PART 2

Social protection of atypical employment and obstacles to freedom of movement

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In the previous section, we focused on the difficulties experienced by atypical workers in their respective national employment markets. The detailed information gathered in eight countries by the Accessor project's experts and specialist witnesses support and complement an overview that had already been partially identified in numerous international research projects and studies[17]: in just a few decades, the global expansion of atypical contracts has radically altered prospects of entering the employment market, especially for younger workers in what is now known as the "precarious generation". It is important to note that in some cases workers may make a conscious decision to accept atypical employment, or it may be a result of a voluntary and explicit agreement between an employer and an employee. For example, it may be a choice that gives people greater freedom with respect to their working hours, enables them to continue their studies or allows them to combine the job with other activities or sources of income. This happens in areas such as in the media world and in newer professions. However, situations such as these are in the minority. In most cases atypical work is associated with precariousness and it is not a voluntary choice. The latter forms of employment are covered by this report and the Accessor project in general.

The main justification for the widespread use of these kinds of contracts was that they helped to create new jobs which were stepping stones to more stable or standard forms of employment, especially for younger people. It should be noted that this reasoning can be deceptive. As with young people, many older workers are now forced to accept atypical and precarious work, simply because there is nothing else available on the employment market. The transition to better forms of employment often remains nothing but a forlorn hope for them.

There are a variety of atypical contracts to be found in the countries of Europe, but they have many things in common: less job security; lower, irregular salaries; fewer training and career opportunities; worse health conditions; and fewer trade union rights. There is little social security coverage, especially in terms of unemployment benefits, while it is very hard to build up a decent old age pension. Essentially, it is impossible to plan for the future. To varying degrees, workers with atypical contracts in all European countries have to deal with social legislation that does not give sufficient consideration to their specific situation and thus once again leaves them worse off than standard workers. Most social security systems are based on an old model of industrial society in which families had a guaranteed income thanks to continued full-time, permanent employment and welfare measures associated with it. In this model, people's lives were mapped out and based on clear, distinctive roles, periods and phases which basically consisted of study, work and inactivity. It was possible to foresee the difficulties which were likely to arise in life and they were mainly associated with the risks of injury, unemployment, illness and disability[18]. Quite simply, this model no longer works.

The national Accessor reports highlight another side to the problem which is just as significant but nonetheless almost always neglected by both scholars and political decision makers. With the globalisation of the markets and the expansion of the European Union from six to 28 countries helping to break down borders, throughout their lives increasingly mobile atypical workers have

[17] See, for instance, also for bibliography: Working Lives Research Institute and London Metropolitan University (2012), *Study on Precarious work and social rights*; Eurofound (2010), *Very atypical work: Exploratory analysis of fourth European Working Conditions Survey*.

[18] Caldarini C. 2007), "L'approccio europeo a welfare e corso di vita", in *Rivista delle Politiche Sociali*, no.3 , 2007, p. 279-300.

to deal with many different national social security systems. They each have their own rules for the allocation of rights and in many cases these too could be classified as atypical and flexible.

As far as the conditions for the application of the European social security regulations are concerned, problems at different levels can be identified, and are summarised as follows, based on a comparative reading of the eight national reports:

1. Lack of insurance coverage This is mainly the problem of mini-job contracts, i.e. with no contribution obligation or with insurance coverage only for some social security sectors. These contracts obviously make the aggregation of working periods impossible in the case of free movement.

2. Impossibility of aggregating periods. even when insurance contributions have been made. The problem arises when the insurance periods accrued in one Member Sate do not have an equivalent in the insurance scheme of the other Member state, due to special limits established under the national legislation of one of the two states. This is especially the case with those contracts with an intermediate status, between salaried work and self-employment.
3. Unemployment benefits that cannot be exported. This is a consequence of the increasingly frequent tendency to protect workers with atypical contracts through partial and special measures without contributions. As well as bringing about impoverishment, these measures cause problems when unemployed workers, entitled to non-contributory benefits, want to look for employment in other Member States.
4. Lack of the minimum insurance requirements. Another obstacle to the free movement of atypical workers is the range of different minimum insurance requirements required in order to have the right to some benefits. In some countries the requirements are relatively minimal, while in others they are high and complex, meaning that they are hard to satisfy for people who have had partial, fragmented careers in a number of countries.
5. Calculation methods for benefits. In some cases, the actual calculation method for benefits penalises people with short or "incomplete" periods of insurance (or residence) in a number of countries.

