
Atypical forms of employment contracts in times of crisis

Carole Lang, Isabelle Schömann and Stefan Clauwaert

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Introduction

Even in times of growth and good economic conditions, atypical work is often related to precariousness. During the economic crisis both its prevalence and the forms it takes have increased.

Comparisons are frequently drawn between atypical work and standard work. But, as observed by Jan Buelens and John Pearson in their book *Standard work: an anachronism?*¹, what one should worry about is not so much the fact that atypical work is gaining ground on standard work – though undisputed evidence points to standard work still remaining the more common form – but more the fact that atypical work has now gained a sustainable foothold in the labour market even in times when the economy is prospering.

When a need is perceived to ‘flexibilise’ the labour market, adapting it to the changes imposed by the economic crisis, atypical workers are the first to suffer changes to their status and employment relationship.

The co-related effects the economic and financial crisis had and is still having on national labour law reforms are a topic that has been studied by the ETUI for several years now.² In this context, the ETUI published a Working Paper in 2012 on *The crisis and national labour law reforms: a mapping exercise*, the aim of which was to list the labour law reforms in various European countries either triggered by the crisis or introduced using the crisis – falsely – as an excuse.³

Labour law reforms have been adopted in recent years in various European countries allegedly in response to the economic crisis. These have often downgraded labour law standards in an effort to introduce greater flexibility into the labour market, with encouragement from the European Commission. Using – in an almost autistic way – austerity as the watchword, the latter has adopted such measures as the Six Pack, the Europlus Pact or the Fiscal Compact.

1. Buelens, J. and Pearson, J. (2012) *Standard work: an anachronism?*, Antwerpen, Intersentia.
2. For an overview of the ETUI’s previous work on the crisis, see the ETUI website on <http://www.etui.org/Topics/Crisis>.
3. Clauwaert, S. and Schömann, I. (2012) *The crisis and national labour law reforms: a mapping exercise*, Working Paper 2012.04, Brussels, ETUI. Available online on <http://www.etui.org/Publications2/Working-Papers/The-crisis-and-national-labour-law-reforms-a-mapping-exercise>.

However, as the years go by without the crisis abating, questions have arisen on the effectiveness of such reforms for resolving the financial and economic crisis in the long term. Doubts have been cast on the effectiveness of the austerity policies adopted by most EU countries. The President of the European Commission, José Manuel Barroso, declared on April 22, 2013 at the Brussels Think Tank Dialogue that ‘politically and socially, one policy that is only seen as austerity, is of course not sustainable’⁴. Similarly, the President of the International Monetary Fund, Christine Lagarde, acknowledged in June 2013 that ‘[The IMF] had failed to realise the damage austerity would do to Greece’.⁵

In adopting measures supposedly to overcome the economic and financial crisis, Member States – in particular those receiving financial support and therefore in a Troika straitjacket – are blatantly ignoring fundamental social rights. This observation was highlighted by the previous ETUI Working Paper *The crisis and national labour law reforms: a mapping exercise*.⁶ Looking closer at the associated labour market deregulation, it became evident that this process often lacked democratic foundations and has had a negative impact on fundamental social rights and workers’ protection.⁷

As already analysed and highlighted in this previous ETUI Working Paper, one of the main areas where labour law changes have been made is that of atypical employment contracts.

During the ILO’s Ninth European Regional Meeting in Oslo in April 2013, employers’ representatives put forward the arguments that ‘flexibility did not necessarily equate to precarity in the labour market’ and that ‘the discussion on atypical work has lost meaning, as such concepts as lifelong employment no longer existed’.⁸

However, building on the statements made by Bernadette Ségol, ETUC General Secretary, at that same meeting that ‘the promised growth in exchange for austerity had not yet materialized’ and that ‘precarious employment and the

4. European Commission (2013) Austerity and growth debate: What President Barroso actually said at the Brussels Think Tank Dialogue, Press release. Available on http://europa.eu/rapid/press-release_MEMO-13-368_en.htm [Accessed 28 July 2013].

5. Elliott, L. Inman, P. and Smith, H. (2013) IMF admits: we failed to realise the damage austerity would do to Greece, *The Guardian* [Online], 5 June 2013 <http://www.guardian.co.uk/business/2013/jun/05/imf-underestimated-damage-austerity-would-do-to-greece> [Accessed 28 July 2013].

6. Clauwaert, S. and Schömann, I. (2012) *The crisis and national labour law reforms: a mapping exercise*, Working Paper 2012.04, Brussels, ETUI. Available online on <http://www.etui.org/Publications2/Working-Papers/The-crisis-and-national-labour-law-reforms-a-mapping-exercise>.

7. On this issue, see the Transnational Trade Union Rights Experts Network’s initiative: the Manifesto urging the European Union to respect and promote fundamental social rights in particular in respect of all crisis-related measures. Available on <http://www.etui.org/Networks/The-Transnational-Trade-Union-Rights-Experts-Network-TTUR>.

8. ILO (2013) Report on the Ninth European Regional Meeting, Oslo, 8-11 April 2013 Available on http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_210358.pdf.

number of the working poor were on the rise and workers' rights were under increased attacks⁹, this Working Paper will try to map the landscape and evolutions in the regulation of atypical employment contracts, analysing how some of these evolutions can be related to the context of the economic and financial crisis.

Atypical contracts cover diverse forms of employment relationships. For the purpose of this study, we will consider any employment contract that is not full-time and of indefinite duration with a single employer as coming under the definition of atypical work¹⁰.

