A country by country summary

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BE (Belgium)

Overview of atypical employment contracts

The expansion of atypical work began in the late 1990s in Belgium. It stabilised in the 2000s, mostly around two forms of work: part-time and fixed-term contracts. Part-time jobs are the most widespread form of atypical work and the phenomenon mainly involves women: 44% of working women have part-time contracts, while the figure for men is 9%. A part is played in this field by the legal provisions that allow workers to voluntarily cut their working hours or take a temporary career break (*crédit-temps* in French and *tijdskrediet* in Dutch). Temporary jobs account for approximately 8% of employment and they are regulated by a number of types of contract. As in many European countries, the majority of temporary employees of this kind are women (especially foreign women), young people and over-50s.

Below is a summary of the main forms of atypical contracts currently in force.

Temporary agency work This is temporary work performed by a worker on behalf of an employer for a third-party user (or client). It is a distinctive form of temporary work which is atypical in terms not only of the duration of the contract but also of the "triangular" employment relationship. Initially, it was mainly used to find temporary replacements for members of staff, but it is now being increasingly utilised as a means of taking on young people for trial periods. The maximum duration of temporary agency work depends on the circumstances, such as whether it is to replace staff temporarily or work on one-off projects. Artistic work is the only kind of employment for which there is not a legally defined maximum duration. In terms of social security, temporary agency workers have the same guarantees and coverage as standard workers.

Secondments Generally speaking, secondments to external organisations are forbidden by Belgian legislation (Law of 24 July 1987, art. 31 et seq.). They are only permitted in temporary agency work, as described in the previous paragraph. However, exceptions to the rule are allowed in some cases, as long as the worker in question and the trade union representatives approve. Secondments must not be the company's main form of business, only permanent staff may be seconded and the transfer must be for a limited period. Secondments only account for a small proportion of atypical work and there are sometimes compensatory benefits for the workers. They mainly take place in fields such as ICT, multimedia and advisory services, call centre work and event organisation. In terms of social security, workers on secondment have the same guarantees and coverage as standard workers. In addition, the working conditions pay and other benefits must not be worse for the secondees than for the employees of the company using their services.

Project-based work (contracts for a clearly defined job) These are known as contracts for a clearly defined job (*contrats de travail pour un travail nettement défini* in French, *arbeidsovereenkomst voor een duidelijk omschreven werk* in Dutch). Instead of having an established duration, they last until the completion of a specific job, such as artistic work, agricultural work or the execution of a project. The working relationship automatically comes to an end when the work is completed, without the need for further notification by the parties. With regard to employment law, these contracts generally have the same limits and conditions as fixed-term contracts. In terms of social security, workers with these contracts have the same guarantees and coverage as standard workers. They are always based on the amount of actual working time.

Work vouchers This scheme was officially launched to put a stop to undeclared cash-in-hand work while creating a network of support services for people. In 2004, work vouchers (*titres-services* in French, *diensten-cheques* in Dutch) were introduced as a way of paying for casual work in the domestic services sector. The system underwent rapid development. By January 2006, almost 13,000 people (equivalent to approximately 6,000 full-time workers) were working under this system. By January 2013, this figure had risen to 130,000 (equivalent to 67,000 full-time workers). 97% of them were women, and the vast majority were foreign[49]. The system involves four main players: a domestic worker, individuals (a family) for whom the worker works, an accredited agency that employs the worker on either a full-time or a part-time basis (for a minimum of 10 hours a week), and the federal state, which establishes the terms of the working relationship and covers more than 60% of the total costs[50]. There are also other players involved, because normally the same worker will perform services for a number of families each week, with changeable working hours and no pay for travel from one house to the next. Therefore, while in theory these contracts involve the same social security requirements and guarantees as a normal part-time contract, in practice the flexibility required of the workers means that it is impossible for them to gain full-time status.

Internships and other forms of on-the-job training Work done within a company as part of an apprenticeship scheme is regulated in Belgium by at least 18 types of contract. Some have been established by the central federal authorities, but most have been introduced by the regional and language communities responsible for work, teaching and professional training policies. Examples of contracts include the *convention d'immersion professionnelle (beroepsinlevingsovereenkomst* in Dutch), the *convention de stage des classes moyennes* (*stageovereenkomst middenstand*), the *contrat d'apprentissage des classes moyennes* (*leerovereenkomst middenstand*), the *contrat d'apprentissage industriel* (*industriële leerovereenkomst*), the *convention d'insertion socioprofessionnelle* (*overeenkomst voor socioprofessionele inschakeling*) and the *contrat d'apprentissage d'une profession salariée* (*werknemersleerovereenkomst*)[51].

While the rules and conditions vary, the agreements are always triangular in nature. A student of an accredited institute will gain knowledge or skills by working for an employer. Rather than genuine employment contracts, these arrangements provide a legal framework for work done within companies as part of the different apprenticeship schemes. Unlike employment contracts, these agreements do not cover the provision of services by a subordinate for an employer in exchange for remuneration. Instead, the purpose is to complete a training cycle so that the person in question can find (or return to) a better position in the production process and in society. In terms of employment law, it can be deemed a form of atypical work not only because of the times and durations of the contracts, but most significantly because sometimes the people concerned do proper jobs but they do not have full access to the rights that are available to normal workers in the same field. In terms of social security, things are rather complicated. Generally speaking,

[49] Figures from the Belgian National Social Security Office (www.onss.fgov.be).

[50] Basically, the workers perform services in the homes of individuals (families). The latter buy vouchers, each of which is worth an hour of household work. At the end of the year, part of the outlay from voucher purchases is tax deductible. A worker's agency will receive €22.04 in total for each voucher (and therefore for every hour of work done). Part of the amount is paid by the person who receives the service (currently €9.00 for the first 400 vouchers and €10.00 for the rest, with a maximum of 1,000 vouchers per family each year) and the rest is paid by the State.

[51] www.emploi.belgique.be/defaultTab.aspx?id=683#

until the age of 18, apprentices are only covered for paid holidays, accidents at work and occupational diseases. Once they turn 19, in theory all of the contracts have the same contributory requirements as the general system for paid workers, including pensions and unemployment benefits. However, it is a real jungle in this respect. Some contracts only provide for the basic right that is normally earned at the end of a complete study cycle: a "waiting allowance" for anyone who has still not found a job a year after they finish their studies[52]. Others, such as the contract for industrial apprentices, give eligibility for unemployment benefit in theory. However, in practice even in these cases apprentices are often not covered despite the fact that the necessary insurance contributions have been paid, because their pay (or rather internship allowance, a minimum amount for which is established by law and calculated in accordance with the person's age and other factors) hardly ever reaches the level of the legally imposed minimum wage for employees, which is one of the requirements for the right to unemployment benefit in Belgium.

(False) self-employment These are contracts for what is essentially subordinate work, even though the contracts are for freelance activities, such as commercial agreements and those for appearance fees or authors' rights. They are particularly common in the fields of journalism, training, multimedia, the arts and entertainment, but they are also being used more and more often by advisory companies, design firms and agencies, especially those involved in the business of European and international institutions. There is a separate statute for the "assistants" of self-employed workers. They often work for members of their own family, so their jobs are clearly at risk if splits emerge in the family. All of these contractual cases are sociologically part of the atypical work phenomenon so they must be mentioned at least, even though in legal terms they are classified as forms of self-employment rather than employment.

Social protection measures and obstacles to free movement

The Belgian welfare system is largely Bismarckian in nature. It is one of the most advanced schemes of its kind in the European Union and it is funded by some of the biggest public spending (Belgium, the Netherlands, France and the Scandinavian countries are the only EU member states where social security spending normally tops 30% of the GDP). There is heavy trade union involvement, partly because of the direct role that the unions traditionally had in the management of unemployment benefit payments (the Ghent system)[53]. Belgium is also one of 21 EU countries with a minimum legal salary. At €1,500 (gross) for the youngest workers, it is second only to that of Luxembourg.

[52] For example, see www.emploi.belgique.be/defaultTab.aspx?id=22774#.

[53] In 2004, the Belgian social security system came in sixth place in the international quality rankings of an International Labour Organization report. The ILO rankings were based on an economic security index that classified the working conditions of each country in accordance with seven types of security: income security, labour market security, employment security, work security, job security, skills reproduction security and representation security. Within these areas are both general indicators of wellbeing and quality of life and work (such as income level, security and inequality, job security, education, training and professional qualifications) and specific indicators that are closely tied to the social security system, such as severance pay, rules against wrongful dismissal, and protection from accidents at work and occupational diseases. ILO, *Economic Security for a Better World. Programme on Socio-economic Security*, Geneva, 2004.

Like all Bismarckian systems, it is based on a largely industrial model[54] in which rights are acquired while performing a (male-oriented) full-time job with an open-ended contract. This is despite the fact that the retirement age is the same for men and women (65 years old) and in general all contracts for employment (or comparable work) are subject to the *requirement to make contributions* under the general social security system for wage-earning workers, meaning that protection is provided against the main risks (disease, maternity and paternity, old age, disability, death, unemployment, accidents at work and occupational diseases), in accordance with the periods of work actually done.

Consequently, the right to *aggregate* insurance periods pursuant to European regulations is also generally safeguarded for those who have spent their careers in Belgium, but it can prove impossible for people who have spent their careers in another country such as Italy, where the distinction between employed work and self-employed work is not as clear as in Belgium (see the examples below).

On top of this, difficulties can arise as a result of incomplete and fragmented careers, leading to a *lack of the minimum requirements* for eligibility for unemployment benefits and an adequate pension. For unemployment benefits, it is necessary to have worked for a proven number of full-time days that is often difficult to reach for workers with atypical and precarious contracts[55]. An additional difficulty lies in the fact that only periods spent working for at least the legal minimum wage are taken into account for the purposes of unemployment benefit, and this is not always guaranteed with contracts such as those for on-the-job training.

Another aspect relating to unemployment is that Belgium has become stricter with its "activation" policies, like other EU countries such as the United Kingdom and Germany. This often leads to the loss of insurance-based unemployment benefits, which are replaced with "integration income" (*revenu d'intégration/leefloon*), a non-contributory benefit that is provided by the social services of the municipality where the recipients reside if they can prove that they have insufficient resources. In addition to the fact that the amount is lower, it is also impossible to export the benefits, so the recipients lose them if they decide to move to another country.