The main problems lie in the aggregation of working periods, especially for unemployment benefit and old-age pensions, and in some cases in exporting unemployment benefits (when they are paid under special regimes). More specifically, problems are often created by the application conditions for the following articles: art. 6 of reg. 883/2004 (aggregation of periods), art. 51, 56 and 57 of reg. 883/2004 (old-age pensions), art. 7, 61, 63, 64 and 65 of reg. 883/2004 (unemployment), art. 12 of reg. 987/2009 (aggregation of periods), art. 54, 55, 56 and 57 of reg. 987/2009 (unemployment) and art. 70 of reg. 883/2004 (special non-contributory cash benefits).

This supposed classification of the main application obstacles of European social security regulations to atypical contracts (here divided into five problem areas for the sake of clarity) does not mean that atypical workers are facing these obstacles "one at the time". The issues to be analysed in the following pages, which were gathered "in the field", do not exclude each other, but on the contrary may be compounded.

2.1. Lack of insurance coverage.

The first aspect concerns contracts with no obligation to make contributions or only partial national insurance coverage that cannot be extended to all of the branches of the social security system.

The German mini-job (*Geringfügige Beschäftigung*) case is the best known example. These contracts were originally conceived to give some legal coverage for casual work conducted by students and unemployed women or for small second jobs done by people who already have social insurance coverage from their main employment. However, they have become a mass phenomenon, especially among women[19].

> EXAMPLE In Germany people who work for no more than €450 a month[20] (most of whom are women) are only insured against accidents at work, while they are exempt from making insurance contributions for all of the other social security benefits. It is clear that according to the European social security co-ordination regulations any working period without insurance contributions is ineligible for aggregation with insured working periods in other Member States.

The situation in Germany is the best known example, but there are similar cases in other countries. In the United Kingdom, weekly earnings of less than £109 (approximately €550 a month) are exempt from National Insurance contributions (Small Earnings Exception), so that workers are not eligible for some state benefits. In Slovenia, the mini-job rule applies for temporary and part-time work (*malo delo*), with maximum limits of 60 hours a month and a gross annual income of €6,300. Contracts of the same type also exist in Austria (for pay up to € 386.80 per month, from 1 January 2013) and in Switzerland (2,300 francs a year, from 1 January 2011).

The same problem can often be found with hybrid training/work contracts, which lead to extremely complex insurance situations. Although they cannot strictly be considered "employment contracts" in a legal sense (which is why we have used the word "hybrid"), in practice a large proportion of European employment – especially for younger people – is now regulated by an array of national schemes for transition between school and work (such as apprenticeships and internships) with insurance coverage that is complete in some countries, partial in others and completely non-existent in others.

For example, in Slovenia apprentices (*vajeniska pogodba*) have to make reduced contributions (six months of contributions for every year of work) which only give them the right to insurance against accidents at work and occupational diseases. In Belgium, the social security coverage provided by apprenticeship contracts (there are at least 18 types of apprenticeship contracts) varies with the age of the apprentices. Up to the age of 18, there is only mandatory coverage for paid annual holidays, accidents at work and occupational diseases. Apprentices over 18 years of age have to contribute to the general social security scheme for employees, although they are exempt

[19] According to the figures of the Confederation of German Trade Unions (DGB), there are 7.5 million mini-jobs in total (almost one out of every five jobs). Over 63% of the workers are women. Approximately 2.5 million of the workers also have other (social or employment-based) sources of income which also provide insurance coverage, but a mini-job is the only source of working income for at least 5 million of them (*IAQ Institute for Work, Skills and Training)*.

