Precarious Labour
EU-level policy initiatives on the promotion of decent work
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INTRODUCTION

The SOLIDAR project “Decent Work for All: A Key for Effective Industrial Relations” aims to create a better understanding of the link between decent work for all in Europe and effective social dialogue. Looking in particular at sectors with higher incidences of precarious labour (e.g. construction, health and long-term care, cleaning) and more vulnerable groups (e.g. young people, migrants from EU MS and third countries, including undocumented migrant workers) in six European countries (Estonia, Germany, Lithuania, Romania, Italy, Sweden), challenges that risk weakening decent work and an effective social dialogue at European, national, sectoral and enterprise level have been identified.

Under the project summaries of the case studies for several countries have been published in a series of SOLIDAR Decent Work and Quality Jobs Briefings. Good practice examples to effectively address the challenges to decent work, notably in the form of social dialogue, as well as recommendations to national governments, public authorities, social partners and European institutions have been put together in the SOLIDAR Booklet “Social dialogue: a tool to promote and defend decent work and quality jobs in Europe”. It also highlights challenges to decent work referred to in this paper and introduces the three concepts “decent work”, “quality work and employment” and “good work” used in politics and academia.

Evidence from the transnational project shows that the financial and economic crisis first and mainly affects more vulnerable groups (e.g. young people; migrants) or women and men being disadvantaged on the labour market due to reduced mobility or flexibility (such as persons with disabilities or parents with small children). Labour law reforms designed before the crises showed its full effects but implemented in times of crises increased the incidence of precarious labour. Whereas some groups are confronted with an erosion of their individual and/or collective labour rights (e.g. those entering the labour market; those facing adaptations of their work contract as a consequence from the crises instead of being laid off), others have never been sufficiently covered by social dialogue or entitled to basic standards (e.g. undocumented migrants). There is the double challenge of improving the legal framework for certain sectors and of better enforcing compliance with existing rules. This is both a particular concern and need as labour inspection often lacks resources and/or is confronted with insufficient political will to effectively monitor compliance with regulation(s).

The purpose of this briefing is firstly to clarify the concepts of atypical work, precarious labour and in-work poverty, with an eye on the main notions from the project and to link this back to on-going policy processes at EU level. Secondly, linking this paper with previous SOLIDAR briefing “Precarious Labour – Legal and Policy Frameworks at EU Level”, the aim is to highlight recent and current EU-level policy initiatives and legal dossiers with regard to decent work, social inclusion and social dialogue.

1 More info on the project: http://www.solidar.org/Page_Generale.asp?DocID=14404&la=1&langue=EN
2 These can be accessed online: http://www.solidar.org/Page_Generale.asp?DocID=21774&la=1&langue=EN
The concepts “decent work”, “quality work and employment” and “good work” are sketched out in the SOLIDAR Booklet “Social dialogue: a tool to promote and defend decent work and quality jobs in Europe”. This section introduces the three terms “atypical work”, “precarious labour” and “in-work poverty” often referred to when discussing and designing policies to promote decent work and quality jobs, within and outside social dialogue. “Atypical work” is the commonly used term in the world of employment and different policy documents, as for instance in the 2010 European Parliament Report “on atypical contracts, secured professional paths, flexicurity and new forms of social dialogue” as in many studies of the European Foundation for the Improvement of Living and Working Conditions (Eurofound).

**Atypical work**

Atypical work refers to employment relationships not conforming to the standard or ‘typical’ model of full-time, regular, open-ended employment with a single employer over a longer time span; in other words to situations where workers have non-standard employment contracts. Concern rises as in some Member States atypical forms of employment respond more to cheaper contractual forms rather than to reasons related to productive organisations. The increase of the indigence of atypical work (up from a share of 17.5% in 1998 to 22.2% in 2008) often seems to be linked to the boosting of services formerly done within households and families.

There are different categories of atypical work: in a cross-country perspective the most relevant are 1) part-time work; 2) temporary agency work; 3) seasonal work; 4) casual work; 5) fixed-term; 6) home work; 7) telework; 8) self-employment and economically dependent work (including free lance); and 9) family work. The categories of atypical work covered by the project mostly either fall into category 4) “casual work” – posted work, work by undocumented migrants – or concern category 5) fixed-term contract when focusing on the situation of young adults with temporary contracts (Estonian and Lithuanian case).