The most common forms are fixed-term contracts and part-time contracts. This study will try in a first section to analyse how these two well-known types of contracts have been reformed during the crisis, taking into consideration the European directives regulating them. (Section 1)

Temporary agency workers are also considered as falling within the category of atypical workers. However, evidence shows that most amendments made in this area are related to the implementation of Directive 2008/104 on temporary agency work. This paper will therefore not be addressing temporary agency work issues.¹¹

When dealing with atypical forms of employment contracts, this report will also focus on the introduction of new types of contracts that are often less protective and target specific groups of workers, mainly the young. (Section 2)

With specific regard to young workers, this paper will also focus on measures being taken in relation to apprenticeships and traineeships. (Section 3)

Looking at these different types of atypical work, this Working Paper only addresses reforms that have been taken since early 2012, as the previous ETUI Working Paper *The crisis and national labour law reforms: a mapping exercise* has already dealt with anti-crisis measures modifying or introducing new forms of atypical employment before February 2012.

In order to map the changes that have taken place since then in the atypical work categories listed above, the paper uses a country-by-country analysis, pinpointing the main trends and tendencies regarding atypical employment. However, the scope does not cover all Member States, but only those having adopted changes within the context of this paper.

9. Ibid.

10. The definition of atypical work used here is based on that found in the Eurofound European industrial relations dictionary on <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/atypicalwork.htm>.

11. On that topic, see Schömann, I. and Guedes, C. (2013) Temporary Agency Work in the European Union, Report 125, Brussels, ETUI. Available on <http://www.etui.org/Publications2/Reports/Temporary-agency-work-in-the-European-Union>.

1. Fixed-term and part-time work contracts

Fixed-term and part-time work contracts are regulated by two European directives transposed by all 27 EU Member States: Directive 1997/81/EC (supplemented by Directive 98/23/EC) on Part-Time Work and Directive 1999/70/EC on Fixed-Term Work.

The context and rationale behind the adoption of the directives regulating these kinds of contracts is that most Member States were at that time experiencing an overall increase in the rate of part-time and fixed-term employment, with concern being raised about the working conditions of employees on such atypical contracts, which were often different to – not to say less favourable than – those for workers on ‘standard’ contracts.

Such contracts imply a risk of an even more segmented labour market emerging, particularly if part-time work becomes more marginal, targeting specific categories of workers, and if fixed-term work fails to act as a stepping stone to open-ended employment. Both directives thus aim to provide such workers with common standards of protection against unequal treatment and discrimination, in line with those enjoyed by standard workers.

However, since the onset of the economic crisis, attempts have been observed to reform rules on fixed-term and part-time contracts for the benefit of labour market flexibilisation, in many cases trampling on the protective framework of the two Directives.

Nevertheless, according to a recent evaluative study ordered by the European Commission, ‘the Directives have lost none of their relevance when looking at the evolution of these types of employment in the EU’¹² and still constitute a necessary framework to protect atypical workers’ interests.

1.1 Fixed-term work

Directive 1999/70/EC on Fixed-Term Work, putting into effect the framework agreement on fixed-term contracts concluded on March 18, 1999 between

¹² ICF GHK (2012) Evaluative Study of Directive 1997/81/EC (supplemented by Directive 98/23/EC) on Part-Time Work and Directive 1999/70/EC on Fixed-Term Employment: Draft final report, Submitted by ICF GHK to DG EMPL, European Commission, Specific Service Order No. VT/2011/072 N° 048.

the general cross-industry organisations (ETUC, UNICE and CEEP)¹³, was introduced mainly to improve the quality of fixed-term work by ensuring that workers under fixed-term contracts are not discriminated against when compared to workers with open-ended contracts, and to establish a framework that will prevent abuse of successive fixed-term work contracts or relationships with the same employer.

To prevent abuse, clause 5 of the Framework Agreement¹⁴ that led to the Directive states that Member States have to implement one or more of the following measures:

- provide objective reasons justifying the renewal of such contracts or relationships, and/or
- specify maximum total duration of successive fixed-term employment contracts or relationships, and/or
- indicate the number of renewals allowed for fixed-term contracts or relationships.

Without going into details, each Member State has adopted one or more of these measures. Some have even gone further, introducing further conditions such as the maximum duration of individual contracts, objective reasons even for concluding a first-time fixed-term contract, or an interval between successive contracts.

Nevertheless, as observed since the beginning of the crisis, there is an ongoing trend towards lowering the threshold of these protective measures by:

- expanding the objective reasons justifying the renewal of such contracts, and/or
- extending the maximum total duration of successive fixed-term employment contracts, and/or
- increasing the number of renewals allowed for fixed-term contracts

Italy has recently been the most active country amending its legislation on fixed-term employment, driven by the urgent need to adopt reforms and find solutions in order not to fall under the control of the Troika¹⁵.

In particular, a number of changes have been made to the ‘objective reasons’ under Law no.92 of June 28, 2012, also known as the Fornero Reform after the Labour Minister at that time.

¹³. On social partners’ framework agreements, see <http://www.etuc.org/r/615>.

¹⁴. See Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:175:0043:0048:EN:PDF>.

¹⁵. On this issue, see the confidential letter sent by the European Central Bank to Italy on August 5, 2011, ordering Italy to deregulate its economy, introduce greater labour flexibility and step up privatization. Available on <http://www.voltairenet.org/Letter-of-the-European-Central>.

The Italian government withdrew the requirement provided for by Article 1 of Legislative Decree 368/01 that a first-time fixed-term contract between a worker and a company be justified by one of the reasons mentioned in that Decree. A first-time fixed-term contract can now be concluded with no particular reason, with the limitation that it can then only last for a maximum of 12 months.