[20] Up until 2012 the limit was €400 a month.

from some supplementary social security contributions that are normally compulsory, such as those for second pillar pensions, active employment policies and training. France is another country where apprentices (with *contrats d'apprentissage*) have the same social security coverage as salaried workers.

The Spanish national report highlighted the difficulties of apprentices (*contratos para la formación*), as well as interns and researchers (*becarios y investigadores*). The former have to pay a fixed monthly contribution (not based on their income) which gives them reduced benefits, even if the contributions are aggregated in accordance with the European regulations. Meanwhile, interns and researchers until recently had no right to benefits whatsoever. However, following a general strike on 29 September 2010, the Spanish government agreed to have talks with workers' representatives about possible changes to the work and pensions reforms. One of the few measures that the trade unions managed to obtain was the right to contributions from interns and researchers with scholarships (*Real Decreto* 1493 of 2011), who now have to make the same mandatory, reduced contributions as apprentices, with the exclusion of the relevant contributions (and therefore the benefits) for unemployment, wage guarantee funds and professional training.

> EXAMPLE In theory, a worker who does an internship in Belgium or France at the age of 19 could subsequently move to another country and later aggregate the period for the purposes of both unemployment and pension contributions.
>
> However, the right to do so would not be available if he did the internship in Slovenia, while it would be available only to a lesser extent in Spain.

2.2. Impossibility of aggregating periods even when insurance contributions have been made.

The right to aggregation can be impossible to exercise even when insurance contributions have been made, especially when it comes to satisfying the time requirements for unemployment benefits and old-age pensions.

In terms of unemployment, the problem emerges when the periods of insurance contributions in one Member State and those in another do not correspond. It is a particularly important issue for work which, in one Member State is considered to be halfway between employment and self-employment, and definitely is considered as self-employment in another. Article 61 of regulation 883/2004 states that "the 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".

For example, take the "semi-subordinate" contracts in the Italian system which are more generally known as "co.pro." or "project-based contracts". Although they are legally considered to be a "sub-species" of self-employment, they are subject to a special insurance regime in Italy (separate management) which gives workers some basic rights, similar to those of salaried workers. *They include a one-off payment at the end of the contract,* which is a sort of minimal unemployment benefit payment, or, as it is widely viewed, as a small payment for the conclusion of the

working relationship, It is an example of one of the many atypical social security benefits provided by Italy for its large number of atypical workers, in partial compensation for their perceived socio-economic weaknesses, such as low income, lack of a direct relationship with the market and frequently a contractual relationship with just one hierarchically superior client, upon whom they are economically dependent. The problem is that this recognition may not (and generally does not) have an equivalence in other European countries, making the aggregation of insurance periods impossible.

EXAMPLE In January 2012, an Italian 32-year-old woman moves to Belgium to look for a job. In her first year and a half in Belgium she has different jobs, with different employers, always on temporary contracts, the last of which ending in June 2013. On 01 July 2013 she applied for an unemployment allowance in Belgium where she was living and where she had last worked. The requirement for the allowance is at least 312 working days in the last 21 months. This requirement could actually be shown by adding together the insurance periods paid in Belgium (310 days) and those paid in Italy between October and December 2011 with project-based contract (3 months). However ONEM, the Belgian national employment centre, rejects her application as the Italian project-based contracts in Belgium are similar to self-employment, and unemployment allowance does not cover this.

EXAMPLE 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 into the Italian special separate management regime. In 2013, she was given a fixed-term contract by a university in Brussels and she returned to Belgium. However, after eight months her research project was cancelled and she found herself unemployed. Having paid contributions for more than 312 days in the last 18 months, the researcher would have been entitled to the Belgian unemployment allowance. The contributions paid in Italy, however, are considered as an insurance period of self-employment, thus denying the right to unemployment allowance in Belgium. If she had stayed in Italy, she would have been entitled to the "one-off" Italian unemployment payment with just a month of her project-based contract to go. Because she had moved to Belgium – where she paid insurance contributions for further eight months – she was neither eligible for Belgian benefits nor for Italian ones.