Across the last two decades, Community law has been adopted for the following types of atypical contracts:

- Directives 1993/104/EC and 2003/88/EC on working time;
- Directive 1996/71/EC on the posting of workers;
- Directive 1997/81/EC on part-time work and European framework agreement signed by the European social partners beforehand;
- Directive 1999/70/EC on fixed-term work and European framework agreement signed by the European social partners beforehand;
- Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;
- Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research;
- Directive 2008/104/EC on temporary agency work;
- Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card Directive);

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5 Eurofound definition for Atypical work
http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/atypicalwork.htm
7 Cf. e.g. list in “Non-standard employment relations or the erosion of workers’ rights” By Jan Cremers. SOLIDAR (2010)
- Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

A recent Eurofound study published in March 2010 on “flexible forms of work: very atypical contractual arrangements” further divides non-standard work into ‘atypical’ and ‘very atypical’ forms of work. The former refers to common types of non-standard work, such as temporary agency, part-time and fixed-term work. The latter refers to non-written contracts, zero-hours or on-call working, part-time work of less than 10 hours a week and extremely short fixed-term contracts of maximum six months duration.

“The types of workers engaged in very atypical forms of work tend to be extremely varied, ranging from very low-skilled workers on seasonal contracts to highly-skilled professionals on short, task-focused contracts. Some sectoral characteristics are also visible: for example, seasonal working, which involves short fixed-term contracts, is prevalent in sectors such as agriculture, or tourism and hotels, while zero-hours working tends to be common in the retail sector and in some parts of the public and care sectors”. Legislation and/or collective agreements have been adopted to regulate various non-standard forms of work, varying according to the member states’ regulatory institutions and processes. There are countries where collective agreements and legislation have been combined, while others where collective bargaining at tripartite level alone regulates complex matters on non-standard employment.

The relative weight of the different forms of atypical work and their degree of feminisation differs partially quite substantially by sector and country.

- In 2008 over 18% of the total employed in the EU-27 was working part-time (31% of the total employed women and almost 8% of the employed men). The Netherlands, Germany, Belgium, Austria, the United Kingdom, Sweden and Denmark are the countries that have developed into “part-time working time societies”, with female part-time rates higher than 30% (in the Netherlands exceeding 50%). In 2008 only The Netherlands, Sweden and Denmark had male part-time rates higher than 10%.

- Across the EU 14% of the employed workforce was in temporary employment in 2008. The crisis that started in autumn 2008 on financial markets, producing severe repercussions in economies and on labour markets illustrates well the oscillation of fixed term employment in parallel to ups and downs of economic development. Sectors with high and clearly above average shares in 2008 were e.g. agriculture (32%), construction of buildings (23%), accommodation, employment services comprising placement and temporary employment agency activities (33%), creative arts and entertainment industries (28%) and sports and recreation activities (28%).

- The number of women and men with a fixed-term contract between 2008 and 2009 dropped by around 6.3% whereas the number of workers and employees with a permanent contract dropped by only 1.3%.

- Sectors with a above average share of female workforce (average: 47%) in 2008 were domestic personal (89%), manufacture of wearing apparel (83%), social work activities without accommodation (83%), residential care activities (81%), human health activities (79%), veterinary activities (74%), legal and accounting activities (71%) and retail trade (67%). In other words amongst the five most feminised sectors according to NACE classification four are made up by the health and social services and by domestic work, sectors well covered

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by the DWIR project and in particular with case studies for Germany and Italy.\(^{12}\)

The categories covered in the project are part-time work, temporary agency work, seasonal work, casual work and fixed-term contracts. Category 1) of the list above, part-time work, can be a freely chosen option, often by mothers to improve the reconciliation of professional with family and private life. The share of part-time work can also be influenced by the availability and opening hours of affordable child-care facilities. Part-time work might also be the only option for those – including parents – that cannot find full-time jobs, for whatever reason. In 2008 around 24% of those working part-time are doing this involuntarily (almost 30% of the women and more than 22% of the men). The main reason for the involuntary part-time work (accounting for a quarter of the cases) is that the persons were not able to find a full-time job.

In a rather clear contrast to part-time work, categories 2) to 5) of the above list as a rule are not freely chosen contractual arrangements. Temporary work, work on fixed term contracts and casual work (and to seasonal work for that matter) are closely connected both in terms of definitions and in the way these types of work are regulated. The terms have different meanings in different Member States up to the point where states refer to different things with the same words and to the same thing with different words.