The reform also allows new objective reasons to be added by collective agreement, on top of those already provided by law. Such reasons now include the start-up of new activities, products or services, major technological changes, the extension of high-value research projects, and the renewal or extension of large supply contracts.

Particularly aimed at encouraging innovative start-up companies, a new Decree was approved on October 4, 2012, providing that any fixed-term contract concluded by an innovative start-up company within the first 4 years of its establishment is deemed to be in line with the objective reason provided for by law.

By extending the possibilities to conclude or renew fixed-term contracts, Italy aims to provide companies with greater flexibility. But while facilitating the conclusion of such contracts, one has to take care that the Directive's objective of protecting workers from abuse is still complied with.

Italy is not the only Member State that has broadened the options for concluding or renewing fixed-term contracts, using the economic crisis as justification for the adoption of such measures.

As part of its 'anti-crisis legislation package', **Lithuania** adopted a temporary possibility in June 2010 for concluding fixed-term employment contracts for 'newly created jobs', including certain particular conditions such as a 2-year limit on their duration and prohibiting the conclusion of such a contract with former employees. However, in line with the current trend in a number of Member States, temporary anti-crisis measures are being extended (and sometimes even becoming definitively enshrined in legislation). In this case, the expiry date of this temporary 'objective reason' has been extended from July 31, 2012 to July 31, 2015.

As with Italy, **Spain** is also facing a very critical situation, especially with regard to youth unemployment which is reaching record levels, affecting 55.2% of the youth population at the end of 2012¹⁶. In his search for solutions, Mariano Rajoy, head of the Spanish government, presented to unions and employer representatives the 100 measures of the 'Strategy for Entrepreneurship and Youth Employment 2013/2016' on March 12, 2013.¹⁷

16. Eurostat data available on http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Youth_unemployment,_2012Q4_%28%25%29.png&filetimesta mp=20130418091546.

17. Document available on http://www.empleo.gob.es/es/estrategia-empleo-joven/descargas/EEEJ_Documento_INGLES.pdf.

Among the proposed measures, a new ‘first job’ reason for fixed-term contracts has been introduced, purportedly making it easier to get a first job. It only affects jobseekers under the age of 30 with no work experience (or a maximum of 3 to 6 months). Working time must amount to at least 75% of a full-time job. Businesses deciding to convert such a fixed-term contract into a permanent one will see their annual social security contributions cut by €500 (for men) / €700 (for women) for 3 years. This measure will remain in force until unemployment decreases to below 15%.

However, it should be noted that these measures are mainly focused on reducing labour costs by offering discounts in social security contributions to employers to stimulate the hiring of the young unemployed, without taking into consideration the need for training in order to improve employability. Therefore, they will probably not have any great impact on the structural problem of youth unemployment. In addition, the Strategy aims at promoting the quality of employment, stating that the high rate of temporary employment is one of the ‘structural weaknesses that have a direct effect on figures for youth unemployment’¹⁸. Such statements put a question-mark over whether any further deregulation of temporary contracts can be in line with the Strategy’s objectives.

On March 5, 2013, the **Slovene** parliament adopted a new Employment Relationship Act¹⁹. Among many other measures, this Act also provides a new and broadly construable reason for concluding a fixed-term employment contract: the transfer of work.

By increasing the maximum duration permitted for a fixed-term contract – thereby increasing the period workers find themselves in an atypical situation – the effect of the ‘anti-abuse’ measure provided by the Directive is undermined, and now acts as a barrier for fixed-term contracts becoming a stepping stone towards open-ended employment.

Several Member States – including the Czech Republic, Greece, Portugal, Romania and Spain²⁰ – have already taken the decision to increase the maximum duration of fixed-term contracts during the crisis, and others are now following the trend.

In its reform of October 2012 aimed at promoting the development of innovative start-ups, **Italy** decided that fixed-term contracts concluded in such companies can last from a minimum of six months to a maximum of 36

18. Strategy for Entrepreneurship and Youth Employment 2013/2016, p. 11-12. Document available on http://www.empleo.gob.es/es/estrategia-empleo-joven/descargas/EEEJ_Documento_INGLES.pdf.

19. Slovenia: commentary of the new labour law reform, Planet Labor, Article number 7389, 19.03.2013.

20. For more details, see Clauwaert, S. and Schömann, I. (2012) The crisis and national labour law reforms: a mapping exercise, Working Paper 2012.04, Brussels, ETUI. , p.11. Available on <http://www.etui.org/Publications2/Working-Papers/The-crisis-and-national-labour-law-reforms-a-mapping-exercise>.

months and can even be extended to 48 months with the approval of the local office of the Ministry of Labour.

A further measure to introduce greater flexibility does not implicitly lengthen the maximum duration of the contract as such but instead extends the period during which a fixed-term contract may continue in force beyond its original expiry date to meet organizational needs: from 20 days to 30 days for contracts lasting less than 6 months and from 30 to 50 days for those exceeding 6 months.

However, a noteworthy trend in the other direction has recently been observed, with a number of Member State realising that their legislation in this field might not be in line with the measures provided in Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work.

This saw the **Swedish** government proposing a bill in June 2012 to clarify the conditions for combining fixed-term contracts, which cannot last more than 2 years over a 5-year period. This bill is mainly the answer to criticism expressed by the European Commission after a trade union complaint claiming that the Swedish regulation on fixed-term employment was too weak and therefore did not comply with the requirements of the Directive to prevent abuse²¹.