To give another example, in Spain self-employed people have to pay a monthly national social security contribution of 29.8%, which is based on a minimum contribution of €858.60 and a maximum of €3,425.70 (these are the figures for 2013), as chosen by the interested parties, regardless of their actual net income or turnover (obviously the benefits paid will be in proportion to the contributions). There are numerous self-employed workers with just one client, so the Spanish law 20/2007 introduced the concept of an economically dependent self-employed worker (*trabajador autonomo economicamente dependiente*) into the Spanish social security system. These persons have to make mandatory sickness and unemployment contributions in accordance

with the same system as salaried workers[21]. Going back to the Italian system, they are similar to *co.pro*. workers but their social security coverage is included within the general regime rather than special separate management. As a general rule, this means that the working periods of economically dependent Spanish self-employed workers could be aggregated for unemployment purposes with those in a country like Belgium, where Italian co.pro. workers do not have the same rights.

> EXAMPLE Going back to the previous case, if, under the same conditions the Belgian researcher had worked in Spain instead of Italy, when she had gone back to Belgium she would have been eligible for unemployment allowance by aggregating her 6 months of economically dependent self-employment in Spain and the 8 months of salaried work in Belgium.

The example of semi-subordinate Italian workers is also enlightening when it comes to old-age pensions. Contributions into the separate management system can be used to claim the right to a pension along with contributions in other Member States. However, as established in 2010 by the Administrative Commission[22], this must be done in accordance with the limits imposed by the national system in which the contributions are used. For example, the Italian legislation states that it will not always be possible to aggregate contributions for a period of work abroad prior to 1 January 1996 with contributions under the separate management system, which came into force on that date, as a result of Italian law no. 335/1995. Italian workers with other social security contributions in Italy have to use the national aggregation system to benefit from all of their contributions.

2.3. Unemployment benefits that cannot be exported.

The report from the United Kingdom highlights the general tendency to protect workers with atypical contracts using special non-contributory measures: basic economic subsidies that generally aim to provide protection to anyone who is not covered by standard social security provisions. As well as resulting in impoverishment, these measures cause problems when unemployed atypical workers entitled to substitute non-contributory unemployment benefits want to look for employment in other Member States.

The new social security co-ordination regulations contain a definition of the notion of special non-contributory benefits (art. 70 of reg. 883/2004) which is based on extension of the general co-ordination principles (equality of treatment and facts) and exclusion of the exportability rule. However, benefits of this kind remain a grey area in EU law which still marks the always fuzzy boundary between genuine social security benefits which have been included in the regulations since the start and assistance measures which are still excluded from the regulations that are in force today[23].

[21] Ley 20/2007, de 11 de julio, del Estatuto del trabajo autónomo.
[22] Administrative Commission for the Co-ordination of Social Security Systems, Decision no. H6 of 16 December 2010. *Administrative Commission for the Coordination of Social Security Systems, Decision n. H6 of 16 December 2010.*
[23] Tesse (2011), I nuovi regolamenti europei. Analisi delle nuove norme Ue di coordinamento dei sistemi di sicurezza sociale Implicazioni e interpretazioni, elementi di forza e debolezza, 1° Atelier transnazionale. Tesse (2011), Les nouveaux règlements européens.

In general, the new social security co-ordination regulations apply to all contributory and non-contributory social security legislation (art. 3 of reg. 883/2004). The simple fact that a benefit is not based on contributory criteria is not enough to exclude it from the material scope of the co-ordination rules.

However, art. 70 of the regulations states that some special non-contributory cash benefits with the characteristics of both social security legislation and social assistance legislation only apply in a person's place of residence, so they cannot be exported from the Member State that establishes and provides them. Annex X of regulation 883/2004 lists all of the benefits in the respective national systems which are *non-exportable,* meaning that the rights acquired cannot be conserved. Many of the benefits are associated with unemployment and they are based on income rather than contributory requirements. For example, this applies to benefits to cover subsistence costs under the basic provision for job seekers in Germany, jobseeker's allowance in Ireland, state unemployment allowance in Estonia, the so called employment market support benefits introduced in Finland with the Act on Unemployment Benefits (1290/2002), income-based jobseeker's allowance in the United Kingdom and the non-contributory mixed benefits in the event of unemployment provided for by the cantonal legislation in Switzerland[24].