As outlined in SOLIDAR Briefing “Precarious Labour: Legal and Policy Frameworks at EU Level”\(^{13}\) the temporary agency work has clearly gained in relative weight in the past years, mainly for reasons of reorganisation of work as explained in SOLIDAR Briefing “Non-standard employment relations or the erosion of workers’ rights”, Section 4. “Externalisation of recruitment”. E.g. in Germany before the crises started end of 2008, the share had reached 3% and more than doubled since 2000, according to a study of the German Federal Trade Union Confederation\(^{14}\). Temporary agency workers then were the first to lose their job.

There is a substantial lack of data on the overall characteristics and number of posted workers throughout the Union. Estimations from 2007 suggest around 1 million or 0.4% of the EU working population in 2005\(^{15}\). This is because monitoring and reporting schemes on posted workers are rare, and only very limited amount of countries have a system for collecting data. As a consequence, there is a risk that comparing and analysing the few existing data is highly misleading, since figures are based on unequal sources and refer to subsections of posted workers. Yet, the economic relevance of posting exceeds by far its quantitative size, because it plays a fundamental role in filling temporary shortfalls in labour supply of certain sectors or professions (e.g. transport, construction).

Posted work received a lot of political attention as an example of discussions if there is or should be a different weight given, in case of conflict, to the realisation of freedoms in the internal market on the one hand and social and labour rights on the other. Recent Eurofound research highlights that the position of posted workers in the labour market “is much more particular, as they find themselves between the regulatory framework of the host country and that of the country they habitually work in. The issue at stake is how to combine or balance these two sets of rules and regulatory frameworks with a view to guaranteeing – simultaneously – freedom of service provision and the protection of the workers involved, as well as a level playing field for domestic and foreign companies”\(^{16}\).

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14 DGB Bundesvorstand: Zeitarbeit in Deutschland (2009). Fünf Jahre nach der Deregulierung, p.3. A more comprehensive picture is drawn by Werner Eichhorst, Paul Marx and Eric Thode in their study
linked to a number of ECJ rulings (Viking, Laval, Rüffert, Luxembourg) issued in 2008, the “most problematic aspects, which have emerged in recent years, concern:

- the relationship between legislation and collective bargaining in defining the employment conditions of posted workers;
- the universal applicability of collective agreements and the selection of the collective agreement to be applied, if more than one bargaining level exists (for instance, national, local, and sectoral agreements);
- the scope of the applicable rules and their identification (whether providing all protections or minimum protections, and specifying what those minimum protections are).)

A joint report of European social partners gives an overview of points of convergence and points of disagreement between trade unions and employers as to how to interpret these rulings and what to do to address open questions and issues of conflicts when applying the Posting of Workers Directive.18

Even though employment rights of workers on non-standard forms of contract are progressively reaching those of standards workers, there are still areas where the former are clearly lacking behind. These are, for instance, the right to claim unfair dismissal (UK, Ireland) or collective bargaining coverage, to conclude specific agreements, mostly because non-standard workers might not be represented by social partners. In other cases, the enforcement of health and safety laws can be more difficult (Slovenia) and job insecurity in terms of probability of loosing the job is higher (Netherlands). Because of the contractual duration or the limited working hours, non-standard employment forms are usually linked with low incomes or weaker or no entitlement to benefits and training from unemployment insurance schemes. They might also generate a negative impact on workers’ overall financial capacities, for instance in obtaining bank loans due to their insecure employment status (Slovenia). Last but not least, these workers do not have access to the same training careers of their counterpart in standard form of work, as development opportunities are usually offered to those in the long term. In countries where there is no regulation on fixed term contracts temporary workers as a rule are faced with less legally guaranteed protection from labour law and social protection. They might enjoy the same rights as permanent workers depending on collective agreements.

**Precarious labour**

This term is to a large extent used interchangeably with the notion “atypical work” and covers all forms of atypical contracts mentioned above. Being a more encompassing concept, precarious labour focuses both on the unstable status of the work relationship and the marginalised position of those under precarious employment conditions in the labour market.19. It can be used as a generic term for those in the “second labour market”. Precarious labour alludes to jobs with low(er) pay, disadvantageous job and career prospects, less training and LLL (options), reduced sets of individual labour rights and working conditions not equivalent to those with a regular (as a rule full-time) contract/in the core labour force/on the first labour market.20

**In-work poverty**

Working poor are in a hybrid position at the intersection of work and income poverty spheres and therefore can be approached following two separate but complementary angles: workers who are poor (i.e. below a set threshold of income from the labour market), but also poor people who are working. This term is used to refer to individuals which during the previous year were mainly at work (i.e. for