In the previous ETUI Working Paper on *The crisis and national labour law reforms*, **Spain** was mentioned as an example of a Member State that has extended the maximum period of fixed-term contracts (from 2 to 3 years). However this has now been changed by Law 3/2012 of July 8, 2012. To prevent abuse of fixed-term contracts, an employee with successive fixed-term employment contracts is deemed to have an open-ended relationship once he or she has worked at least 24 months over a period of 30 months for the same employer. This new provision has been in force since January 1, 2013.

Following the April 2012 elections in **Slovakia**, proposals were launched in July 2012 for modifying the Labour Code, retracting a number of measures taken in 2011 in response to the crisis. As a result, the maximum period for a fixed-term contract is reduced from three back to the original two years and can only be extended twice within that 2-year period²².

Such examples give evidence that Directive 1999/70/EC with its social harmonisation goals aimed at protecting workers on fixed-term contracts still fulfils its role, despite the introduction of many national labour law amendments (sometimes even dictated by EU institutions themselves) contrary to its aim.

Likewise in **Finland**, concerns were raised and efforts made in May 2012 to find ways to improve the labour market position of atypical workers, more

²¹. Sweden: government proposes bill limiting the number of fixed-term contracts to comply with Community provisions, Planet Labor, Article number 120458, 13.07.2012.

²². Slovakia: commentary of the Labor Code reform enforced on January 1, 2013, Planet Labor, Article number 7457, 09.04.2013.

specifically in the anti-discrimination field, as required by Directive 1999/70/EC. Though as yet no concrete proposals have been made, here again, the Directive has been a help, acting as a basis for trying to improve the situation of such workers. Other efforts have already been made in favour of fixed-term workers, with Government Proposal 152/2012 amending the Employment Contracts Act (55/2001) Chapter 2 Section 4 and the Act on Contractor's Obligations and Liability When Work is Contracted Out (1233/2006) Section 6 also aiming to provide workers with better information. As of January 1, 2013 according to the amendment, the employer shall provide a fixed-term employee with details of the duration of the fixed-term employment contract in writing and justify the fixed term, even if the contract's duration is less than one month.

1.2 Part-time work

Council Directive 1997/81/EC (supplemented by Council Directive 98/23/EC) on Part-Time Work aims to provide a legal framework for combating discrimination against part-time workers and for improving the quality of work, while at the same time facilitating the development of part-time work on a voluntary basis. Forming the basis of the Directive, the purpose of the Framework Agreement concluded by ETUC, UNICE and CEEP on June 6, 1997²³ was also to promote the flexible organisation of working time, taking into account the needs of both employers and workers. Part-time work is thus a topic closely linked to working time arrangements, meaning that it was frequently used during the crisis to implement short-time working schemes²⁴.

Part-time work has also been used as a tool against unemployment, with the current focus placed on youth unemployment. In Member States facing high levels of youth unemployment, part-time work is being promoted as a way of facilitating access to the labour market.

In **Spain**, as part of the 100 measures presented in March 2013 to encourage youth employment²⁵, the hiring of young workers through part-time contracts is being promoted. For companies recruiting people under the age of 30, without a job, with no professional experience (or less than 3 months) or coming from another sector, employers' social security contributions will be cut for one year, or longer if training is ongoing, by 75% for businesses with 250+ employees and 100% for smaller businesses. Working time cannot exceed 50% of a full-time job. In addition to their job (or within 6 months prior to hiring), the young beneficiaries need to attend training, regardless of whether it is specifically designed for the new job. This measure is aimed

23. About social partners' framework agreements, see <http://www.etuc.org/r/615>.

24. For more details on working time reforms, see Lang, C., Clauwaert, S. and Schömann, I. (2013) Working time reforms in times of crisis, Working Paper 2013.04, Brussels, ETUI.

25. Strategy for Entrepreneurship and Youth Employment 2013/2016. Document available on http://www.empleo.gob.es/es/estrategia-empleo-joven/descargas/EEEJ_Documento_INGLES.pdf.

at improving training for young unskilled jobseekers and their chances of entering the labour market. It may be prolonged by 12 months on condition that the employee provides evidence of completion of the relevant training programme within the second year or within the six months immediately prior to renewal.

However, despite being regulated by a Directive, part-time work still has noticeable drawbacks.

A study carried by Eurofound in 2011²⁶ found that this form of employment is not evenly distributed across the EU's working population. There are important differences in part-time employment rates depending on factors such as age, sex, sector or occupation. For instance, part-time work is unevenly distributed between genders, with more women (32.1% in 2012²⁷) working part-time than men (only 8.4 %²⁸). With regard to the age factor, part-time work is most common amongst young workers (29 % of the 15-24 age group) and older workers (55 % of the active 65+workforce). Therefore Eurofound came to the conclusion that 'while male part-time is most common in the youngest and the oldest age groups, the female part-time rate increases with age, reflecting gender inequalities in transitions from part-time to full-time'²⁹.

Moreover, part-time work is often involuntary. According to Eurostat data in 2012, in the EU-27, 27.7% of part-timers would be ready to work more.³⁰

Therefore, it is questionable whether encouraging and facilitating the use of part-time work, especially for categories of the population that are already in a difficult and precarious situation, would not contribute to an even more segmented labour market and to a rise in inequality.

26. Eurofound (2011) European Company Survey 2009: Part-time work in Europe. Report available on <http://www.eurofound.europa.eu/pubdocs/2010/86/en/3/EF1086EN.pdf>.

27. Eurostat data available on http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Employed_persons_number,employment_rates_and_share_of_part-time_employment,_by_sex,_2012_V2.png&filetimestamp=20130531091300.