As for pensions, it should be noted that the Belgian system is based on the principle of "complete careers" (currently 45 years for men and women), so all forms of part-time and fixed-term contracts inevitably lead to incomplete pensions[56]. Nonetheless, unlike other EU countries such as Spain, Italy, Portugal and Slovenia, the *calculation methods for benefits* do not involve any minimum insurance periods, so even a brief and fragmented career will make a worker eligible for some benefits. The amount will be in proportion with the duration of the working period (including notional periods).

Example 1 A 32-year-old female worker from Italy moved to Belgium in January 2012 to look for a job. In her first year and a half residing in Belgium, she had a number of stints working for different

[54] For more information see: Caldarini C., *Dire, fare, tutelare. L'azione sindacale di tutela individuale in cinque Paesi europei*, Ediesse, Rome, 2010; Caldarini C., "Dal patto sociale al contratto di solidarietà tra le generazioni. Origini e funzionamento del sistema di sicurezza sociale in Belgio", *Rivista Italiana di Politiche Pubbliche*, no. 3, 2006, p. 133-163. See also: www.cleiss.fr/docs/regimes/regime_belgique.html; www.missoc.org.

[55] Depending on the age of the applicant, either 312 days in the last 21 months, 468 days in the last 33 months or 624 days in the last 42 months (www.rva.be).

[56] The Belgian system partially compensates for these two problems with a number of social measures (which are for assistance purposes and non-contributory) that take the income of every single person to a level that at least covers minimum living costs.

employers. Each time she had a temporary contract and the last one ended in June 2013. On 1 July 2013 she applied for unemployment benefit in Belgium, which was her country of residence and the place where she had last worked. In order to be eligible for the benefits, she needed to have worked for at least 312 days in the previous 21 months. She could have met this requirement by aggregating her periods of contributions in Belgium (310 days) with her working periods in Italy between October and December 2011, when she had a 3-month project-based contract. However, the Belgian National Employment Office rejected her application because Italian project-based contracts are deemed self-employed work in Belgium, so they are not eligible for unemployment benefits of any kind.

Example 2 A 42-year-old Spanish waiter has worked in Spain, Italy and France, always with short-term seasonal contracts. He moved to Belgium to work as a waiter in October 2012 and the following March he lost his job. In accordance with Belgian law, to obtain unemployment benefits a worker must be able to demonstrate 468 working days in the last 33 months (the waiter can only show 412), or alternatively 624 days in the last 42 months (he can only show 580) or 5 years of work (1,560 days) in the last 10 years (he can only show 1,470). Even if he adds together all of his working periods, the waiter has no right to any unemployment benefits in Belgium.

Example 3 In 2012, a 31-year-old Belgian researcher moved to Italy, where she worked for six months for a single client (an Italian public research body) with a project-based contract. During that time, she earned €18,000 and made the legally required social security contributions in the Italian special separate management system. In 2013, she returned to Belgium, where she had found a better job: a fixed-term contract at a university in Brussels. However, after six months her research project was cancelled and she found herself unemployed. If she had stayed in Italy, she would have been entitled to a "one-off" Italian unemployment payment with just one month of project-based contract work. Because she had moved to Belgium – where she paid insurance contributions for six months – she was neither eligible for Belgian benefits nor for Italian ones.

DE (Germany)

Overview of atypical employment contracts

Out of almost 30 million jobs, approximately 9 million are atypical. The term "atypical" in this case includes all jobs which are not covered by collective bargaining agreements, those for which workers have no protection against dismissal and those which do not give eligibility for an old-age pension. The deregulation sanctioned by the Hartz reforms in 2003-2005 has led to a huge increase in atypical work in Germany. However, not all of the changes have occurred because of former Chancellor Schröder. For at least 15 years, Germany has been one of the OECD countries with the fastest growth in low-paid work, and therefore in atypical and highly atypical working contracts. The percentage of workers with low wages has been increasing since at least 1995. There is no legal minimum wage, so the downward trend is particularly significant, especially for temporary workers, people under the age of 25 and people with fixed-term contracts, who have both low incomes and a lack of job security. According to the German Confederation of Trade Unions (DGB), since 2000 workers with low incomes have suffered the biggest losses in wages in real terms, while their working hours are longer than those of people with other categories of income. The combination of low wages and discontinuous employment naturally means that there is no guarantee of an adequate old-age pension. Poverty levels among the elderly are destined to increase, especially in the former East Germany and among immigrants. Another

factor in the deregulation of the job market is the fact that paid work by women is considered a supplementary form of income in the traditional German family model.

Looking more closely at the different forms of atypical and highly atypical contracts, below is a summary of the six main types: fixed-term work, temporary agency work, and internships (atypical contracts); mini-jobs, contract work and seasonal work (highly atypical contracts).

Fixed-term work (Befristetes Arbeitsverhältnis) The number of fixed-term contracts has increased in Germany in recent decades. In the 25 to 34 age group, the percentage of these contracts increased by 10.6 points in 20 years, going from 8.2% in 1991 to 18.8% in 2011 (IAQ, Institut Arbeit und Qualifikation, 2012). Among new employees, this trend is even more noticeable (Bellmann et al. 2009), especially in big companies where there is greater protection against dismissal. In 2009, the percentage of fixed-term contracts for new recruits was 59% in companies with 50-249 employees and 62% in companies with 250 or more employees (Hohendanner 2010: 3).

In terms of social security, workers with fixed-term contracts have the same requirements and rights as standard workers, but they are at much greater risk of finding themselves unemployed and there is no protection against dismissals. According to the German Confederation of Trade Unions (DGB), after one year 10-15% of employees with fixed-term contracts will be unemployed or no longer working for the same company. According to a study by the Centre for European Economic Research (*Zentrum für Europäische Wirtschaftsforschung*), the equivalent figure for workers with open-ended contracts is 5%, but after three years the risk of unemployment is just as high for both groups of workers.

Temporary agency work (Arbeitnehmerüberlassung) The deregulation sanctioned by the Hartz reforms has encouraged an increase in temporary agency work. In 1994, there were 6,910 temping agencies in the country. At the end of 2010, the *Bundesagentur für Arbeit* (Federal Employment Agency) counted 16,600 of them, 1,100 of which had more than 150 employees. After the 2007-2010 crisis, there was a double-digit increase in temporary work. According to the Federal Employment Agency, this type of work is behind half of the increase in employment (figures from 2010). Meanwhile, the number of workers with temporary contracts went from 170,000 in 1996 to almost 900,000 in 2011 and it topped 1 million in 2012. In terms of social security, temporary workers have the same requirements and rights as standard workers. The problem is the difference in wages and the resulting consequences on the pension front. According to research by the Friedrich Ebert Foundation, in West Germany the average starting salary for temporary workers is half of the national average pay, leaving them on the verge of poverty by European standards. Even for skilled work, the difference in monthly pay is approximately 35%. According to a study by the German Ministry of Labour in North Rhine-Westphalia, in 2006 the average monthly social security payment made by a full-time temporary worker (€1,550) was approximately 7% lower than in 1999 (€1,668) and approximately 45% lower than the average for other categories of workers. The introduction of collective contracts for temporary work in 2004 did nothing to reduce or bridge the gap between the average monthly pay of temporary workers and that of standard workers. On top of this, temporary workers have less job security[57] and receive less money for their unemployment benefit and old-age pensions.

[57] Only around half of the periods of temporary work that ended in 2010 lasted for more than three months. Furthermore, according to the Institute for Employment Research (Institut für Arbeitsmarkt- und Berufsforschung – IAB), only 7% of previously unemployed temporary workers managed to keep hold of a job in the two years following their stint of temporary work.

Internships (Praktika) Internships provide professional guidance during a study or training programme, so they can serve as very useful preparation for the world of work. However, over the years companies have increasingly misused contracts of this kind to conceal their real goal of obtaining low-cost work. For example, many internships take place once a period of study or professional training is over, at a time when people would really expect to start their working careers. They no longer need professional guidance and they may well already be suitably qualified. According to the DGB, many "false" internships are used instead of giving people real jobs. A 2008 study by the Federal Ministry of Labour and Social Affairs revealed that 20% of qualified young workers (approximately 1.9 million people) have done at least one internship (1.9 internships per capita on average). Half of them received no pay and the other half did not earn enough to support themselves. No social security or pension contributions are made, it is difficult to plan for the future or consider raising a family, professional qualifications gradually lose value the longer a person remains in precarious employment and the situation can lead to health problems, such as psychological issues. In addition to the fact that young people are being treated unfairly, more false internships mean fewer standard working contracts with compulsory pension contributions. The savings made by employers are adding to the pensions deficit.

Mini-jobs (Geringfügige Beschäftigung) Mini-jobs are the most commonly cited example of atypical work in Germany. They are small jobs that are exempt from most contributory and tax obligations and they were included in the *Sozialgesetzbuch* (Social Security Code) for the first time in 1971. Updates to the law have been made a number of times to alter the conditions for social security, tax, pay and working hours. Until 31 December 2012, contracts for a maximum of €400 a month and no more than 15 working hours a week came under the category of mini-jobs. Since 1 January 2013, the maximum pay has been €450 a month (or €5,400 a year) and the 15-hour limit has been abolished, so it is now legal to have contracts of perhaps 30 hours a week, even though the same pay restrictions apply. The exemption from social security contributions has been made optional for everything except accidents at work. Basically, this means that employers could say that they will only give someone a job if he/she "voluntarily" opts out of the contributions, meaning that he/she will lose his/her social security rights. People with jobs of this kind are paid between €5 and €7 an hour on average, but there is no legally imposed minimum wage so at the end of the day the amount depends on the agreements made between the parties. There is also a second category called "midi-jobs" (*Gleitzonenfall*). The monthly pay can be up to €850 and the workers have the right to paid holidays, maternity leave and unemployment benefits as long as they have worked – and paid contributions – for at least 15 hours a week. Mini-jobs were originally created to provide a source of secondary income for married women – whose social security coverage was essentially provided by their husbands' work – or to legalise little second jobs for workers who were already covered by the social security contributions of their main employment. They soon developed into a mass phenomenon and almost one out of every five jobs now falls into this category. According to the DGB's figures, there are 7.5 million mini-jobs, more than 63% of which are held by women. Approximately 2.5 million of these workers have other sources of income, which in many cases provide them with their main form of social security coverage, but a mini-job is the only source of working income for at least 5 million people (IAQ, Institut Arbeit und Qualifikation).