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17. Ibid.
18. Report on joint work of the European social partners – BusinessEurope, CEEP, UEAPME and the ETUC – on the ECJ rulings in the Viking, Laval, Rüffert and Luxembourg cases (March 2010) http://www.etuc.org/a/7110; for more info see Part “EU level initiatives and pending policy files”, Section “Posted workers” and footnote 26
19. See e.g. a comparison between the UK and Germany using the term in its title, “Precarious employment in the public and private sectors: comparing the UK and Germany” [authors: Leschke, Janine/Keune, Maarten, ETUI-REHS, European Economic and Employment Policy Brief, No. 1 – 2008]
a minimum of 6 months) and are living in a household with an income below the ’at risk of poverty’ threshold that as a rule is set at 60% of median equalised income. As a rule there is a strong link to low job quality\textsuperscript{21} and earning inequalities\textsuperscript{22}. They are employed people whose disposable income puts them at risk of poverty: in 2007, in the EU27, 8% of employed people (working age population above 18 years old) were also poor. Countries with the lowest in-work poverty rate are Czech Republic (3%), Denmark, Belgium and Malta (4%), while the highest in-work poverty rate are registered in Portugal, Latvia and Italy (10%), Spain (11%), Poland (12%) and Greece (14%).\textsuperscript{23} On average, the number of working poor increased both in share and absolute terms over the last decade. In 2009 amongst the roughly 80 million people living in or at risk of poverty, an estimated 19 million are women and men in a situation of in-work poverty. The EU Member States where working poor have increased are the UK, Finland, France, Austria, Germany, Cyprus, Spain, Hungary, Latvia and Poland, remaining stable in Denmark and Norway, Belgium, Bulgaria and the Czech Republic, while decreasing in Portugal, Malta, Estonia, Ireland, the Netherlands and Sweden.

It is interesting to notice that even though women face higher poverty risk, when they are employed, they are less likely than men to live in households with income below the poverty threshold. As a matter of fact, the EU 27 average in-poverty risk for women is lower than for men, 7% against 8%. Further, it seems that in-work poverty risk is decreases with the age of workers: young workers aged 18-24 years register the highest value (9%), followed by workers aged 25-54 (8%) and aged 55-64 (7%). This is particularly the case for eight Member States: UK, Finland, Sweden, Denmark, Germany, Luxembourg, Belgium and Italy, where in Northern European member states a larger proportion of young people live alone, while in Southern countries, they receive some income support from other members of the household (which in the Italian case is not even sufficient). To the other extreme, in Greece, Portugal, Spain, Ireland, Austria and Lithuania, older workers are the ones facing higher in-poverty risk.

Labour market conditions such as low pay and having a job for less than a full year strongly raises the risk of in-work poverty. Statistics also show that self-employed persons have a risk three times higher (18%) of being working poor than employees (6%), and the fact that the less educated forms a substantial part of the self-employed suggests that those individuals with less ‘bargaining capital’ are ‘pushed’ into precarious self-employment. Moreover, as migrants more often subject to low pay, living in single households or being low-skilled, they are particularly vulnerable to in-work poverty. Migrants and ethnic minorities are often ‘pushed’ into sectors in which the work is less well paid and valued. In turn, migrant self-employment is not always voluntary and can be linked to poverty.\textsuperscript{24} Last but not least, certain sectors of the economy – such as agriculture and fishery in Spain, textile and clothing in Bulgaria – and groups – such as unpaid family workers – run a high risk of being/becoming working poor.

2. EU-LEVEL INITIATIVES AND PENDING POLICY FILES

In line with SOLIDAR Briefing 21 “Precarious Labour: Legal and Policy Frameworks at EU Level”, this section lists selected recent and current EU-level policy initiatives and pending legislative dossiers related to the promotion of decent work. It endeavours embedding work and results in the context of the SOLIDAR project “Decent Work for All: A Key for Effective Industrial Relations” in a broader policy context.

Posted workers

The recent European Court of Justice rulings on the Viking-Line (C 438/05), Laval (C 341/05), Rüffert (C 346/06) and Commission vs Luxembourg (C 319/06) cases on the mobility of workers and companies in the framework of cross borders service provisions/establishment triggered a vivid debate on the relationship between fundamental social rights of collective bargaining/action and single market economic freedom. In SOLIDAR view these judgements showed the limitations of the application of EU law to protect workers' rights against the freedom of establishment and the freedom to provide services in Europe. The impact of the four ECJ cases on the Posting of Workers Directive (PWD) and on workers themselves calls for concrete action at the EU level.