28. Ibid.

29. Eurofound (2011), European Company Survey 2009: Part-time work in Europe, p. 2. Report available on <http://www.eurofound.europa.eu/pubdocs/2010/86/en/3/EF1086EN.pdf>.

30. Eurostat data available on <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>.

2. New types of contracts

Atypical work such as fixed-term and part-time employment are regulated by European Directives to prevent abuses regarding unequal treatment or excessive use.

Through adopting new types of contracts, Member States have often opened up ways of circumventing the legal framework of the Directives by ‘eloquently using’ the possibilities offered by the directives to exclude certain contracts from their scope³¹. Indeed, those contracts frequently offer less employment protection than standard contracts by weakening for instance rights to unemployment or social benefits, severance pay, or offering reduced wages.

Such contracts are implemented with the idea of ‘helping’ particular categories of workers, mainly those who have been affected the most by the recession, i.e. young and older workers.

In the same way, this idea was supported by employers’ representatives during a thematic panel ‘Tackling the youth employment crisis and the challenges of the ageing society’ at the ILO’s Ninth European Regional Meeting in April 2013, who argued that ‘non-traditional forms of employment constitute a good stepping-stone to open-ended contracts’³².

As a way of tackling the youth unemployment crisis and the challenges of the ageing society – as the thematic panel at the Ninth European Regional Meeting was called -, **France and Spain** have recently introduced so-called ‘generation contracts’.

31. Clause 2 of the framework agreement on fixed-term work : “Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:
(a) initial vocational training relationships and apprenticeship schemes;
(b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme”.

Clause 2 of the framework agreement on part-time work : “Member States, after consultation with the social partners in accordance with national law, collective agreements or practice, and/or the social partners at the appropriate level in conformity with national industrial relations practice may, for objective reasons, exclude wholly or partly from the terms of this Agreement part-time workers who work on a casual basis. Such exclusions should be reviewed periodically to establish if the objective reasons for making them remain valid”.

32. ILO (2013) Report on Ninth European Regional Meeting, Oslo, 8-11 April 2013. Available on http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting_document/wcms_210358.pdf.

In **Spain**, this is one of the hundred measures proposed in March 2013 to promote youth employment³³. The idea of such a contract is to cut social security contributions by 100% for young entrepreneurs recruiting experienced people for their projects. This measure targets young self-employed workers under the age of 30 and encourages them to recruit long-term jobseekers over 45. When they sign a part-time or full-time permanent contract, their social security contributions will be completely suspended for the first year of the contract. The measure will be maintained until unemployment decreases to below 15%.

In a different way, since February 2013 companies in **France** are being encouraged to continue employing young workers under the age of 26 under open-ended contracts while at the same time retaining older employees. Companies with less than 300 employees can receive financial support for this³⁴. For larger companies, there is an obligation to negotiate an agreement on this matter. The agreement must include commitments for training and sustainably integrating young people, for the employment of older workers, and for skill and knowledge transfer. These commitments will be linked to objectives, some of which must be quantified, an implementation schedule and ways of tracking and evaluating their fulfilment. Companies with 300 or more employees, or belonging to a group of that size, have until September 30, 2013 to reach a company-level or group-level agreement or, in the absence of such agreement, to present an action plan; otherwise they become liable to a fine (either 1% of the total sum of salary payments made to employees during the period in which the company is not covered by a generation agreement, or a reduction in certain social security contribution exemptions).

It is still a bit too early to assess the effect of such measures. Nevertheless, it should be pointed out that when the French government tries to deal with the unemployment of older workers through this ‘generation contract’, it appears that the measures do not match the issues. The causes of such unemployment are numerous and retaining older workers in a company is not the only solution. Easier access to training and skill development should be promoted, as well as the reorganisation of work taking its physical stress into consideration. Such criteria are not sufficiently taken into account in the ‘generation contract’.

In **Poland**, service contracts, also known as ‘trash contracts’, were adopted during the crisis³⁵. This particular type of contract is not covered by labour law but by civil law. Many of them are also not covered by social security regulations.

33. Strategy for Entrepreneurship and Youth Employment 2013/2016. Document available on http://www.empleo.gob.es/es/estrategia-empleo-joven/descargas/EEEJ_Documento_INGLES.pdf.

34. Loi n°2013-185 du 1er mars 2013 portant création du contrat de génération. Document available on http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=6E0714375CE0760460F3DE8AC7FFCE17.tpdj005v_2?cidTexte=LEGITEXT000027124273&dateTexte=20130721 (in French).

35. Eurofound - <http://www.eurofound.europa.eu/eiro/2011/11/articles/pl1111019i.htm> ; Poland: government reveals 2013 social program, Planet Labor, Article number 120615, 18.10.2012.

Trade unions consequently asked for these contracts to be brought under the social security system. However, in October 2012, the Prime Minister announced his decision not to do so, stating his desire to maintain employment levels.

This decision appears to be quite surprising, as the 2012 Country Specific Recommendations for Poland, adopted in the framework of the European Semester, indicated that ‘the partial abuse of self-employment and civil law contracts which are not governed by Labour Law appear to be a cause of labour market segmentation and in-work poverty, which is among the highest in the Union’. Its recommendation was ‘To combat labour market segmentation and in-work poverty, limit excessive use of civil law contracts and extend the probationary period to permanent contracts’³⁶.

As a consequence of the Prime Minister’s refusal to change the legislation in this field, the 2013 Country Specific Recommendations stated that since ‘the use of revolving civil law contracts with significantly reduced social protection rights is widespread’, Poland should ‘combat in-work poverty and labour market segmentation through better transition from fixed-term to permanent employment and by reducing the excessive use of civil law contracts’³⁷.