Other benefits are deemed to consist entirely of social assistance, so they are automatically considered to be non-exportable even if they do not appear in the above-mentioned Annex X. For example, this is the case with Belgium's integration income (*Revenu d'intégration / leefloon*). There are no insurance requirements for the awarding of this social benefit, which is instead given to people who are shown to have insufficient resources. It is provided by the social services of the municipality where the recipients reside if they have no access to other sources of income, such as employment, social security payments or maintenance payments.

Special benefits such as the above-mentioned Belgian integration income and the others listed in Annex X are often used on a national basis as a form of income support when unemployed workers are unable to access general unemployment benefits, either because they have not made sufficient contributions during their working lives or because other restrictions mean that they are not eligible.

> EXAMPLE For example, this is the case with the income-based jobseeker's allowance in the United Kingdom. It replaces contribution-based jobseeker's allowance, which can be claimed for a maximum of six months. Basically, unemployed workers go from the initial benefit, which is based on the amount of contributions that they have made, to flat-rate payments which are not based on contributions but which are set at a lower level. However, when it comes to free movement, it prevents the workers in question from exercising their right to mobility and moving to look for work in another country while remaining eligible for a benefit which would otherwise be available for a period of three to six months (article 64 of reg. 883/2004).

Les nouvelles normes de coordination des systèmes de sécurité sociale. Interprétations et implications, éléments de force et de faiblesse, 1° Atelier Transnational.
www.osservatorioinca.org/30-657/tesse/bruxelles,-242522011.html

[24] See also: European Commission (2013), A fact finding analysis on the impact on the Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence.
http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1980&furtherNews=yes
De Cortazar et al. (2012), Coordination of Unemployment Benefits. Think Tank Report, tress.
www.tress-network.org/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESS_ThinkTankReport2012.pdf

It should be noted that this is a widespread phenomenon which is not just found in one country. The switch to these palliative measures is often tacitly accepted by the beneficiaries, either because they have little alternative or because at times the amount can sometimes be reasonably similar to the amount paid for full unemployment benefit (if one stays in the country where the benefit is provided).

2.4. Lack of the minimum insurance requirements.

Another set of obstacles to the free movement of atypical workers is the range of different minimum insurance requirements in order to have the right to some benefits. Some are more stringent than others, but all European countries set minimum insurance requirements for access to benefits such as unemployment, maternity and paternity payments[25]. Could be seen as reasonably natural and it is to be expected in an insurance-based regime.

Once again, the problem lies in the inequality of treatment in the different national regimes. In some countries the requirements are relatively minimal, so they are potentially accessible even to people who have had short, fragmented careers. For example this is the case in France, where the general minimum requirement for unemployed people is four months of work (122 days or 610 hours) over the previous 28 months. However, it is not like this everywhere.

In Germany, anyone who wants to claim unemployment benefit must show that they have made 12 months of working contributions in the last two years. This is also the case in Romania. In Belgium, the requirement varies with the age of the applicant. For example, up to the age of 36 312 days of work in the last 18 months are required. In the United Kingdom, to claim contribution-based jobseeker's allowance the requirement is to have made at least 26 weeks of class 1 national insurance contributions in one of the last two tax years before the application is made (notional contributions are not taken into account in the calculations). It is also necessary to show that at least 50 weeks of actual or notional contributions have been made in the last two tax years prior to the application. In Sweden, income-based unemployment benefit may only be claimed by people who have worked for at least six months during the 12 months before they found themselves unemployed, and for at least 80 hours per calendar month. To receive full parental benefits, the parent must have been covered by the sickness insurance regime for at least 240 consecutive days prior to the birth of the child.

For many workers with short-term contracts, all of this constitutes a continual obstacle course where they have no hope of reaching the finishing line and being given social security coverage.