Due to the salience of the issue, the European Trade Union Confederation (ETUC), BusinessEurope, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) and the European Centre of Employers and Enterprises Providing Public Services (CEEP) produced a joint report on of the European social partners on the ECJ rulings in the Viking, Laval, Rüffert and Luxembourg cases. They engaged in this work from a critical perspective trying to find points of convergence.

According to BusinessEurope, ECJ has correctly recognised a logical limitation related to trade unions’ right to take collective action and its interaction with the freedoms of services, whereby collective action needs to be used in a proportionate manner. Further, it also appropriately addressed the notion of public policy which induces Member States to limit labour regulations of wage indexation and rules specific to part-time/fixed-term work (Luxembourg case) on foreign services. Last but not least, the Rüffert case, according to BusinessEurope, did not undermine the use of public procurement rules to pursue social objectives where they exist.

On the same matters, the ETUC has partially quite different or even opposite views. The ETUC held that the ECJ judgments limit the right to take collective action significantly, imposing restrictions on fundamental rights undermining Member States’ duty to comply with Constitutional law international law as recognised by the ILO. Moreover, the “Rüffert judgment for the recognition of collective agreements in public procurement procedures annuls this national practice of sustaining collective bargaining and disregards the specific responsibility of national public authorities to guarantee decent work”.

For these reasons, the trade union presented a final report with eight proposals for revision (through amendments) of the PWD on (1) clarifying the legal basis and the social policy objectives of the Directive (2) restoring the autonomy of social partners (3) clarifying the scope of the Directive (4) restoring the minimum character of the Directive (5) respecting and safeguarding the plurality of industrial relations systems in the Member States (6) restore public procurement as a method of implementation (and that public contracts can go beyond the list of minimum standards of Art. 3.1. for reasons of public

policy) (7) restoring the notion of public interest (8) securing effective enforcement.

In its report “A new strategy for the single market”, delivered in May 2010, Mario Monti acknowledges the critical debate but does not address for a review of the Directive, generally recommending to clarify its implementation, to increase the dissemination of information on rights/obligations of both workers and companies, to strengthen administrative cooperation and sanctions in the framework of free movement of persons and cross-border provision of services. However, in view of protecting the rights of workers rejecting protectionism, he suggests to “introduce a provision guaranteeing the right to strike modelled on Art. 2 of Council Regulation (EC) No 2879/98 and a mechanism for the informal solution of labour disputes concerning the posted workers rights and clarify the obligations of national authorities and businesses. The aim is also to improve cooperation between national authorities, the provision of information for companies and workers, ensure effective enforcement through sanctions and remedial action and prevent circumvention and abuse of the rules applicable”. The preference, according to the bulk of relevant documents and statements of Commissioners and key personal, clearly lies in explanatory and clarification work, rather than embarking on a process aiming at a revision of specific stipulations.

However and not coherent with the above announcements and according to the 2011 roadmap of DG Employment, Social Affairs and Equal Opportunities 35, the Commission foresees a new legislative initiative for PWD expected to be adopted in the 4th quarter of next year. This may consist in (a) a broad, wide ranging review of PWD; (b) a new legislative initiative (a Directive or a Regulation) on enforcement of PWD; (c) a Council Regulation on the basis of Article 352 Treaty on the Functioning of the European Union (TFEU) 36.

Obviously, the impact of the legislative proposal will largely depend on the option upheld. According to the Commission, a wide ranging review could establish equality treatment between posted and domestic workers, reversing the rulings of ECJ and changing the balance between fundamental freedom to provide cross border services and need to guarantee rights’ protection of workers temporarily posted abroad. Yet, given the controversy of the issue and current balance of evidence 37, the Commission claims that its proposal allows a wide ranging review of PWD; (a) a broad, wide ranging review of PWD; (b) a new legislative initiative (a Directive or a Regulation) on enforcement of PWD; (c) a Council Regulation on the basis of Article 352 Treaty on the Functioning of the European Union (TFEU) 35.

