of agreements the dispute can be referred to Labour Court. If the employee is not a member of a trade union, the dispute has to be taken to the ordinary district court, the judgment of which can be appealed to the Labour Court (AD).			
UK	The employee can take a case to an employment tribunal to determine what particulars should have been included or referred to in the written statement so as to comply with the requirements of the legislation. The jurisdiction of the employment tribunal is however limited (as specified in *Southern Cross Healthcare Co Ltd v Perkins ([2011] IRLR 247*, although the tribunal can construe a contract of employment to the extent that this is necessary to determine the accuracy of the written statement; the tribunal has no power to interpret the written statement itself - as this power belongs only to civil courts; the tribunal's jurisdiction is to ensure that the statutory statement	Employment Tribunal		

Member State	Short Description	Judicial process	Administrative bodies (LI)	Alternative mechanisms
	accurately records the agreement between the parties, as per *Construction Industry Training Board v Leighton [1978] IRLR 60*). As discussed below (on sanctions) the availability of damages was introduced in 2004, but it is limited.			