Slovakia also offers the possibility of concluding a particular kind of contract with less employment protection³⁸.

The so-called ‘agreements on work performed outside the employment relationship’ only have supplemental character, though employers make widespread use of them. Labour relationships based on such agreements are less well protected. For example, unless otherwise provided for in the agreements, the employee has no paid annual leave and no wage compensation when encountering obstacles to performing the work. As of January 1, 2013, significant changes to the legal regulation of these agreements were introduced. For instance, social and health insurance contributions are now almost the same for employers and employees as in a standard employment relationship. The only exceptions remaining are for students and pensioners.

The United Kingdom is somehow ‘well-known’ when it comes to adopting liberal measures. Recent concern has been raised about a particular form of contract called ‘zero hour contracts’, under which no specific working hours or pay are guaranteed, with workers staying at home until their employer calls them³⁹.

36. Country Specific Recommendations 2012 for Poland available on <http://register.consilium.europa.eu/pdf/en/12/st11/st11267.en12.pdf>.

37. Country Specific Recommendations 2013 for Poland available on http://ec.europa.eu/europe2020/pdf/nd/csr2013_poland_en.pdf.

38. Slovakia: commentary of the Labor Code reform enforced on January 1, 2013, Planet Labor, Article number 7457, 09.04.2013.

39. Inman, P. (2013) Zero-hour contracts need code of practice, says Lib Dem MP, The Guardian [Online] <http://www.guardian.co.uk/politics/2013/jul/04/zero-hours-contracts-stephen-lloyd> [Accessed 28 July 2013].

The Office for National Statistics' Labour Force Survey released data according to which the number of workers on such contracts doubled between 2005 and 2012, up to 200,000 people now⁴⁰.

The Government is under pressure to outlaw such contracts, with trade unions denouncing the fact that they leave workers in a very uncertain position. Another disputed invention coming from the UK is the introduction of a highly controversial new type of contract, whereby employees will be given shares in exchange for waiving certain employment rights, notably including those related to unfair dismissal, redundancy and certain statutory rights to request flexible working and time-off for training.

In March 2013, during debates at the House of Lords, Lord Pannick, an independent crossbencher at the vanguard of moves to abolish this new contract form, made this very relevant statement: 'Employment rights were created and have been protected by all governments - Conservative and Labour - precisely because of the inequality of bargaining power between employer and employee. To allow these basic employment rights to become a commodity that can be traded by agreement frustrates the very purposes of these entitlements as essential protection of the employee who lacks effective bargaining power.'⁴¹

Nevertheless, after many debates and after rejecting the bill twice, the House of Lords finally approved the so-called 'employee ownership bill' allowing workers to give up some of their labour rights in return for shares in the company⁴². But there have been concessions. Employers will have to offer free legal advice to employees who agree to the system. The bill is expected to come into force as foreseen in September 2013.

As mentioned before, these new types of contract are mostly adopted as a way of bypassing legal frameworks already in place, and more particularly the European Directives regulating fixed-term and part-time work.

With the alleged purpose of improving employment among specific categories of workers such as young and older employees, those unprecedented rules and contracts offer less protection and security, often leaving workers in a very uncertain position, with the justification that it is better to have that kind of job rather than no job at all.

However, this is not a commonly shared opinion and the legitimacy and legality of some of these new types of contract have been questioned before international bodies.

40. Data available on <http://www.ons.gov.uk/ons/search/index.html?newquery=zero+hour>.

41. House of Lords blocks 'shares for rights' plan, BBC [Online], 20 March 2013 <http://www.bbc.co.uk/news/uk-politics-21871106> [Accessed 28 July 2013].

42. Silvera, I. (2013) Government's employee ownership proposal passes, Employee Benefits [Online] <http://www.employeebenefits.co.uk/benefits/share-schemes/governments-employee-ownership-proposal-passes/101878.article> [Accessed 28 July 2013].

In the previous ETUI Working Paper on *The crisis and national labour law reforms: a mapping exercise*, Greece was cited for introducing a new “youth contract” that provides for considerable support measures to hire people up to the age of 25 on wages 20 per cent lower than the previous rate for first jobs, with a two-year probationary period, no social contributions for employers and no entitlement to unemployment benefits at the end of the contract. A complaint was submitted to the European Committee on Social Rights (ECSR) by Greek trade unions, claiming that this new type of contract was in breach of numerous articles of the European Social Charter. On May 23, 2012, in reply to complaint 66/2011 – General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece -, the ECSR held that indeed, this ‘youth contract’ violates the rights to vocational training, to social security and to fair remuneration.⁴³

This decision constitutes a good incentive to carry on monitoring such new types of contracts which, with their objective of facilitating access to the labour market, often cause more harm than good.

43. Decision on the merits available on http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC65Merits_en.pdf.

All other relevant documents can be found on http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

3. Apprenticeships and traineeships

The rise of unemployment among young people (aged 15-24) has been dramatic. In March 2013, 5.7 million young persons were unemployed in the EU-27, of whom 3.6 million were in the euro zone. The youth unemployment rate was 23.5% in the EU-27 and 24% in the euro zone, up by respectively 0.9 percentage points and 1.5 percentage points compared to March 2012. In March 2013, the lowest rates were observed in Germany, Austria (both 7.6%) and the Netherlands (10.5%), while the highest were in Greece (59.1% in January 2013), Spain (55.9%), Italy (38.4%) and Portugal (38.3%).⁴⁴

In this context, traineeships and apprenticeships have the potential to play a key role in increasing the access of young people to the labour market. Both help to bridge the gap between the theoretical knowledge gained in education and the skills and competences needed at the workplace, thus increasing the chances of young people finding a job.