The European Commission has explicitly stated in the Single Market Act (proposal number 30), in the Communication “An Agenda for new skills and jobs: A European contribution towards full employment” (key action number 9)31 and in the Work Programme 2011 (initiative number 1832) to adopt by this year, after consulting EU social partners, a legislative proposal aimed at improving the implementation of the Posting of Workers Directive “to ensure effective respect of the posted workers rights and clarify the obligations of national authorities and businesses. The aim is also to improve cooperation between national authorities, the provision of information for companies and workers, ensure effective enforcement through sanctions and remedial action and prevent circumvention and abuse of the rules applicable”. The preference, according to the bulk of relevant documents and statements of Commissioners and key personal, clearly lies in explanatory and clarification work, rather than embarking on a process aiming at a revision of specific stipulations.


Art. 352 TFEU, a general clause in case of lack of a specific legal basis, entitles the Council, “acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament” to adopt the appropriate measures “if action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers” (1.), under the conditions that these measures “shall not entail harmonisation of Member States’ laws or regulations in cases where the Treaties exclude such harmonization” (3.)
power in the European Council and the European Parliament there are few chances for a revision to be adopted by the Council, as it is unlikely to forge a Council Regulation considering the (im)possible legal basis. As a result, another viable solution could be a new Directive that “could set more detailed provisions than the present Directive (in Article 4, 5 and 6), concerning administrative cooperation in the context of the posting of workers, the exchange of relevant information between the Member States and/or social partners, sanctions and possibilities given to posted workers to better defend their rights. Equally, such a proposal could contain recitals stressing the respect of collective rights of workers and the role of social partners in the implementation of this act”.

Migrant workers

Of the four legislative proposals announced in the Communication Policy Plan on Legal Migration in 2005 and initially planned to be drafted before 2009, only the first one concerning the directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment has been presented and adopted. In July 2010, the Commission finally endorsed the proposal for a directive on seasonal employment, to define a common procedure for entry and residence in the EU and the rights of seasonal workers from third-countries, and the proposal for a directive on the procedures regulating conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (ICT) – posted workers as managerial and qualified employees for branches and subsidiaries of multinational companies.

A few months later, in October 2010, the Justice and Home Affairs Council held a first debate on both recent Commission proposals on entry and residence conditions of third-country nationals. Minister recalled at this occasion the right of member states to determine the number of third-country nationals to be admitted into their territories, and there was concern on whether their should be equivalent to those enjoyed by national of the host member states, particularly with regard to social security benefits. In the case of seasonal workers, Member States demanded the possibility to choose on whether they would be receiving residence permits, as proposed by the Commission, or long-term visas. Further, it is also interesting to notice how on the proposal for seasonal employment, a series of minimum conditions would be necessary in order to avoid exploitation, while on the proposal for intra-corporate transferees, favourable conditions were necessary in order to achieve the main objective of the dossier: to attract qualified personnel needed by the EU labour market.

While the 2010 roadmap of former DG Justice, Freedom and Security acknowledges the need of impact assessment at its final stage concerning the proposal for a directive regarding the conditions of admission of third-country nationals for the purposes of training (remunerated/paid trainees), there is no

41 European Commission 2010 roadmaps available at
mention of any corresponding legislative dossier neither on the 2011 roadmap of DG Home nor on the 2011/2012-2014 Commission Working Programme. It can be concluded also from there that the road to a common policy on immigration and asylum is still long.

Moreover, the Commission proposal for a Council Directive on a single permit for third-country nationals to reside and work in the EU is still in the legislative process. The single work permit directive has the aim to facilitate immigration of non-EU citizens to fill gaps in the European Union labour market. By simplifying application procedures, it provides a "one-stop shop" for immigration, common rights for third-country nationals legally working and living in the EU. The legislative proposal was rejected by the Parliament in the plenary session in December 2010. The Commission now will have to decide whether to withdraw the proposal, keep alive the current one presumably with amendments, or present a new one. Last but not least, Member States are also on the process of implementing by July 2011 the Employer Sanctions Directive.

Concerning the free movement of workers, relevant for example for the Italian case study on care workers, it is EU citizens that enjoy the fundamental freedoms of the internal market, amongst them the freedom of movement for workers (outside the public service), Art. 45 TFEU. It does not apply to third country nationals. Limitations and transitory arrangement were applied and partially still exist for citizens of the 8 New Member States from Central and Eastern Europe having joined the EU in 2004. Until 30 April 2011, citizens from these countries need a work permit to work in Malta, the UK, Germany and Austria.

and after that date all labour restrictions are to be lifted. For Romanian and Bulgarian citizens, nationals of countries having joined the Union in 2007, a total of 10 Member States – the UK, Germany, Austria, Italy, France, Luxembourg, Malta, Ireland, Belgium and the Netherlands – have retained labour market restrictions, which can be kept until 31 December 2013. It was announced that restrictions in the UK and Belgium will be upheld until end of 2011; France also partially opened its gates for Romanians working in 150 fields which are under-supplied in the country; Germany announced to lift restrictions in 2011 for all EU citizens if falling into the category “seasonal/temporary workers”.