Contract work (Werkverträge) With contract work, one party accepts a fee to do a job or perform a service on behalf of another party, working mainly on their own without any degree of

subordination. It is a form of self-employed work, so there should be no need to include it here. However, contract work is often used as a means of getting around the rules of employment law and collective agreements so as to cut costs and limit protection from dismissal. In such cases, it is false self-employment, at least three types of which exist. The first is when companies give contract work to workers who are self-employed but nonetheless subordinate to the companies and made to follow their orders. This allows the companies to avoid taking on permanent staff. In the second case, the jobs are given to other companies, which do not carry out the work directly. Instead, they illegally supply temporary workers. The third case is when contract work is given to foreign companies, which take advantage of the right to free movement of services in Europe and use their own resources. If there is a minimum wage for the sector which is not paid, it is a violation of the European secondment regulations for workers. If there is no minimum wage for the sector in question, wage dumping is not illegal under EU law. Numerous case studies and trade surveys have shown that inappropriate use of contract work has increased. The most extreme forms can be found in the meat industry (in which the supply chain is divided into separate activities) and in construction (in which a long subcontracting chain allows minimum wage checks to be avoided). Assembly work is also outsourced in the automotive industry (for example, see Rieble 2012; Koch/Wohlhüter 2012). Unfortunately, the amount of spurious contract work cannot be quantified because it is impossible to make a clear distinction between real and false contract jobs, but a number of indicators show that it is a growing trend. In the automotive industry, the percentage of external suppliers and service providers is expected to go from 62% in 2002 to 77% in 2015 (Bromberg 2007: 2). Research by the IAB (Institute for Employment Research) into the use of self-employed workers by companies revealed an increase from 350,000 in 2002 to more than 600,000 in 2010. In the same period, the percentage of companies that use contract work increased from 4% to over 7%. European E101 forms are the only source of information in these cases. They confirm that self-employed workers contribute to the social security schemes in their home countries, so they do not need to make contributions in their host countries. It is not possible to know whether the secondments really happen or how many workers are seconded without these forms. Despite the crisis, in 2009 the use of the forms was more and more widespread. 221,220 were issued for seconded workers in Germany. Just over half were in industrial fields and approximately half of these were in construction. According to the figures, the majority of contract workers (165,400) came from countries with much lower wages in Central and Eastern Europe (European Commission 2011).

Seasonal work (Saisonarbeit) Seasonal work in fields such as forestry, agriculture, catering, the meat industry and home help provides people from the EU and other countries with the opportunity to work in an EU country like Germany. It may be for a brief period and can involve jobs for the duration of the harvest, assisting ill people or work in slaughterhouses. The workers are partially protected by Europe-wide minimum legal conditions, but it is not easy to provide them with protection and they do not tend to be aware of their right to it. Often, they do not speak the local language, they quickly return to their home countries in the event of illness, they are not organised, they are not members of unions, they do not know how the legal and administrative control mechanisms work, and they are afraid that they will not be paid if they do the wrong thing. They constitute a proletariat that even the unions struggle to represent and protect.

Social protection measures and obstacles to free movement

Germany is one of the founding fathers of welfare and under Bismarck it was the first country to introduce compulsory social insurance, meaning that the State replaced the countless mutual aid funds (mainly with the goal of preventing the growth of trade unions and socialism). Its welfare system largely developed around employment. Generally speaking, people must have an ongoing, regular professional career in order to be eligible for rights. Access is based on insurance rules, with proportionality between wages, contributions and benefits.

Trade union membership is rather low (approximately 20% of employees) and it has been falling for a number of years. Nonetheless, Germany has a large population and more than 30 million workers, so there are almost 9 million members of trade unions in the country (including pensioners and unemployed people). This makes it one of the countries with the highest numbers of union members in Europe, along with the United Kingdom and Italy. Although it is not as high as in Nordic countries, welfare spending is quite high (almost 30% of the GDP), but the system mostly protects people in standard employment.

There is a strong split in the job market and the welfare system, with high income and protection for some categories of workers, and little or no protection for others, such as small-scale (or false) self-employed workers[58], interns and above all people with mini-jobs. The latter are subject to a special tax and social security regime, under which employers are charged a flat rate of 30% and the workers have no social security coverage. Some people already have health coverage because they are dependants or their mini-jobs are just a way of supplementing another income from a job in which the legally required contributions are made, but all other people with mini-jobs have to pay for their own health insurance (at approximately €150 a month) and they are not eligible for unemployment benefit or maternity leave. They can only claim a small benefit in the event of disability and when they retire they will only be able to have a basic state pension, not a contributory one (unless they choose to make a voluntary contribution of 4.5% of their pay, which can be added to the pension fund).

In terms of coordination of social security systems and free movement, the *lack of compulsory insurance* clearly means that *aggregation* with (insured) working periods in other states is not possible. Even for those with compulsory contributions, it can be difficult to satisfy *the minimum insurance requirements* for unemployment if their careers have been fragmented, because no rights are available to those who work for less than 15 hours a week.

ES (Spain)

Overview of atypical employment contracts

In the early 1980s, there was growing unemployment because of a fall in demand, partly due to the opening of the internal market after the long period under the dictatorship and ahead of Spain joining the EEC after years of waiting (in January 1986). In response, the first socialist government under Felipe Gonzalez introduced a number of forms of fixed-term contracts. This resulted in the creation of a two-track job market, in which the majority of people had open-ended contracts and

[58] The trade unions believe that self-employed workers need just as much protection as employed workers. However, the German social security system is not designed for workers of this kind. Currently, approximately a quarter of self-employed workers have pension plans with special regimes. They include farmers, midwives, sailors and registered professionals. There are also special regimes for other groups, such as social insurance for artists, but most self-employed workers are not covered by compulsory insurance. Since 2009, everyone who lives in Germany has been required to take out health insurance, but many self-employed workers struggle to pay the amount due, which is approximately €650 for those with income of over €1900.

a minority – who nonetheless constituted a significant percentage of the total – had fixed-term contracts. The latter group was mainly made up of young people, women, immigrants and workers with few qualifications in general. The economic structure was based on intensive use of the workforce in sectors with low productivity (especially in the tertiary sector) and seasonal work (such as agriculture and the associated industries, tourism, catering and construction), which encouraged the use of these contracts. Subsequently, they also began to be used by industrial companies and even by the public authorities.

The low level of pay (compared to the EU average) meant that employers were able to cover the costs of contributions (in an industrial environment that largely catered to the internal market). In some cases, they even (fraudulently) managed to reduce the costs of workers by getting the public system to pay some of them. For example, they would get the welfare system to cover holiday pay by ending contracts at the beginning of holidays and starting a new contract at the end of the break, so that unemployment benefit would act as holiday pay. The use of fixed-term contracts reached a peak in 2005, when they were held by 6% of women and 32% of men. In recent years, these percentages have fallen simply because this group of workers has been the worst affected by the unemployment in the country. At the same time, in business sectors there has been growing demand for measures to cut social costs. In broad terms, there have been calls to reduce income-based contributions, but there have also been requests for the introduction of new forms of contracts which are not only fixed-term but also involve lower social security contributions. There are often references to "mini-jobs" in the proposals[59].

Nevertheless, truly discriminatory measures have never been taken on the welfare front. Indeed, the benefits available – especially to the unemployed – have always acted as an important safety net for workers with a string of fixed-term posts, at times with periods out of work in between. As a result, even today Spain is not only the EU country with the highest unemployment rate but also the one that spends the greatest proportion of its GDP on unemployment benefit. All the same, as outlined below, there are three forms of atypical contracts in a grey area where the protection is not quite as strong.

Apprenticeships (contratos para la formación) These are training schemes for workers aged between 16 and 25 who do not already have a professional or academic qualification (Law 3/2012 has temporarily raised the upper age limit to 30 and it will apply until the official unemployment rate drops below 15%). There is compulsory insurance with a single contribution (www.seg-social.es). For insurance against unemployment (*desempleo*), the minimum contribution is the same as the minimum for accidents at work and occupational diseases, which was €753 in 2013. Therefore, these contracts give workers limited economic rights, both in terms of national benefits and if the abovementioned contributions are aggregated in accordance with European regulations.

Scholarship holders and researchers (becarios y investigadores) This is a group of qualified workers who had no rights to benefits until recently. Following a general strike on 29 September 2010, the Spanish government agreed to have talks with workers' representatives about possible changes to the job market and pensions reforms. One of the few positive measures was recognition for

[59] When the European Central Bank (ECB) bought Italian and Spanish sovereign debt in the secondary markets, its president at the time, Jean-Claude Trichet, sent a letter to Zapatero. One of his conditions was that mini-jobs should be introduced in Spain. The Spanish Confederation of Employers' Organisations (CEOE) defended this request, but the Spanish trade unions strongly opposed it.

these workers by the welfare system. Following the Royal Decree (*Real Decreto*) 1493 of 2011, scholarship holders and researchers had the right to make contributions. The same contributions system was applied as for the above-mentioned training contracts, with the exclusion of the contributions (and therefore the benefits) for unemployment, wage guarantee funds and professional training. Less than two weeks later, with the *Real Decreto* 1707/2011 the government excluded from the right to contributions all university students who were taking part in external training programmes. There had been 41,135 registrations for the Spanish social security system by people in this category in one month alone, but following this measure the number immediately fell to 20,000. The Comisiones Obreras trade union made a legal appeal against the second *Real Decreto* and on 21 May 2013 the Supreme Court (*Tribunal Supremo*) restored the scholarship holders and researchers' right to contributions, as ratified by the previous law (ruling no. 130,514).

Economically dependent self-employed workers (TAED - trabajadores autónomos económicamente dependientes) Spanish self-employed workers have to make a monthly contribution of 29.80% to the social security system, which is based on a minimum contribution of €858.60 and a maximum of €3,425.70 (these are the figures for 2013). They can choose the amount themselves, regardless of their actual net income or turnover. Many of these figures only work for a single client, so Law 20/2007 (the self-employed workers' statute) introduced the concept of an economically dependent self-employed worker (*trabajador autónomo económicamente dependiente*). These workers make the relevant contributions to the social security (*Seguridad Social*) system and they are eligible for benefits in circumstances such as unemployment and ill health, in the cases covered by the law. Before the introduction of this concept, there were numerous blatant examples of false self-employed workers with roles equivalent to those of employees. They had to go to work every day and they had set working hours and (in some cases) paid holidays[60].

