

## Foreword

This report presents the comparative analysis of the Accessor project, based on its enquiry into European social security coordination in the context of atypical work and in this short introduction we present the main areas of study, along with an executive summary of the key finding. Accessor is a European funded project led by INCA-CGIL UK, with INCA-CGIL and trade union partners from Belgium, France, Germany, Italy, Slovenia, Spain, Sweden and the United Kingdom and with the active participation of the ETUC. Its investigation into forms of employment reveals the growth of atypical work in every country of the study and a gradual movement from the standard form of permanent, full-time contract, towards more fragmented employment relationships. In all eight countries atypical contracts have increased over the last two decades and while there is limited standardised data to allow for accurate comparisons between Member States, the evidence supports the assessment that there is a proliferation of alternative forms of contract, a consequence of labour market deregulation, economic crisis and globalisation.

Accessor goes beyond just simply an examination of forms of atypical work. First, it provides an overview of the developments of European coordination to consider this issue in the context of freedom of movement. The aim has been to understand what the consequences are when workers move from one Member State to another with the aim of bettering their living and working conditions and where the form of employment relationship they then enter falls within one of the categories regarded as atypical. The EU rules of coordination have the stated aim of guaranteeing that persons moving within the Community and their dependents and survivors retain the rights and the advantages acquired and in the course of being acquired, also providing for the equal treatment of *benefits, income, facts or events*. However, the study has demonstrated how the coordination rules are inadequate when it comes to dealing with workers in atypical work relationships and that consequently the aims of coordination are not apparent when it comes to these groups. Furthermore, given that atypical work is closely identified with certain categories of worker, the failure of the coordination rules to provide adequate social security protection, risks offending non-discrimination principles, in particular, where these relate to gender, ethnicity, or age.

Freedom of movement is acknowledged as a fundamental principle of the Treaty and is enshrined in Article 45 of the Treaty on the Functioning of the European Union. It encompasses the right to look for a job in another EU Member State; to work there without the need for a work permit; to reside there and to remain even after employment has ended. It also encompasses a right to equal treatment with nationals of the destination Member State with regard to access to employment, working conditions and all other social and tax advantages. The emphasis on free movement of workers since the beginning of the European Economic Community has distinguished Community labour regulation from national labour laws of the Member States. Given that it represents such a fundamental principle of EU law it would be of concern if the rules regulating social security entitlement might in some way act as an inhibitor of free movement. Yet this is what the Accessor project has found in relation to free movement and atypical work. As this report demonstrates,

social security rules within the Member States which in almost every case take as their model the standard employment relationship, of full-time permanent employment, disadvantage those in atypical work. This means that the rules often operate so as to exclude or limit the rights to social security protection of workers in atypical employment and to this extent it might be argued that the coordination rules are not negated and that there is no issue of less favorable treatment in the context of freedom of movement, since social security regulations apply equally to nationals and non-nationals in atypical employment. However, the Accessor project suggests that there is the need for a more nuanced examination, as the predominance of atypical employment among those to move to a different Member State in search of work, means that they are more likely to be found in a disadvantaged group where they will be over-represented. Furthermore the complexity of the rules for acquisition of social security benefits in each of the Member States and the differences between them inevitably mean that those who migrate for work will be less aware and knowledgeable as to the rules and their application.

#### *Learning through Accessor*

Accessor had always intended to reach out beyond just an investigation of a problematic; its aims have been to provide in-depth training as well as detailed information to all of the partner organisations as well as to the participating trade union and related bodies. Thus, in addition to the exchanges of information that are at the core of any research project, Accessor developed a comprehensive training agenda delivered in three different stages. First it provided three days of intensive training to participants of the partner organisations, at a forum in London from 4 to November 2013. This training seminar explored in-depth the concept of atypical work and its spread throughout the participating countries; it also looked at social welfare provisions in the participating countries; and then turned to the issue of the protection of the rights of atypical workers who have crossed borders, looking at the social security coordination rules and at relevant case law. Following this seminar, training sessions were also organised in each of the participating countries. Here the aim was to spread the knowledge acquired in the course of the Accessor research beyond the partner organisations to provide *training for the trainers*, both INCA-CGIL and more generally. Representatives from trade unions and related bodies took part in these training sessions, each of one or two days' duration. The work of Accessor has been supported at all times by a panel of trade union and academic experts, right up to its concluding formalities: the Rome conference on 6th-7th February 2014 focusing on the presentation, assessment and use of the results, and a final session of internal project evaluation in London on 27<sup>th</sup>-28<sup>th</sup> 2014.

#### *Executive summary*

The key findings of the Accessor project are set out below and developed in Parts 1-3 of this report.

#### *The growth in atypical work relationships*

- Atypical employment contracts have increased in all of the Accessor countries, with a proliferation of alternative forms of contract;
- There is an absence of robust and comparable data on the forms of atypical work in the Member States making comparisons difficult. There are also different definitions of atypical work

although a common theme is that the concept is often defined in its relationship to *typical* or *standard* work; and

– Some categories of worker are more likely to be found in atypical work, particularly women, young people and migrant workers. These are all groups who ought to benefit from the protection of non-discrimination law at EU and national level.

*Social protection of atypical employment*

– The study acknowledges that atypical employment may represent a choice taken by some workers, in particular as a method of entering the labour market. However this choice has longer-term and negative consequences with respect to future social security entitlement and often the worker concerned is not aware of this likely consequence;

– Atypical work shares some common elements: lower levels of job security, lower and irregular salaries; less training and fewer career opportunities; worse health and safety protection; and fewer trade union rights. Thus it comprises elements that challenge the stability of working relationships for all of Europe's workers; and

– Social security regulations in relation to atypical work often exclude insurance coverage; make the aggregation of periods of entitlement more difficult; and prevent the exportation of unemployment benefits.

*The operation of the coordination rules*

– National social security systems and EU coordination were created during periods of industrial development, when employment was standard. Consequently the application of the coordination system continues to act as a barrier that prevents those in atypical work from accessing the protection offered by EU social security regulations;

– Atypical workers are more subject to partial or total restrictions on the exportability of rights to unemployment and the difficulties experienced by non-standard workers are largely due to structural gaps in protection that would not be counter-balanced by refinement to the coordination rules in isolation. Indeed the coordination legislation is inherently incapable of compensating, if an employment relationship fully or partially lacks social security coverage by the standards of the regulations in force in the Member State or if fragmented working lives mean that there is an inability to meet minimum national insurance requirements;

– The increase in temporary mobility in the form of workers moving from one Member State to another for work often has a negative impact on the level of social protection for the persons concerned and therefore might act as a barrier to freedom of movement;

– The concepts of worker and of employment relationship as developed and defined under EU law, while enabling the European Court of justice to take account of some forms of atypical employment relationship, such as part-time, fixed-term, however, they are less able to deal with other newer forms of atypical contract. Furthermore the concept of worker for social security law takes its definition from that in national legal systems;

– The use of residency rules, in particular with regard to non-contributory cash benefits, bars the exportation of benefits. Furthermore, the shift from the concept of a worker to that of a

person covered by insurance had brought about a gradual split in the work and the benefits-based concepts of workers; and

– The exclusion of social assistance and the non-exportability of special non-contributory benefits now tend to be more stringently checked by the European Court of Justice for the compatibility with the principles established by the treaty and with free movement, in particular in terms of compliance with the proportionality principle.