Temporary agency workers

The main political development in this context is the implementation of the Temporary Agency Work Directive by Member States by December 2011. However, neither in the Commission working programme 2011 nor in the (indicative) list of main initiatives planned for 2012-2014 there is indication of conducting reports/ analysis on Member States’ situation.

Labour law reform and atypical contracts

The issue of atypical work has been last addressed by the Parliament in the Report “on atypical contracts, secured professional paths, flexicurity and new forms of social dialogue”. Adopted in the plenary session in July 2010 the text defines atypical employment as part-time work, casual work, temporary work, work under fixed-term contracts, home working and teleworking, part-time employment of 20 hours or less per week. In the explanatory statement, it introduces the notion of ‘very atypical forms of employment’, explicitly mentioning employment contract shorter than six months, working hours less than 10 hours and non-written employment contracts, assessing that these forms of employment are most prevalent

http://ec.europa.eu/governance/impact/planned_ia/roadmaps_2010_en.htm
http://ec.europa.eu/prelex/detail_dossier_real.cfm?C_L=en&DosId=196321
among young aged 19-29 and older aged 50+, women and low-skilled.

What is important is the recognition of ‘very atypical’ forms of employment as receiving less training, having more limited career prospects and lower income compared with other categories of workers, therefore a more precarious employment profile. It further condemns “the replacement of regular employment with forms of atypical contract that contribute to poorer and more uncertain working conditions than regular employment conditions and that work to the detriment of the general public, employees and competitors; stresses that abusive practices violate and destabilise the European social model”.

For these reasons, an “extension of the protection of workers in atypical forms of employment” is recommended as being one of the priorities of labour law reform. Finally, the report highlights the importance of both the quality of the social and institutional support which the social partners enjoy for effective social dialogue as well as the role of governments “in providing the preconditions for inclusive and effective collective bargaining and encompassing tripartite structures to involve the social partners in an institutionally formalised and substantial way, and on an equal basis, in public policy-making, in accordance with national practice and traditions”.

Flexicurity

The four flexicurity components – namely flexible contractual arrangements, comprehensive lifelong learning strategies, effective active labour market policies and modern social security systems – were initially enshrined in the Commission communication entitled ‘Towards common principles of flexicurity: More and better jobs through flexibility and security’47. Most importantly, the broader common principles on flexicurity were adopted by the EPSCO Council on 5/6 December 200748 and later endorsed by the

European Council on 14 December 200749. However, flexicurity under the crises and after the crises means something different than in time of economic growth and increases in prosperity. We witness a certain shift from external to internal flexibility measures (see paragraphs below). It should also have become obvious in particular during the last two to three years that the shape it takes and the extent to which also security and training elements are included critically depends on capacities, political will and power relations of social partners. Flexicurity strategies in any case should be agreed on in the context of social dialogue and properly monitored, balanced in its overall components, adopted to national realities and supported by public expenditure.

In more recent developments, the EPSCO Council conclusions in June 2009 on flexicurity in times of crisis50 indicated measures which can help Member States and social partners to manage the impact of the global crisis through the application of flexicurity principles focusing on elements 2 and 3 of the above tool box, such as maintaining employment, for example through helping companies operate alternatives to redundancy such as temporary adjustment of working time and flexible working patterns or other forms of internal flexibility policies within companies.

Other measures suggested comprise improving activation measures, providing adequate income support and access to quality services to those who are hit by crisis’ impacts, using modern social protection systems in line flexicurity principles and sustainability of public finances. A third set of measures comprises increased investment in human capital, in particular skills upgrading, retraining and labour market needs-matching, for low-skilled workers, people working part-time or in other flexible forms of employment.

Health and Consumer Affairs Brussels, 5-6 December 2007 [18139/07 (Presse 284)]


Moreover, as one of the seven flagship initiatives put forward to catalyse progress under the EU 2020 Strategy, in November 2010 the Commission adopted the Communication “An Agenda for new skills and jobs”. The aims are identified as (1) to reform labour markets and to review flexicurity strategies (2) to provide people with right mix of skills and matching them with the market demand (3) to improve job quality and working conditions (4) to develop stronger policies for job creation and labour demand. Elaborating there about measures to strengthen (the four components of) flexicurity in labour markets the Commission calls for an extension in the use of open-ended contractual arrangements, with an adequate long probation period and a gradual increase of protection rights.