Social protection measures and examples of obstacles to free movement

As in Greece, Italy and Portugal, spending on the Spanish welfare system is rather low. It is mainly focused on unemployment benefits and it is supplemented by the traditional central role of the family, which can offer welfare, income and services. Another notable feature of the Spanish system is that the rate of union membership is one of the lowest in Europe. The legal minimum for a monthly salary is approximately €750 (gross).

Generally speaking, all of the types of contracts for employed work require *contributions* to be made, so it is possible to *aggregate* them and *export* benefits in accordance with the European regulations.

Difficulties applying the European coordination rules emerge when it comes to meeting the *minimum requirements,* due to some of the *benefit calculation mechanisms* for old-age pensions. This is an issue with both standard and atypical working contracts and it has caused the pension calculation system established by Spanish law to be examined by the European Court of Justice on two occasions, in 2011 and in 2013.

[60] According to the Spanish trade unions, every year there are still more than 3,000 reports of breaches of the rules. The majority of them concern false self-employed work, and this is only the tip of a much larger iceberg.

The first case (C-385/11, Isabel Elbal Moreno vs. Seguridad Social, judgement of 22/11/2012) involved a woman who was refused an old-age pension because she did not meet the requirement of having made contributions for at least 15 years. She had worked part-time for 18 years, doing four hours a week, which is 10% of the statutory working week in Spain. The court ruled that the system discriminated against part-time workers, because basing the calculation for the contributions made on the hours actually worked means that they are unable to reach the minimum amount of contributions required in order to be eligible for an old-age pension. The court even noted that there was a form of discrimination on grounds of sex, because 73% of part-time workers are women.

The other judgement was in the case of Ms. Salgado González, who paid contributions to the special scheme for self-employed persons in Spain for a total of 10 years and then in Portugal for a period of five years. Under the Spanish regulations, pensions are calculated on the basis of the contributions paid in the 15 years prior to an application. A fixed divisor is then applied for the contributions, but neither the duration of the period nor the divisor can be adapted to take account of the fact that the workers concerned have exercised their right to freedom of movement in another member state.

Using this system, the Spanish social security body deemed it necessary to calculate the amount for Ms. Salgado González's pension by only adding together the contributions made in Spain between 1991 and 2005 and dividing the total by 210, which would normally correspond to the amount of contributions made in 15 years. It completed the calculation period with five years at a notional value, which for a self-employed person is zero. As the court noted, by doing so it created discrimination between people that have worked in more than one country and those who have worked for the same amount of time in just one country.

FR (France)

Overview of atypical employment contracts

In France atypical work has been growing since the 1980s. Since then, the number of fixed-term workers has increased six-fold, while the number of contracts through third parties and apprentices is four times bigger. Considering all fixed-term contracts, the "precariousness rate" of the employed was 5.3% in 1982, 7.6% in 1990, 11.8% in 2000 and it exceeded 12% in 2011 (INSEE data). Part-time jobs have also almost tripled from 1980 to today. This percentage is approximately 7% among men and 30% among women. It should be taken into account that precarious employment tends to decrease in periods of economic crisis, since fixed-term, part-time, temporary, intermittent and occasional jobs are the first to be deleted, then developing again when unemployment becomes structural.

Undoubtedly, in some cases part-time work can be a voluntary choice. However, manpower statistics show that 27 to 29% of part-time workers do not choose such work intentionally; they just cannot find better jobs. Precarious jobs are more common among women and young people in France too. At least one third of the so-called working poor are actually part-time female workers. In the 15 to 29 age range, one employed person out of three has a precarious contract-fixed-term, internship, apprenticeship, temporary), a much higher percentage than the previous generations.

Atypical contracts in France can be grouped in two main categories: contracts with atypical terms and non-permanent employment relationship (fixed-term, temporary, funded contracts and various forms of internship) and contracts with atypical working hours and wages (some are part-time contracts). Globally, at least 6 million people are involved in atypical work, of whom at least 4 million working part-time. Please note, however, that these contracts are subject to compulsory insurance, so workers are entitled, at least in principle, to general protection by the social security system. Additionally, fixed-term workers are usually entitled to a one-off precariousness benefit *(prime de précarité*), equal to 10% of the total gross pay received by the worker during his/her contract. This benefit is not applicable to students' contracts, seasonal workers, contracts dealing with unemployment measures, dismissal for serious misconduct and generally when workers obtain a permanent job upon termination of a fixed-term one.

Here is a summary of the main forms of atypical contracts existing in France at the moment[61].

Fixed-term contracts (à durée déterminée) Fixed-term contracts (the so-called CDD) are only permitted in France to perform specific, temporary tasks and in cases strictly provided for by the law. Regardless of the reason why fixed-term work is resorted to, this must be laid down in a written contract, the object of which may not be performance of a company's ordinary job. If these legal requirements are not fulfilled, the CDD turns into a permanent job (CDI) automatically.

Project-based contract (à objet défini) Law 596/2008, known in France as labour modernization Act, introduced a new kind of fixed-term contract. Its duration is not determined by a period of time but by the conclusion of a specified 'project'. This contract can only be stipulated if provided for by a trade association agreement, or by a specific agreement between trade union and the company and can only be used for professional tasks (engineers and managers, as defined by collective contracts). Its term should be at least 18 months and no longer than 36 months and it can be terminated with 2-months notice[62].

Apprentiship (apprentissage) Apprenticeship contracts are not real work contracts, but offer supplementary training and specialization to young people who have already completed their studies and are not of compulsory school age. These contracts are usually intended for 16 to 25-year-olds, with some exceptions provided for by the law. In addition to the *contrat d'apprentissage* narrowly defined, there are some other apprenticeship contracts[63], such as the so-called *contrat d'apprentissage aménagé*, with no age limits and designed for people with diagnosed and recognized disabilities, the *contrat de professionnalisation*, open to the unemployed over 25 and other unemployed beneficiaries of social benefits, the so called *PACTE* which allows for the recruitment of non-graduated and non-qualified young people, or the so-called *contrat de professionnalisation*, l'*Emploi d'avenir*, etcetera.

Intermittent work (travail intermittent) Exclusively allowed for some trade categories in certain businesses, usually with regular activities, such as tourism, show business, school, etc.), intermittent work alternates between working to non-working periods, in the context of a permanent job. A number of compulsory workers' protection clauses are provided, such as taking

[61] For further atypical employment relationships see: http://travail-emploi.gouv.fr (for instance: *contrat unique d'insertion, contrat vendanges, cumul d'emplois, travail à temps partagé, travail saisonnier, activites d'adultes relais, emplois d'avenir*).
[62] Notice may be shorter than 2 months in some cases as provided for by the law.
[63] http://travail-emploi.gouv.fr

into account non-working periods for the length of service or in the event of dismissal. Workers with intermittent contracts have the same rights as the other workers.

Common use contracts (contrat d'usage) The so-called *contrats d'usage* are temporary contracts which represent an exception to general legislation; they are permitted in some sectors where work is typically seasonal or fluctuating. Here the use of non- permanent jobs is common, such as in forestry, ship repair services, transportation, restaurants, show business, education, surveys, etc. Unlike a regular fixed-term contract, the *contrat d'usage* can be renewed many times with no limits; there are no time limits between two consecutive renewals; it does not entitle workers to any precariousness benefit and does not necessarily imply a termination date.

Occasional work (travail occasionnel) Occasional work is only allowed to carry out a task at a private person's house- not in a company- and is different from the so-called social and personal services. Recruitment, working and wage conditions are the same as those usually applied to paid employment and those recruiting occasional workers have the same obligations as an employer. The most common case is that of an individual who intends to have some construction or maintenance work done in his/her house and recruits a worker rather than a self-employed or building firm, thus paying for social contributions and no VAT. The occasional worker and his employer are both subject to labour law and the worker is entitled to the same social protection as any paid employee.

Temporary work (travail temporaire) A temporary work contract in France is only permitted to perform a pre-set assignment *(mission*) and in cases provided for by law. Its object cannot be a company's ordinary job. Workers with temporary contracts have the same rights as the other workers and such a contract signed outside its legal framework turns into a permanent job automatically.

Agency work (intérimaire) Legalized in 1972, agency work is theoretically intended to exceptionally replace workers in a company. This contract has recorded such a significant increase that it has become a common category in the French labour market. As in the other main kinds of atypical work, the agency worker has the same rights as other workers in terms of social security; income uncertainty is partially balanced by the so-called one-off precariousness benefit (*prime de précarité*), equal to 10% of the total gross pay received by the worker during his/her contract.

Social protection measures and obstacles to free movement

The French social protection system is among the oldest in Europe – its origins can be traced back to the medieval guilds, the confraternities and mutual aid associations that appeared spontaneously in the 18th century). Today it is a mix of initially different legal systems which were then assimilated around a general occupational pattern for some aspects, and universal for others. In terms of the allocation of resources, France comes immediately after the Scandinavian countries, along with Belgium and the Netherlands, and has historically been one of the countries allocating more resources to the social protection system (over 30% of GDP in 2011), mainly through social contributions. Unlike these countries, however, unionization in France is among the lowest in the world (approximately 8% of the employed), anyway compensated by high firm representation. Its welfare system is usually defined as *mere occupational*, but with remarkable

state-centric features unlike Belgium and Germany[64]. Additionally, France is one of the 21 EU countries where the minimum legal wage is effective and its amount, Euro 1,430 gross, is the fifth highest, after Luxembourg, Belgium, the Netherlands and Ireland.

All employment contracts (or similar) are basically subject to *contributions* p to the social security payable by employers and the insured covering the main risks such as sickness, maternity and paternity, old-age, invalidity, death, unemployment, occupational incidents and occupational diseases. Obviously, this depends on the periods actually worked and with all the disadvantages connected to career fragmentation and to the wage differences (not considering the abuse of atypical contracts). The right to an *aggregation* of insurance periods, according to European rules, is therefore generally safeguarded.

The *minimum requirements* to be entitled to unemployment benefits are less strict than those in most EU countries[65], thus in relative terms they facilitate the right for workers with short and fragmented careers. A similar consideration can be made for pensions. In the French social security system the full-rate pension depends more on the person's age than on their completed career. Unlike countries such as Spain, Italy and Slovenia, the benefit calculation system does not depend on a minimum insurance period, so even a short and fragmented career entitles people to a benefit, with an amount proportional to the working period (including figurative periods).