Nevertheless, as acknowledged by the European Commission in April 2012 in a Commission Staff Working Document⁴⁵ ‘traineeships and apprenticeships in some cases do not play the role they should: for several years now, concerns have been raised about their quality. For instance, the organisations ‘*Génération précaire*’⁴⁶ in France and ‘*Generation Praktikum*’⁴⁷ in Austria have expressed serious concerns that traineeships may be abused as a source of cheap or free labour by employers who in many cases fail to provide the first step towards decent and sustainable work. This situation, it is argued, can in turn lead to a vicious circle of precarious employment and insecurity.’

Since 2010, the European Parliament has been lobbying in favour of better internships, publishing a report on ‘Promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status’ and calling upon the Commission to propose a European quality charter on internships.⁴⁸

44. European Commission (2013) EU measures to tackle youth unemployment, Press release, 28 May 2013. http://europa.eu/rapid/press-release_MEMO-13-464_en.htm [Accessed 28 July 2013].

45. Commission Staff Working Document available on <http://ec.europa.eu/social/BlobServlet?docId=7620&langId=en>.

46. For more information, see their website on <http://www.generation-precaire.org/index.php>

47. For more information, see their website on <http://www.generation-praktikum.at/english-version.aspx>.

48. Available on <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2010-0197+0+DOC+XML+Vo//EN#title1>.

A number of Member States have set up initiatives for improving the transparency and quality of traineeships and apprenticeships.

Despite these measures, it still remains very tempting to use the cheap manpower of trainees to replace permanent work, basically as a way of cushioning the impact of the crisis and improving youth unemployment figures. As a consequence, many new measures dealing with traineeships and apprenticeships have been recently adopted.

Italy and Spain are amongst the Member States most affected by youth unemployment. Between 2010 and the end of 2012, youth unemployment rose by 13.6 percentage points in Spain and by 9.1 percentage points in Italy⁴⁹. As a result, those two Member States have implemented new measures designed to encourage the use of traineeships and apprenticeships as a way of improving the situation of young people, supposedly to act as a stepping stone to long-term employment.

One measure adopted recently by **Spain** targets apprenticeships and traineeships. It includes a so-called amended internship contract to facilitate the transition to a first job. This system is for young graduates under 30 looking for a first job in their field of study. They are entitled to take part for 5 years after they graduate. Businesses that hire them will see their social contributions cut by half. These amendments to internship contracts will remain in force until unemployment decreases to below 15%. In addition, the decree-law provides that temporary work agencies may now sign training and apprenticeship contracts with workers assigned to user companies. Temporary work agencies will be in charge of training obligations while tutoring will be handled by the user companies. However, unions reject this measure as it was not addressed during the tripartite negotiations.

As part of the Fornero Reform adopted in June 2012 in **Italy**, reforms have been made to facilitate access to apprenticeships and traineeships.

Apprenticeship is considered the most important form of access to the labour market. Therefore, a minimum apprenticeship contract duration (six months) has been provided, which may only be reduced in the case of seasonal activities and other exceptional circumstances specified by law. At the same time, a procedure by which the recruitment of new apprentices by employers with more than 10 employees is based on the percentage of permanent apprentices hired during the previous three years (50% - for the first three years of implementation of the Reform, and later 30%) has been introduced. Nevertheless, employers are allowed to hire one additional apprentice even if the above-mentioned percentage of permanent apprentices has not been reached or even in case no permanent apprentice has been hired within the prescribed period. The ratio of apprentices/skilled workers has been raised

49. Eurostat data available on http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Youth_unemployment,_2012Q4_%28%25%29.png&filetimestamp=20130418091546.

from currently 1/1 to 3/2. For employers who employ less than 10 workers, the ratio may not exceed 100% of the workforce. Employers who do not employ skilled workers at all or who employ less than 3 skilled workers are allowed to hire no more than 3 apprentices. Apprentices cannot be hired under agency work contracts.

For internships, in addition to the obligation of ‘decent pay’ with fines up to €6,000 in the case of violation, the government has been requested by Parliament to adopt one or more legislative decrees setting down fundamental rules and requirements for internships based on the following criteria and principles: a) general revision of internship regulations; b) measures to prevent the abuse of internships by means of an accurate description both of the intern’s activities and of the internship’s qualifying elements; c) internships should provide some form of remuneration (e.g., reimbursement) related to the intern’s specific performance.

Sweden has also been very active in promoting apprenticeships and traineeships, but for other reasons than Italy and Spain.

The United Nations Regional Information Centre for Western Europe (UNRIC) highlighted the specific context of Sweden: ‘Youth unemployment is certainly highest in countries such as Spain with more than 40% of young job seekers unemployed, but if we look at unemployment among those under 24 compared to unemployment in general, the situation is different. The highest ratio of youth unemployment vs. unemployment in general in the OECD is in Sweden. Unemployment among the under 24’s in Sweden is 24.2%, or four times the average unemployment rate of 8%. The average for those aged 25-54 is 6.1%.’⁵⁰ However, when looking at the reason why the ratio of youth unemployment is so high in Sweden, it appears that the problem seems to be structural and therefore not necessarily linked to the crisis. Indeed, “both employers and the Federation of Swedish Trade Unions (LO) agree that the education system is partly to blame. Too many young people graduate without the necessary skills for the job market’⁵¹. By encouraging traineeships and apprenticeships, Sweden hopes to resolve this structural issue. As a consequence, in a Government newsletter ‘More paths to jobs for young people’ of November 7, 2012, the Ministry of Employment declared that ‘in the Budget Bill for 2013, the Government proposes further initiatives in a youth package totalling SEK 8.1 billion, which will create more paths to jobs for young people’. Among those paths, ‘action is being taken to promote apprenticeship and upper secondary vocational programmes aimed at facilitating contacts between young people and employers. Increased resources will help to raise the quality of programmes, increase throughput and reduce dropout rates. Other proposals include measures to increase the proportion of vocational teachers with teaching degrees, a new national training programme for mentors, measures to improve the quality of work introduction programmes, and raising and

⁵⁰. See <http://www.unric.org/en/youth-unemployment/27411-sweden-highest-ratio-of-youth-unemployment> [Accessed 28 July 2013].