According to the document presented, further action could be geared, in times of economic downturn, towards increasing the weight on internal flexibility. This may consist in working time flexibility, as short-time and part-time work, or functional flexibility, as internal job changes, flexible work organisation and on-the-job learning.

With regard to comprehensive life long learning policies, the strategy is to pursue targeted approaches for the more vulnerable workers such as low skilled, disabled people, unemployed, youngsters/elders and minority groups. Moreover, the focus given to Active Labour Market Policies (ALMP) on the reduction of long-term unemployment, with measures to improve skills and employability – such as training schemes, job counselling and job search assistance – is also important. Further, the Communication affirms that as labour markets (will) recover, Member States should consider rolling back the temporary extensions of benefits and duration of unemployment insurance introduced during the recession, in order to avoid negative effects on re-employment incentives. However, it also suggests improving benefits coverage for those most at risk of unemployment, like young people in their first jobs or the self-employed, for instance through reinforcing social security entitlements (parental leave, sickness leave, disability benefits)

The role of social dialogue and collective agreements

The way for considerably strengthening the role of European Sectoral Social Dialogue has been paved by the 2004 Commission Communication entitled ‘Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue’. Updates on the state of the art and achievements are given in the Commission Staff Working Document on the functioning and potential of European sectoral social dialogue Brussels.

A September 2010 publication by the European Commission summarises recent developments in the work of the European sectoral social dialogue committees. It highlights progress made in areas such as skills, training and lifelong learning; working conditions; health and safety at the workplace; anticipation of change and restructuring; equal opportunities; corporate social responsibility and sustainable development. The report stresses the essential role of social dialogue at different level, including the EU-level, for sustainable development, growth and employment creation, job quality and good employment practices, as well as efficient and productive industrial relations.

Without any big surprise working conditions have been emerged as one of the main themes of European Sectoral Social Dialogue across different sectors. The report explains that “employment and working conditions, including questions of flexicurity policies, flexible working practices, recruitment and image of the sector as well as, increasingly, precarious work, bogus self-employment, migrant workers, undeclared work and other decent work issues” by 2010 are amongst the key issues across a variety of sectors”.

“Decent work”, however, explicitly is only mentioned as topic dealt with in the context of exchanges and negotiations on working

http://ec.europa.eu/social/main.jsp?catId=738&langId=de&pubId=570&type=2&furtherPubs=no
54 Ibid p.8
conditions for the sectors of “Tanning and leather” and “Temporary agency work”. In the latter sector European social partners in their work programme until 2010 “have agreed to address the following issues: first, labour market policies, and in particular flexicurity, labour migration (including a European Observatory on cross-border activities within temporary agency work), and vocational training; second, promotion of national social dialogues; third, temporary agency work regulation, covering the full range of temporary agency work labour contracts, the posting of workers directive, ILO convention 181 on private employment agencies and the development of a compendium of best practices and measures for decent work, non-discrimination and equal treatment; and fourth, sectoral developments and the economic situation”.

As a cross-cutting issue and in the understanding of the broad ILO definition of decent work and in the vein of the ILO Decent Work Agenda, the term, however, features as overarching topics in the work programmes of several sectors, amongst them construction, horeca, agriculture, industrial cleaning and temporary agency work. These sectors widely corresponding to sectors with an over-average rate of precarious working conditions.

Not least as a reply to the Commission Communication on ‘A Shared Commitment for Employment’ of 2009 the European social partners (ETUC, Eurobusiness, UEAPME, CEEP) negotiated an Agreement on Inclusive Labour Markets, signed on 25.03.2010. “With this agreement, they commit to take concrete actions to help disadvantaged people to enter, remain and develop in the labour market. Examples of areas in which measures can be taken include vocational training, apprenticeships, recruitment, transparency and information regarding competences, available jobs and training programmes.” The document could be used to push joint action towards fighting different forms of precarious labour and to promote decent work in Europe. In this context the Eurofound publication “Eurofound: Foundation Findings: Opening the door - The role of social partners in fostering social inclusion” well illustrates the potential roles of social partners, their responsibility and the mutual advantages of addressing different forms of precarious labour and related risks of social exclusion.

55 Ibid p.82