IT (Italy)

Overview of atypical employment contracts

In the last 20 years, there has been a huge increase in the number of types of contracts in the Italian system. This has led to a sharp drop in the indicators of employment protection used by the OECD for international comparisons[66]. Numerous legislative measures have been taken in the field, the most significant of which are the Treu Law (1997), the Biagi Law (2003) and the Fornero Law (2012). The multitude of overlapping regulations has produced a bewildering array of *atypical* and *highly atypical* contracts. Estimates of the number of contracts of this kind depend on the classification criteria applied: there are 19 according to the Confindustria employers' federation, 26 according to the Employment Consultants' Study Centre, and 46 according to the CGIL trade union's job market department (including 26 types of subordinate positions, four types of contract positions, five types of self-employed positions and 11 types of "special" positions). Against such a disjointed backdrop, the one thing that all of them have in common is that they tend to be more flexible, less protected, less expensive and reasonably versatile. They make things on the job market particularly tough for young people, who find themselves in a state of *flex-insecurity* (Berton et al. 2009) that is more arduous than that of many of their European contemporaries because of the poor social protection standards. The situation is splintered and there is no clear functional specialisation in the system, so "it is possible for companies to engage in a kind of *contract shopping* as they seek out the most advantageous model and the best options for (foreseeable) strategic use, with a series of contractual types used to avoid the restrictions imposed by the law" (Carinci 2012: 531).

[64] Caldarini C., *Dire, fare, tutelare. L'azione sindacale di tutela individuale in cinque Paesi europei*, Ediesse, Roma, 2010. Bonoli G., "Classifyng Welfare State: A Two-Dimension Approach", *Journal of Social Policy* , n° 3, 1997, pages 351-372.
[65] 122 days over the last 28 months or, for workers of fifty or over fifty, over the last 36 months.
[66] www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm.

For the sake of brevity, in this report we will only examine four types of contract in detail: staff leasing, intermittent work, contract work, and ancillary casual work.

Staff leasing This is a type of triangular working relationship that was introduced in Italy in 2003 (with the Biagi law) to replace the temporary working relationship that was introduced in 1997 (with the Treu law). Workers are employed by an accredited staff leasing agency and they are sent to work for third parties known as "users". Consequently, this type of work involves two contracts: a commercial agreement between the user and the agency, and an employment contract between the agency and the worker. Although the workers are employed by the leasing agency, they work under the management and supervision of the user. Therefore, they have to comply with the orders given by the user as they do their work, as if they were its own employees. They have the right to the same pay and the same benefits as the employees of the user (in terms of aspects such as information, health and safety, strikes and meetings). Workers essentially have open-ended contracts with the agencies, so they are subject to the general regulations for open-ended employment. When their services are not being used, the workers remain at the disposal of the agency, so they have the right to a "waiting" allowance. The amount is established by the relevant collective bargaining agreement and it must be at least €350 a month. The regular contribution rate applies. Fixed-term staff leasing is only allowed in certain cases (such as the need for temporary, one-off additions to the workforce or replacements for workers on sick leave)[67] and the rules for fixed-term contracts apply, with some exceptions[68].

In terms of social security, leasing staff have to make the same contributions and they have the right to the same benefits as standard employees, including unemployment benefit[69]. On top of this, there is a special one-off unemployment payment of €700 from the Bilateral National Temporary Work Body (run by trade unions and associations of temporary work agencies) for anyone who has worked for at least six of the previous 12 months. The waiting allowance is also taken into account for pension purposes[70]. However, no unemployment benefits are available during periods of inactivity for the workers if they continue to be employed by the agency, even if they do not receive a waiting allowance.

Apprenticeships Apprenticeship contracts provide young people aged between 15 and 29 with an opportunity to combine work and training as they make the transition from school to the workplace. At any time, the agreements can be converted into open-ended employment contracts. The law provides for three types of apprenticeships: apprenticeships for professional diplomas and qualifications, apprenticeships for qualified professionals or trade contracts, and higher education and research apprenticeships. Finally, in a measure that reflects recent trends elsewhere in Europe, adults that have been made redundant can be given apprenticeship contracts regardless of their age. In terms of social security, apprentices have the right to family allowance, medical care and insurance coverage for accidents at work, occupational diseases, disability and old age. They do not have the right to receive temporary redundancy pay, unemployment benefit following redundancy or sick pay. Until 2012, apprentices had no right to

[67] It is not necessary to specify the reasons for an initial working contract of no more than 12 months or for contracts for certain categories of disadvantaged workers specified by the law.
[68] The provisions for re-employment, the right to precedence, transfers following takeovers and overall duration do not apply.
[69] The exceptions are unemployment benefit, temporary redundancy pay and special unemployment rights for construction workers. Leased staff are not eligible for them even if they work in an industrial or building firm because their official employers are the staff leasing agencies.
[70] For further details, see www.inps.it.

any unemployment benefits whatsoever. Since 2013, they have had the same rights as normal employed workers in the event of unemployment.

Intermittent work (or on-call jobs) With these subordinate employment contracts, workers are at the disposal of their employers for intermittent work, as defined by national or local collective bargaining agreements. The employers are only obliged to pay a "waiting" allowance (20% of the wages) if the workers "choose" to guarantee their availability on call. The workers have the right to the same payment, social security and assistance conditions (in proportion to their hours of work) as someone of the same level with a normal employment contract. The benefits for sickness, injury, maternity and parental leave are also reduced in proportion with the working hours. Meanwhile, intermittent workers can claim the full amounts for family allowance and unemployment benefits for periods when they do not work. Unemployment benefits are only available if the workers are not contractually obliged to be on call, meaning that they do not receive a waiting allowance.

Contract work This label is used to describe a range of working relationships that lie somewhere between employment and self-employment, such as contracts for ongoing coordinated services (Co.co.co.) and project-based contracts (Co.pro.). The former are for set periods specified when the contracts are signed, while the latter are for the completion of a project. In both cases, the following can be said about the workers: 1) they are not subordinates because the client (company) does not have management and hierarchic powers over them, so they can organise their work relatively independently; 2) they are not entrepreneurs, because they do the work themselves; 3) they are not self-employed workers because they do not have a direct relationship with the market, they have an exclusive contractual relationship with a single client, and they are economically dependent. In terms of social security, contract workers have to make payments to a system that is managed separately from that for employed workers. It provides insurance for accidents at work, occupational diseases, old age, disability and survivors. Subject to compliance with certain conditions, the workers are eligible for some benefits, such as those for sickness, maternity, parental leave and family allowance. In addition, for some years now Co.pro. workers have been able to claim one-off severance pay. It is not of an entirely contributory nature and there are some very strict requirements for entitlement[71].

Ancillary casual work (with vouchers) This is a special system for "ancillary" casual work whose nature means that standard employment contracts cannot be used. Payment is made with vouchers with a nominal value of €10 per hour of work. The final, net value for the workers is €7.50 (except for in the agricultural sector, where the conditions of the relevant contract are applied). Voucher-based work is officially covered for the purposes of pensions and insurance (for accidents at work and occupational diseases), but the workers have no right to income support (such as benefits for unemployment, maternity, sickness or family allowance).

Social protection measures and obstacles to free movement

Traditionally, one of the gaps in the Italian welfare system has been the lack of income support to act as a "social safety net" for those who lose their jobs.

[71] In the year prior to the application, it is necessary to have worked for just one client, with a taxable income of less than €20,000, two months of unemployment and three months of contributions. In addition, it is necessary to have made one month of contributions in the year of the application (conditions in 2013).

According to the latest Eurostat figures (correct as of 31 December 2011), out of the 28 EU member states, Italy is in joint 23rd place (with Estonia) for spending on unemployment support, 26th place for spending on sickness and disability support and last place (28th) for spending on families, children, social housing and measures to fight exclusion. Nonetheless, overall Italian spending on social security is in line with the EU average both as a proportion of the GDP and in terms of per capita spending at purchasing power parity. This is entirely down to spending on old age and dependant's pensions, which has traditionally been the highest in Europe, largely due to the fact that Italy has the oldest population, and consequently now also the highest retirement age among all of the EU countries. According to a number of estimates, unemployment benefits in Italy cover less than 30% of unemployed people, compared to 36% in the United Kingdom, 50% in France, 70% in Germany, Spain and Scandinavia, and 80% in Belgium. There is also insufficient spending on activation policies and employment services (Source: OECD, www.oecd.org).

The foundations for unemployment protection mainly lie in the Constitution of 1948. The model is based on the principle of employment/work, with a degree of proportionality binding work, wages, contributions and benefits. However, the actual protection system in Italy is the product of a mass of measures that has created a mixed output. Over the years, it has been altered by numerous measures, which have mostly been shaped by emergencies and the negotiating power of different production categories who have demanded and obtained recognition on each occasion. Consequently, the protection system is incoherent and fragmented. It is correlated to the nature of the recipient's work contract, the size of the company, the production sector, the age of the recipient and the job market in the local area. The size, funds, coverage and access to the benefits vary significantly with the employment boundaries, which are based on the capabilities and the negotiating power that each production category has used over the decades to put pressure on the public authorities, who in turn are interested in gaining and stabilising approval.

With regard to the different forms of atypical work, in general all of the contracts involve *compulsory contributions,* as mentioned above. The problems mainly emerge when people try to *aggregate* the contributions that they have made to the "separate management system" (for contract work), in order to claim either unemployment benefit or a pension. The difficulties with unemployment benefit lie in the lack of compatibility between the Italian separate management system and the social security systems of other member states (see article 61 of EU regulation 883/2004)[72]. As for pensions, in principle the payments to the separate management system can count towards the right to a pension in other member states, but this must be "in accordance with the limits set by the system of the country where the contributions are used"[73], as established by the Administrative Commission for the Coordination of Social Security Systems. For example, under Italian legislation it is not always possible to add the contributions for a period of work abroad before 1 January 1996 to contributions to the separate management system, which began operating on that date as a result of Italian law 335/1995. Workers with other pension contributions in Italy need to use the national aggregation scheme in order to make use of all of their past contributions. It should be said that the same applies for people in the same situation

[72] The article states that "periods of employment or self-employment completed under the legislation of another Member State shall not be taken into account unless such periods would have been considered to be periods of insurance had they been completed in accordance with the applicable legislation".
[73] Administrative Commission for the Coordination of Social Security Systems, Decision no. H6 of 16 December 2010.

who have only worked in Italy: they too must turn to the national aggregation scheme in order to use all of their past contributions.