⁵¹. Ibid.

giving permanent status to the allowance paid to schools and employers offering apprenticeship places⁵².

It is also interesting to look at the measures **Croatia**, a new EU Member State since July 1, 2013, has adopted in the run-up to joining the EU. Croatia, like the rest of the EU, has felt the impact of the economic crisis and has a very high level of youth unemployment (59% in the first quarter of 2013⁵³), competing with Greece and Spain and much higher than the EU-27 average (23.4% at the end of 2012⁵⁴).

To deal with this situation, the government adopted ‘The Law on Stimulating Employment’ in May 2012 which *inter alia* expanded an already existing measure entitled ‘vocational training without employment relationship’ and which applies to young unemployed without previous work experience. The measure allows for an employer to engage young workers registered with the Croatian Employment Service for one year (or two years for certain professions), without signing a labour contract. The employer only has to pay pension contributions, while the state provides health insurance and a compensation of around 220 euros for the young worker. The employer is obliged to designate a mentor and compile a professional training programme for each person. Both the trade unions and youth organisations objected to the fact that compensation is lower than the statutory minimum wage (around 285 euros) and expressed fears of misuse in the private sector. A further problem with this measure is that it will provide a strong disincentive for employers to provide regular employment for young people, since they can now get young workers almost for free.

The idea of a regulation for better internships and apprenticeships seems difficult to achieve at the European level.

On May 16, 2012, during the European Youth Forum in Brussels, a ‘European Quality Charter of Internships and Apprenticeships’⁵⁵ was presented, and on May 31, 2012, a new motion for a resolution was presented to the European Parliament⁵⁶.

Although the Commission, as part of the social dimension of the European Monetary Union, has committed itself to introduce a regulation for better internships by early 2014, the immediate objective currently pursued seems to encourage and develop traineeships and apprenticeships, thus providing evidence that the difficult situation of young Europeans is being taken care of, no matter what the consequences are.

52. See <http://www.government.se/sb/d/14471/a/203093> [Accessed 28 July 2013].

53. Eurostat data available on http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_unemployment_lfs/data/database.

54. OECD data available on <http://stats.oecd.org/Index.aspx?DatasetCode=STLABOUR>.

55. Charter available on http://www.europarl.europa.eu/meetdocs/2009_2014/documents/empl/dv/empl_eqc_internships_/empl_eqc_internships_en.pdf.

56. See <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2012-0273&format=XML&language=EN>.

Conclusion

Atypical work is particularly affected by the impact of the economic crisis, putting employees in a very insecure and precarious position.

A two-phase process has been observed during the crisis when looking at atypical forms of employment. To start with, atypical workers were the first to lose their jobs as it is easier to get rid of workers not enjoying as much employment protection as standard workers. Then, when it came to dealing with fluctuations in labour demand, new jobs were created on a temporary basis, rendering them highly adaptable. Fixed-term and part-time contracts were used for their flexibility compared to standard contracts, existing regulations on fixed-term and part-time work were adapted and loosened to facilitate recourse to more flexible forms of work contracts, and even more flexible forms of employment were introduced by creating new types of contract.

As a result, it appears that during the crisis, the objectives of the EU Directives on fixed-term and part-time work have been somehow forgotten. These Directives were adopted with the specific goal of integrating atypical workers into the labour market and preventing them from falling into precariousness by trying to place them on the same footing as standard workers.

But what is currently being observed with the implementation of reforms of atypical work or the introduction of new kinds of contract is exactly the opposite, with such employment contracts often contributing to a more segmented labour market. By widening the possibilities to conclude and renew fixed-term contracts, there is no opportunity for them to act as stepping stone to long-term employment. Likewise, part-time contracts are becoming more and more marginal, targeting particular and often weak categories of workers (youth, older workers, women), as do new types of employment contracts.

Officially seen as a way to resolve the unemployment crisis, those new measures contribute above all to ensnare workers in precariousness. As Bernadette Ségol, General Secretary of the ETUC, stated during the ILO's 9th European Regional Meeting in April 2013, 'flexible labour markets [are] not the solution if they simply [give] rise to precarious jobs'.⁵⁷

57. ILO (2013) Report on Ninth European Regional Meeting, Oslo, 8-11 April 2013. Available on http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting_document/wcms_210358.pdf.

In addition, such developments of atypical work call into question the respect of European and international concepts such as the quality of employment and decent work and undermine the meaning and consistency of the European Social Model. What seems to prevail today are competitiveness, flexibility and productivity, watchwords of a neoliberal Europe, instead of the promotion of the European values anchored in the Lisbon Treaty (Art.3.3): ‘the sustainable development of Europe based on (...) a highly competitive social market economy, aiming at full employment and social progress, and a high level protection and improvement of the quality of the environment’.

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