> EXAMPLE 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 in March 2013 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.

[25] For further details, see: http://ec.europa.eu/social/main.jsp?catId=858&langId=it

In Italy, to take another example, to be eligible for already mentioned *one-off payment*, project-based workers are required to show su*ch strict requirements* that, in practice, hardly nobody can have access to it: they would have to have worked for a single employer in the year before unemployment, have taxable income in the previous year of less than € 20,000, have at least one monthly contribution in the year of application, at least two months unemployment in the year preceding the application and at least three months contribution in the year before that of the application (2013). The Italian case highlights a problem affecting other countries, too: the problems of accessing social protection with which the atypical workers have to face do not exclude each other, but on the contrary they are cumulative.

2.5. Calculation methods for benefits.

In other cases, the actual calculation method for benefits penalises people with short or "incomplete" periods of insurance (or residence) in a number of countries. As stated in the introduction, the problem is that in many ways the national social security systems are still based on an old model of industrial society with continual full-time, permanent employment, and their benefit calculation systems often follow the same thinking.

> EXAMPLE The UK national report outlines the case of a Dutch citizen who moved to the UK with her two children in 2005. She found a part-time job working 13 hours a week for £5.00 an hour, so she only earned £65.00 a week. She also received child benefit of £28.40 a week and child tax credit of £72.38 a week. After living with friends for a while, in July 2006 she moved with her children to a rented flat and applied for housing benefit, something for which a UK citizen would be eligible in her circumstances. The local council claimed that her part-time work was not "effective and genuine" in accordance with EU law. The Administrative Appeals Chamber disagreed and accepted her application because she was in any case a worker, even though she had asked for social assistance.

The national report from Spain gave the example of two recent rulings by the Court of Justice of the European Union which revealed discrimination – especially in the pension calculation systems – against citizens that have worked in non-standard employment in a number of EU countries.

With its judgement in case C-385/11 (Isabel Elbal Moreno vs. Seguridad Social) of 22/11/2012, the court ruled that the treatment of part-time workers was discriminatory because basing the calculation of contributions paid on the number of hours actually worked did not allow the person in question to arrive at the minimum number of contributions to have the right to a pension. The calculation methods for eligibility are clearly discriminatory because the minimum contribution periods vary significantly from one country to the next, thus preventing equality between citizens of different countries. With the same amount of contributions, they may or may not have the right to a benefit, depending on the social security regime that applies to them at that time.

The other judgement was in case C-282/11 of 21/02/2013 (Salgado González vs. Seguridad Social). It related more specifically to the principle of aggregation ratified by the European regulations.

EXAMPLE Ms. Salgado González paid contributions in Spain to the Special Scheme for Self-Employed Persons (*Régimen Especial de Trabajadores Autónomos*) for a total of 3,711 days from 1 February 1989 to 31 March 1999 and in Portugal for a total of 2,100 days from 1 March 2000 to 31 December 2005. When it calculated her pension, the Spanish social security body applied the national rules and based it on the contributions made during the 15 years preceding payment of the last contribution by Ms. Salgado González in Spain, but it only considered the 10 years of contributions paid in Spain and 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 resulted in clear 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.

The report from Sweden also provides a clear example of how the aggregation of working periods can penalise workers who have exercised their right to free movement. The case in question refers in particular to the part of the state pension which is based on periods of residence (*garantipension*). This portion is used to supplement pensions for people who do not have pension rights based on income and those with pensions based on very low incomes. The guaranteed benefit is calculated in fortieths according to residence and it reaches the full rate after 40 years of residence in Sweden between the ages of 16 and 64.

EXAMPLE The Swedish national report outlines an example that well summarises all the difficulties and the obstacles that have been examined individually up to this point. 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 continues to live. 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 on an hourly rate of pay 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 an 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 have been 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.