The circumstances in Italy highlight a problem that also applies in all of the other countries, albeit on a smaller scale: rather than cancelling each other out, the problems that workers with atypical contracts have accessing social protection often compound each other. Once again, an example is provided by the field of contract work, and in particular by Co.pro. workers. In order to qualify for their one-off severance pay (note that this is something completely different from unemployment benefit, to which they have no right), they have to meet *minimum requirements* that are so strict that in practice hardly anybody is eligible.

Example Let us consider the case of a worker with 17 years of insurance contributions in Sweden prior to 1993, six of which were actually spent working. He can only lay claim to three years of contributions to the separate management system in Italy, between 1997 and 2001. In Italy, he does not have the right to a disability allowance, but he should be eligible for an old-age pension using the national and international aggregation system. There may be grounds for a refusal because the worker is not registered for two or more compulsory forms of pensions in Italy, as provided for by article 1, section 2 of Italian Legislative Decree no. 42 of 2 February 2006. Nonetheless, it should be noted that he would definitely be registered for two different forms of pensions if he had worked in Italy before 1993. Therefore, this requirement could be satisfied by the principle of equal treatment of benefits (art. 5 of EC Regulation 883/2004). Failure to respect this principle would result in unequal treatment of a worker who had exercised his right to free movement.

Having the right to a foreign pension does not prevent a person from using the national aggregation system to combine periods of contributions. Established rulings by the European Court of Justice also safeguard the more favourable rules from internal legislation when applying EU provisions. Finally, it is worth noting that subparagraph 3(a) of article 53 of Regulation no. 883/2004 also only allows restrictions to be imposed by national legislation if external clauses apply ("*the competent institution shall take into account the benefits or incomes acquired in another Member State only where the legislation it applies provides for benefits or income acquired abroad to be taken into account").*

SE (Sweden)

Overview of atypical employment contracts

The job market in Sweden stands out for the generally high protection rate of standard job contracts, even more than the other Northern countries[74]. However, the same rate is unusually low, both in relation to the European average and that of other Northern countries, as far as fixed-term contracts are concerned, currently involving approximately 15% of overall employment. The centre-right wing government, which has been in power since 2005, is insisting on the concept of *flexicurity*, based on lower taxes on salaries and changes to the social insurance systems in the event of illness and unemployment. The activation policies for the unemployed have been improved, new incentives have been introduced for employers recruiting barely

[74] http://resourcecentre.etuc.org/linked_files/documents/Sweden_Fiche.pdf

employable people and the use of fixed-term contracts, in their different forms, has been streamlined.

The Swedish trade unions are concerned about the weakening of the so-called LAS (*Employment Protection Act*), law protecting the general employment of the social security system and of labour market rules, even though the increase in atypical work is not prioritized as compared to other issues.

Temporary work (allmän visstidsanställning) As compared to other forms of atypical work, fixed-term contracts for temporary substitutions and for seasonal jobs are relatively well-regulated in Sweden, since they are governed by LAS and by the collective bargaining contracts which set their terms and give automatic rights to a permanent contract if the employment relationship is longer than 2 years over a 5-year period. Fixed-term contracts, on the other hand, with fewer rights than a typical contract, are those without a definite term, particularly hourly-based and on-call contracts. These are the most popular contracts with less social protection.

Frequently used in the service-producing and trade sectors, the *on-call contracts (behovsanställningar)* and *the hourly-based contracts (timanställningar)* are not covered by collective bargaining contracts; they do not comply with a work scheme, or allow one to plan one's week, often not even one's day and virtually never lead to a permanent job. The on-call contract is particularly disadvantaged in terms of social protection since it does not entitle workers to sick or paid leave. On-call contracts in Sweden are often offered by text messages and require full availability from workers. This kind of contract is mainly to be found among women and young people. 53% of workers with such contracts is aged between 16 and 24 (data from 2011). Fixed-term contracts include trial period contracts (*provanställning*), which automatically turn into a permanent job after 6 months, but the employer has the right to interrupt the trial period at any time.

Temporary agency work (anställningar i bemanningsföretag) Temporary agency work was not allowed in Sweden before 1993. This kind of contract is regulated by LAS and by collective bargaining. The Swedish trade unions have always opposed these contracts, since they tend to decrease the overall level of salaries in companies. In order to keep this problem under control, LO signed a collective contract with the agency work employers' organization so that at least those sectors covered by LO (mainly industry, trade and services) can ensure the same salary and working conditions for agency work employees as the other employees in the company. In 2010, 60,000 workers had a temporary contract, equal to approximately 1.5 % of employed people.

Involuntary part-time (deltidsanställningar) Involuntary part-time is very common, particularly among women and in the service-producing sector (elderly care, cleaning, etc.). This contract has the same rights and rules as typical contracts but barely meets all the minimum requirements to be entitled to unemployment benefit, particularly when working hours are below 50% and in any case has proportionally limited benefits in the event of maternity/paternity or retirement.

Social protection measures and obstacles to free movement

The Swedish social model is often used as a reference in international comparisons. It is essentially based on four pillars: strong trade unions (unionization at approximately 70% and coverage of collective bargaining agreements higher than 90%), flexible work legislation, active policies for the job market and family, welfare for all. In the background, high taxes and an effective public communication system. Sweden allocates approximately 30% of its GDP to social security. Its scheme covers all risks, partly dependant on living in Sweden and partly according to the work situation and is mainly funded by taxes and contributions. The compulsory scheme includes a basic insurance for sickness and maternity, old-age pension, invalidity and survivors, family allowances, occupational accidents and occupational diseases.

Social protection for maternity and paternity leave is quite progressive, as long as the working period before birth reaches 240 days[75].

The old age pension system covers all individuals residing or having worked in Sweden and is divided into four kinds of pension: a basic pension (*inkomstpension*), based on an allocation system funded by social contributions, a government supplementary pension (*premiepension*), based on an individual capitalization system, a guaranteed pension (*garantipension*), financed through general taxation (a genuine safety net for those people who have not paid enough contributions to be entitled to pension) and finally the so called *tjänstepension*, a job-related supplementary pension, depending on the company or the industry[76].

On average, 80% of the workers are covered by voluntary unemployment insurance. This is managed through an insurance fund system historically associated with the trade unions, even if formally independent. As for involuntary unemployment, atypical workers too are also generally entitled to benefits provided by social security. In addition, the State encourages all citizens to pay into one of the 29 voluntary funds managed by the trade unions, which pay a more generous benefit and are proportional to the last wage. A state fund called *Alfa-kassa* provides for payment of a basic benefit to workers who do not have any voluntary insurance. A set of restrictive measures introduced by the centre-right coalition has resulted in a reduction in trade union funds and union members. Despite providing for a voluntary private fund, now cheaper than in the past, the Swedish insurance system is still characterized by reasonable costs for the individual and by generous unemployment benefits, but at the sole condition of having paid for minimum insurance periods over a certain timespan, which can be difficult for occasional and irregular workers. From the social security viewpoint, it is not the atypical character of the contract that makes it most disadvantageous, but rather the fragmentation and the precariousness of the work career.

The unemployment insurance system consists of two parts: basic coverage depending on the work done and another one based on income. The first one is for all those workers who have not subscribed to any optional unemployment insurance or have not been members for a minimum period of 12 months; the other one is for *A-kassa* members who meet the requirement of a minimum 12-month membership, including 80 hours' work a month over a 6-month period. The income-based unemployment benefit is calculated according to the average salary of the last 12 months. In the first 200 days it amounts to 80% of the salary average of the last 12

[75] Otherwise, only a basic allowance is granted (*Grundersättning*), equal to 180kr per day for no longer than 90 days.
[76] In most cases atypical contracts are not covered by collective bargaining contracts, so they are not entitled to a professional pension paid by the employer (*tjänstepension*).

months. Subsequently, it decreases to 70% of the average salary. The unemployment benefit cannot exceed 300 days (450 in the event of a child aged under 18).

In addition, in 2007 the government introduced an unemployment benefit with a maximum daily ceiling of 680kr. As a matter of fact, this made it impossible to receive benefit equal to 80% of the salary, as it was before. To overcome this problem, many union funds introduced a supplementary insurance which allows workers to obtain 80% of the actual salary.

All employment relationships in Sweden are *subject to contributions* and allow for *aggregation* of the working periods pursuant to EU rules. The social protection measures concerning atypical work contracts are basically the same as those relating to typical employment.

As for pension, a *minimum contribution period* is not required to be entitled to pension. Each contribution paid and residing year are taken into account for the calculation. As for contributory pensions, all taxable incomes automatically generate pension contributions. The problem lies with occasional workers with an income lower than 42.30% of the basic income; i.e. 18,824 kr in 2013, equal to approximately 2,000 Euro, since this income does not need to be declared so no contribution is generated. The mixed Swedish system is based on the *benefit calculation* principle which mainly protects "residents" but may be particularly unfavourable if not all contributions have been paid in Sweden, especially when someone's career is fragmented.

As for unemployment, most of the problems affect workers with very short-term contracts (hourly-based, etc.) rarely resulting in permanent jobs and which make it very difficult to meet the *minimum requirements* and be entitled to unemployment benefit (particularly with a working time of below 17 hours a week) or even to a maternity or paternity allowance.

Example 1 It is the specific case of a 65-year-old waiter who spent lots of short periods working in Italy and Sweden. From the age of 25, he worked in Italy with training and internship contracts through which no contributions were made. At the age of 35 he moved to Sweden, where he still lives. For his first 10 years living in Sweden he studied and did labour market integration courses, without any income. In the following 20 years he worked occasionally for an hourly rate as a waiter in restaurants and pizzerias. During eight of his years residing in Sweden he returned to Italy for three months in the summer (24 months in total) to do seasonal work for an hourly rate. In Italy, he only has 48 weeks of contributions, so he does not meet the minimum requirement of 52 weeks and he therefore does not have the right to receive a pension. In all of his time in Sweden, he only had annual income of more than 42.30% of the basic income rate (meaning that he paid contributions that are valid for a pension) in 12 years (the years when he did not do seasonal work in Italy). This means that in Sweden he will receive a very low pension which would be supplemented by the full "guaranteed pension" (*garantipension*) if he had resided in Sweden for 40 years. Instead, only 28 years of residence will be taken into consideration (30 years less the two years in total which he spent in Italy). He will therefore receive 28/40 of the guaranteed pension (the full amount would be 7,046 Swedish kronor for married people and couples with children or 7,899 Swedish kronor for other people). The person in question will not meet the requirements for an Italian pension and he will have a very low Swedish pension. If he had resided in Sweden all of the time, and he had paid his contributions here and not in Italy, even with short atypical contracts, nowadays his pension would be considerably larger.

Example 1 A 65-year-old waiter spent lots of short periods working in Italy and Sweden. From the age of 25, he worked in Italy with training and internship contracts through which no

contributions were made. At the age of 35 he moved to Sweden, where he still lives now. For his first 10 years living in Sweden he studied and did labour market integration courses, without any income. In the following 20 years he worked occasionally for an hourly rate as a waiter in restaurants and pizzerias. During eight of his years residing in Sweden he returned to Italy for three months in the summer (24 months in total) to do seasonal work for an hourly rate.

In Italy, he only has 48 weeks of contributions, so he does not meet the minimum requirement of 52 weeks and he therefore does not have the right to receive a pension. In all of his time in Sweden, he only had annual income of more than 42.30% of the basic income rate (meaning that he paid contributions that are valid for a pension) in 12 years (the years when he did not do seasonal work in Italy). This means that in Sweden he will receive a very low pension which would be supplemented by the full "guaranteed pension" (*garantipension*) if he had resided in Sweden for 40 years. Instead, only 28 years of residence will be taken into consideration (30 years less the two years in total which he spent in Italy). He will therefore receive 28/40 of the guaranteed pension (the full amount would be 7,046 Swedish kronor for married people and couples with children or 7,899 Swedish kronor for other people). The person in question will not meet the requirements for an Italian pension and he will have a very low Swedish pension. If he had resided in Sweden all of the time, even with nothing but atypical contracts, his pension would be considerably larger.

Example 2 An Italian musician worked in Italy and in England, always with short seasonal contracts. In January 2013 he moved to Sweden where he worked as a musician for a short time and then lost his job in February 2013. When he applied to the Swedish social fund for unemployment benefit this was refused since he had only worked in Sweden for 2 months before being unemployed and in England, where he last worked 24 months before moving to Sweden, he could not prove he had worked 12 months with a minimum of 80 hours over a 6-month period, nor that he had worked 480 hours over 6 months with a minimum of 50 hours a month. Therefore, even if we add all working periods to work out the benefit according to the international convention, Sweden will grant him no income-based unemployment-, but only a maximum basic benefit amounting to 320 kr a day (depending on the hours worked) for a maximum of 300 days.

SI (Slovenia)

Overview of atypical employment contracts

In Slovenia, atypical work needs to be considered in a framework of a deep social transformation and of developing international relationships, where special attention is drawn to cross-border work.

Slovenian economic stability and its labour market were profoundly impacted upon by events such as the dissolution of the Federation, independence, the resulting worsening relations with Serbia and the conflict extending to Croatia and Bosnia-Herzegovina. Slovenia accounted for only 8% of the Yugoslavian population, yet it was the most prosperous of all Yugoslavian Republics and contributed to approximately 20% of GDP and 30% of Federal exports. Immediately after independence, Slovenia went through a tough recession: GDP dropped, unemployment and inflation rates rocketed and financial institutions suffered a deep crisis. This stage was overcome by a deep economic review, mainly consisting in joining the EU, curbing public expenditure, privatization, strengthening trade with Western countries, particularly Germany, Italy and Austria

and promoting tourism. Slovenia, however, still needs to deal with a high public and private sector debt as well as a bank system that is just about collapsing.

Today Slovenia has 2 million inhabitants, with 900,000 of them economically active (i.e. employed or looking for a job). 90% of the employed have a full time job and 83% have a permanent job (data from SURS, *Statistični Urad Republike Slovenije*, 2012). Standard jobs are therefore the prevailing form of contract. However, for some years now, a steady increase in precarious and atypical work has been noted. Women usually have more precarious jobs than men; young workers are more often in a precarious situation than older workers and cross-border workers are more likely to have temporary, atypical employment relationships than standard workers.

As a whole, a *fixed-term* job provides for the same conditions and rights as permanent jobs, except for the end-of-service conditions, where no notice is required. It is often used to find temporary replacements for members of staff, to cope with a temporarily increased workload or similar situations. Generally, the employee cannot renew more subsequent contracts with the same employer over a two-year period. Before the 2013 reform, this kind of contract did not entitle workers to severance pay.

In this context, *cross-border work* is a further form of atypicalness. This form of contract is growing in Slovenia, according to two opposing migration flows: one outbound, towards Austria and Italy, the other inbound, from Croatia and Hungary. Despite some undisputed disadvantages, such as uncertainty and discontinuity in terms of income and social benefits, in Slovenia many workers "voluntarily" choose cross-border and atypical jobs, as a permanent choice; hence the contradictory case of fixed-term workers, whose contract is renewed up to ten years in some cases.

Other forms of atypical work developing in Slovenia are tele-working (or working from home), temporary agency work, occasional work, seasonal work and various forms of internship or apprenticeship.

Tele-working According to SURS, tele-working involved over 46,000 workers in 2012, usually supported by communication technologies. In general, this work is considered positively by the government and employers, as it allows them to increase productivity and employment. In terms of flexibility, it offers some advantages, but more disadvantages when it comes to working conditions, control of health and safety, career development, access to training, as well as social isolation problems, blurred distinction between work and private life and lack of trade union participation and representation. As for the social protection and labour law, tele workers are entitled to the same collective rights as people working on the premises. Different conditions are often achieved through an additional agreement between the employer and the employee, usually more favorable for the employer than for the workers.

Temporary agency work This includes work contracts between an agency providing work, a work supplier (worker) and a user (client). It is a fast-growing phenomenon. According to SURS, the hours worked through agencies were just over 17,000 in 2009, well above 138,000 in 2010 (+700%) and already 138,000 in the first 6 months of 2011. According to the Slovenian trade union, these figures show how agency work is clearly turning into a crisis negotiation pattern. Still according to SURS, there over 160 temporary job agencies in Slovenia, with over 6,500 registered workers (data 2012). According to the trade union, at least as many workers work irregularly, beyond any control, and the number of violations is increasing due to few, inefficient labour

inspections. The 2013 reform will establish a 25% limit for employees hired through agencies in a company.

Seasonal work Lacking a clear legislative definition, it is a fixed-term job, often used in the building sector, agriculture, forestry and tourism. It is basically covered by the usual social security system, but is often characterized by fragmented working periods as well as irregular contributions or wages, with non-clearly defined working hours.

Part-time occasional work (malo delo) In Slovenia, part-time occasional work, less than 60 hours a month for a gross income of up to Euro 6,300 per year, is exempt from compulsory insurance contributions, thus does not entitle workers to social security benefits. Mainly designed for some categories excluded from the labour market (the unemployed, pensioners, students, other inactive people), these contracts are often used in order not to pay contributions and illegally used for jobs which should be standard. In 2011 a labour market reform, to extend mini-job contracts based on the German model, was defeated by a referendum, with 80% of votes.

Internship and apprenticeship There are several contracts regulating students' jobs and, more generally, young people in training. Students' temporary work is not subject to contributions or taxes if performed within the limits set by law. It does not entitle people to social security benefits and is often used for workers who are not studying. Apprenticeships apply to young people who have completed basic training, aged 15 or more, attending a vocational school whilst doing an apprenticeship in a company. They have limited obligations and social security benefits (1 year apprenticeship equal to 6 months of social security benefits). Apprentices are insured for occupational accidents and occupational diseases and before 2011 they used to be entitled to unemployment benefit. Post-diploma organized training in the workplace, for maximum one year, grants trainees the same social rights as regular permanent employment. These contracts imply a minimum legal wage (784 Euro a month in 2013- gross), but real pay does not exceed 70% of the average salary.

Social protection measures and obstacles to free movement

In the shift from the Communist sphere of influence to the European Union, Slovenia has a quite low unionization rate (approximately 26% according to OECD), but is protected by collective bargaining (96% according to Eurofound). Another feature of the Slovenian system is moderate social protection expenditure (25% of GDP according to Eurostat), but still the highest of all former Communist countries. This figure is expected to decrease due to heavy adjustments to public expenditure decided in recent years. 2013 saw a pension reform being enacted, progressively increasing the pensionable age, taking men and women to the same level. At the same time, the budget law led to some social benefit restraints in terms of unemployment, sickness, old-age and family allowances.

As a whole, as briefly reported, most contracts are subject to the *requirement to make contributions* in Slovenia, thus entitling workers to an *aggregation* of periods according to the EU coordination rules. Additionally, Law 80/2010, enacted in 2011, has reformed the unemployment insurance system, making it compulsory for both employees in the public and private sector and for the self-employed and apprentices. Since it is a form of contribution with a minimum requirement of 9 months insurance coverage over the last 24 months, unemployment benefit can be exported based on coordination rules. Slovenian citizens working abroad who are not covered by compulsory insurance might subscribe to a voluntary unemployment insurance. Under

economic and financial crisis pressure, those few contracts not offering standard guarantees - basically occasional work and different forms of internship and apprenticeship - are used increasingly by the labour market, thus lessening workers' benefits.

UK (United Kingdom)

Overview of atypical employment contracts

There are three main forms of employment contact in UK: Contracts of service, Contracts for services and Agency worker contracts.

The majority of UK workers continue to work on typical standard contracts (contracts of service), that is full-time permanent contracts. At February 2013, 21.65m people (73 per cent of those in employment) were employed in this way. Of those working full-time 18m were working as full-time employees (in other words were working under contracts of employment which gave them access to the full range of statutory employment rights). The remaining 3m (in legal terms defined as 'workers') had employment contracts defined as 'contracts for services' and therefore were treated as self-employed for some social welfare protection. Those who are 'workers' as opposed to 'employees' are more likely to work longer working weeks, with 34.5 per cent of men and 15.7 per cent of women in that category working more than 45 hours.

It is important to note that the mere fact that a contract is not 'typical' does not mean per se that workers engaged under such contracts are necessarily disadvantaged in terms of the social protection norms available to them. In principal the obligation of 'no less favorable treatment' applies in the case of part-time workers, fixed-term contract employees, agency workers (after 12 weeks' employment with the same employer).

The typical standard contract is normally defined as a *contract of service* whereby the employee agrees to work, under the direction of the employer, in return for pay. A person who is employed under a contract of employment will have access to the full range of employment and social security rights, although these may be dependent on length of service[77].