Swedish citizens (or people from other Member States who move to Sweden at the age of 16) who work occasionally with a number of atypical contracts in Sweden until the age of 65 have the right to a substantial supplement to their pensions, even though they have erratic, fragmented and poorly paid careers. Meanwhile, people who are born in Sweden and spend time living and working in other Member States with atypical contracts before returning to Sweden have very low contribution-based Swedish pensions when they retire, along with a very low guaranteed pension because it is based on their years of residence in Sweden. Because they exercise their right to free movement, their pensions are lower than those of people with the same amount of contributory periods who stayed in Sweden.

2.6. To conclude...

They are like a dog biting its own tail. On one side: workers with atypical contracts are more likely to migrate to other countries in search of better economic and social conditions and on the other side atypical employment is most common among immigrants from EU Member States and third countries. The resulting imbalance between standard workers and atypical workers means that the latter group suffers discrimination not just once but in three different ways: they have low, precarious incomes when they work; they have little coverage from the social security systems in their home countries; and they lose some of their rights when they move to a different EU country.

These three factors together can easily lead workers with atypical contracts into a sort of *trap.*

A clear example of a *trap* is given by the UK report, where it is explained how foreign atypical workers have more difficulties in fulfilling the necessary contribution requirements to be eligible for JSA (*Job Seekers' Allowance*). Since they have a low wage, if they cannot find anything better, they tend to leave their precarious job to go back to their country or move to a different one. Should this happen, even if they fulfil the contribution requirements, they will not be entitled to the benefit either in the host country should they remain to look for another job, or in any other country if they leave, since they "voluntarily" left their job.

And even when theoretically these rights are formally granted to atypical workers they cannot be accessed in practice, not so much because of cultural and language difficulties often discussed, but rather because of the objective complexity of the rules. The two new European regulations on social security coordination enforced in 2010, for example[26], consist of 188 articles and 16 annexes, overall more than 200 pages[27]. And the puzzle of national regulation is certainly more complex.

Like the national social security systems, the European social security co-ordination regulations were mainly created to protect standard workers from traditional social risks. At the time of the early European regulations, in the 50ies, 60ies and 70ies, the migration processes mainly involved the working class, essentially from the South to the North of Europe. And the social protection systems of Member States were, despite differences in their structures, substantially

[26] Regulation (EC) nr. 883/2004 and Regulation (EC) nr. 987/2009

[27] According to a trade union survey of more than 800 EU and non-EU migrants carried out in 2012 in six European countries, seven out of every ten interviewees know nothing about the EU regulations, two know that they exist but are unaware of their content and just one is really familiar with them (www.osservatorioinca.org/33/esopo.html).

homogeneous in their organization. So the founding fathers chose to go down the road of *coordination* rather than *harmonisation*[28].

In the last 20 or 30 years, as new forms of atypical work have emerged, thousands of workers have been gradually marginalised by welfare systems. The only action taken has been to adopt measures – which are also of an atypical nature – to ensure that minimal support is extended to non-standard workers. This may come in the form of remuneration for their precarious employment or supplements for their insufficient social security contributions, either through the national insurance system or in the shape of assistance funded by general taxes. It is important to underline that these are "minimal" measures. They do not alter the general structures of social security systems, which continue to revolve around standard workers, nor do they provide sufficient income support. These measures are often at or beyond the boundaries of the models used to create and establish the structure of the European co-ordination systems.

Paradoxically, having rejected all forms of social harmonisation of the national welfare systems in favour of co-ordination, it is now impossible to apply the co-ordination principles to a growing group of atypical and precarious workers whose size, characteristics and needs are unknown. And also the third generation of social security co-ordination regulations enforced in 2010 (for the sake of streamlining and modernisation) has not reduced the problem from this point of view, despite an over 7-year incubation period.

[28] Caldarini C. (2013), *Il coordinamento dei sistemi di sicurezza sociale. Ovvero, perché in Europa i regimi di welfare sono così diversi tra loro*, in corso di pubblicazione; Holloway J. (1981), *Social Policy Harmonisation in the European Community*, Farnborough, Gower; Roberts S. (2010), "Bref historique de la coordination de la sécurité sociale", in Jorens Y. (édit.), *50 ans de coordination de la sécurité sociale*, Commission européenne, p. 8-29