A 'worker' is someone whose work is regulated under a *contract for services*. Here the law tests whether the individual has a degree of control over her/his work, can for example determine how it is done and when, utilises their own equipment and takes responsibility for the payment of taxes and National Insurance. While this definition includes genuinely self-employed workers, the UK courts have often extended it to include workers who might otherwise be seen as being directly employed[78]. Those defined as 'workers' have limited employment and social security rights. They have for example, no right to protection against unfair dismissal (no matter how long the period of employment) and limited rights to welfare protection. 'Workers' are entitled only to rights under National Minimum Wage legislation[79], the regulations governing the protection of part-

[77] For example, for rights to protection against unfair dismissal an employee must have worked for at least two years for the same employer and this is also the case with regard to collective dismissals.
[78] See: *Carmichael and another v National Power plc. [2000] IRLR 43*.
[79] National Minimum Wage Regulations 1999

time workers[80] and by the working time regulations[81]. They are not however covered by the fixed-term workers regulations[82], which give the right to 'no less favorable treatment' only to employees.

Over the last decade, the use of *temporary agency work* has increased markedly. Estimates by the European Confederation of Private Employment Agencies for the UK suggested that in 2005 there were some 6,000 officially designated employment agencies operating through 14,400 branches and sourcing 1.2 million workers a day (5% of the national workforce). These temporary agency workers made up 86% of all workers on a temporary contract. Agency work is regulated by the Agency Workers Regulations 2010[83] which give workers hired through agencies the right to equal access to workplace facilities and after a period of 12 weeks' work give a right to equal treatment with regard to pay and other basic working conditions.

Broughton, in her Eurofound study, defines very atypical contracts as those 'based on the principle of 'absolute' divergence from the standard employment relationship' and as encompassing three main categories of workers: Workers with no employment contract; Workers who report working a very small number of hours (less than 10 hours a week); Workers who hold a temporary employment contract of six months or less. To these three categories can be added apprentices, unpaid family members and those in freelance or false self-employment.

Workers on Zero hours contract These are contracts where employees work only when requested by the employer and where there is no contractual obligation to offer a specific amount of work. There is little data as to the number of workers on zero hours' contracts. Broughton suggested that around five per cent of workplaces employed at least some workers on zero hours' contracts (2010).

Workers on a very small number of hours - Hakim (2004)[84] calculated that for the UK this around eight per cent of the UK workforce worked fewer than ten hours a week. Recent ONS data shows that 470,000 people had usual working hours of less than six hours a week between December 2012 and February 2013. Women are much more likely to have contracts with very short working hours and of the 470,000 identified in that category 161,000 were male (34 per cent) and 309,000 (66 per cent) were female. Of those working fewer than six hours a week, 304,000 (65 per cent) were categorised as employees working under contracts of employment, while 148,000 (32 per cent) were classified as 'self-employed'. Thus while just 14 per cent of the UK workforce is classified as self-employed, a higher proportion of the self-employed work a very small numbers of hours.

Temporary contracts of six months or less There is little data on the length of fixed-term contracts. Broughton suggested that most fixed-term contracts in the UK will be of less than 12 months induration.

Apprentices on government or employer training schemes 151,000 mainly young people were on government supported training and employment programs in February 2013. This number has

[80] The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
[81] Working Time Regulations 1998
[82] The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
[83] http://www.legislation.gov.uk/uksi/2010/93/contents/made
[84] Hakim, C. (2004) Key Issues in Women's Work: Female Diversity and the Polarisation of Women's Employment (Contemporary Issues in Public Policy).

grown significantly, with a 30.5 per cent increase registered between February 2012 and February 2013.

Freelance or false self-employment This is where the worker declares or is declared to be self-employed and therefore excluded from certain National Insurance and taxation regimes but where consequently she/he is also excluded from a range of welfare protection. There are no accurate figures as to how many workers fall under this category but from the 4.204m persons who were declared as being self-employed in February 2013, three million are working full-time. Males are more likely to be declared as self-employed than females, with 70 per cent of all self-employed workers in that category.

Unpaid family members In February 2013 just over 100,000 people were identified as unpaid family members, a figure which rose by 5.7 per cent over the previous year. In this category they are unlikely to have access to social security rights available to employees or even to workers.

Social protection measures and obstacles to freedom of movement

Employment in the UK is characterized by a relatively low level of social protection. In addiction social protection is based on the model of the full-time, permanent worker, and there are no measures which specifically seek to address the position of those with atypical contracts.

In contrast to many other EU countries, UK workers are largely unprotected at work. For example, they have no entitlement to claim that they have been unfairly dismissed until they have worked for the same employer for more than two years. UK social security protection has been under increased attack over the last two to three decades. There has been a move away from benefit levels which are linked to earnings and thus are aimed at providing a substitute income to those who cannot for whatever reason work. Instead, much social security protection is based on flat-rate payments. These inevitably are low, as they are established at a level that will not encourage people to stay on benefits and it is thus the lowest levels of pay that are used as a basis to determine the level of benefit provision. Within this overall panorama is the continued fall in trade union representation in the UK. Just 6.4m workers were members of trade unions in 2011, compared to more than 13m in 1979. Trade union density fell to 26 per cent.

Social protection for those who are out of work is provided under the Job Seekers' Allowance (JSA). The *eligibility conditions* for JSA require that an individual has actually paid Class 1 contributions[85] in respect of one of the last two tax years and must have had relevant earnings for the base year on which the contributions have been paid or treated as paid. [86] JSA is paid for a maximum of six months, after which individuals who are still out of work can claim income-based Jobseeker's. Those whose gross earnings are less than the 'lower earnings limit', currently £109 (€124.26)[87] a week do not pay National Insurance contributions but also have no entitlement to contribution-based JSA. Only 60 per cent of those who are unemployed have been in a position to claim the allowance. The type of contract which individuals have is the main reason for this gap in provision between those out of work and those entitled to JSA.

[85] Class 1 contributions are the standard contributions paid by those in work.
[86] A person must actually have paid contributions with an earnings factor of 26 times the lower earnings limit in one of the last two contribution years (this means that they must have earned at least £2,834 (€3,230) a year. They must also have worked a minimum of 26 weeks during one of the last two complete tax years and they must have paid or been credited[86] with contributions based on having earned at least £5,450 (€6,213) a year in both of the last two years before the claim is made.
[87] Calculation on basis of £=€1.14

Atypical contracts make it also more difficult for workers to become eligible for the State Pension which is based on the contributions made throughout working life from the age of 16 to reaching the state pension age. The following table shows how contract type impacts on entitlement to both the JSA and the State Pension.

Forms of atypical work and their consequences on social protection entitlement

	Consequences on JSA	Consequences on State Pension entitlement
Agency workers	Their likely irregular periods of work may also mean that they do not have a salary level which is sufficiently high to pay NI contributions, thus excluding them from JSA. They are also more likely to be defined as 'self-employed' and thus are ineligible for JSA.	They are likely to meet current the requirements for State Pension but only if they have the NI contributions over 30 years (35 years in 2016).
Fixed-term workers	Most fixed-term contracts are of less than 12 months, and working on such short contracts is likely to put the worker in a position of ineligibility for JSA.	Breaks in employment affect the number of years of contributions.
Part-time workers	Workers on these contracts are more likely to be excluded from entitlement to JSA on the basis of their earnings being below the threshold for National Insurance contributions.	Part-time workers are predominantly female and are more likely than male workers to have significant breaks in employment; consequently they may not have the 30 years of qualifying contributions.
Freelance and falsely self-employed	Those workers who are required to declare themselves as self-employed have no entitlement to JSA under the eligibility conditions.	They have entitlement to the basic State Pension but not to the additional state pension (S2P).
Apprentices	The national minimum wage for apprentices is below the LEL and therefore is outside the National Insurance contribution requirement. There is thus no entitlement to JSA.	Apprentices are not likely to have sufficient earnings to pay National Insurance contributions.

INCA-CGIL in the UK acknowledges that there are enormous problems over the exchange of information within Member States and that it is those workers with the most vulnerable employment contracts that are most affected by the rules for benefit entitlement which vary dependent on the country. The main area of difficulty is with the JSA for those coming from Italy or going to Italy. People with atypical contracts rarely satisfy the contribution conditions to be able to apply for Jobseeker Allowance. Furthermore if Italian workers in the UK are working in poorly paid jobs with uncertain conditions and cannot find anything better, they tend to leave their jobs and return to Italy. If this occurs then, even if they satisfy the contributions conditions, they

will not have entitlement neither in the UK if they stay and look for another job nor in Italy, if they go back, because they left their job voluntarily.

Example 1 (worker choosing to leave work) Stefano (not his real name) is 24 year old of Italian origin who has been working in the UK, earning. He had been earning around £1,700 a month (€1,938) before tax and National insurance deductions. Stefano had worked for at least two years in the UK and had paid his contributions. However, Stefano made the mistake of resigning from his job without a reason acceptable to the DWP. As a result it was decided that he was not entitled to JSA as by leaving his job he had deprived himself of the right to claim the benefit. In the case of *St Prix v. Secretary of State for Work and Pensions [2011] EWCA Civ 806*, the Court of Appeal held that a pregnant woman who voluntarily left employment on account of her pregnancy did not retain the status of worker; leaving work meant that she was no longer a worker.

Example 2 (part-time contracts) In the case of *SS v. Slough Borough Council [2011] UKUT 128 (AAC)* the claimant was a Dutch national and EU citizen. She worked part-time, working 13 hours a week for £5 an hour, thus earning just £65 a week. She also received child benefit of £28.40 a week and child tax credit of £72.38 a week. Having lived with friends for some time she and her children eventually moved into rented accommodation at a monthly rent of £895 and she claimed housing benefit, a social security provision which UK citizens in her position would have been entitled to. The local authority argued that the part-time work she did was insufficient 'effective and genuine' to qualify as work under EU law but the tribunal allowed her claim on the basis that she was a worker, even though she required public funds to survive economically.

Example 3 (self-employed contracts) In the case of *Tilianu v. Secretary of State for Work and Pensions [2010] EWCA Civ 1397*, the Court of Appeal concluded that a self-employed person could not retain the status of a self-employed person when "unemployed", so as to be able to claim income JSA, implying that the self-employed can never be "unemployed" in the same sense as a worker.

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