

Working time and atypical forms of employment contracts in times of crisis: recent reforms in the Member States

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Since 2008 and the beginning of the economic crisis in Europe, the legislative situations in EU Member States have undergone several, accelerated changes. Although the roots of the crisis clearly lie in financial speculation, not only has the situation led to reforms in the field of economic and financial law, but labour law has also been particularly hard-hit by the adoption of measures aimed at finding a way to exit the crisis. The 2008 crisis was an opportunity to bring back a long-standing concept promoted by the European Union, that of flexicurity. Traditionally, flexicurity is a two-sided notion which purports to combine flexibility for employers and companies on the one hand with more job security for workers on the other hand.

However, various pieces of research (for example Clauwaert and Schömann 2012, Escande Varniol *et al.* 2012 and Omarjee 2012) conducted since the beginning of the crisis in the field of labour law reforms and social policies demonstrate that the core idea of flexicurity has been somehow distorted over the years, so that it now leans more towards greater flexibility to the detriment of security, leaving the concept of flexicurity imbalanced.

Therefore, concerns have recently been raised as to the effectiveness and the relevance of the concept of flexicurity as it has developed during the crisis (Escande Varniol *et al.* 2012, Laulom *et al.* 2012, Lokiec *et al.* 2012, Schömann 2014). As it stands today, the concept seems to suffer from a serious number of shortcomings due to the way in which it has been used politically. Consequently, some authors have come to the conclusion that the flexicurity approach should either be abandoned or be substantially improved (see Buroni and Keune 2011).

The crisis was used as an excuse to justify this distortion. Reforms, aimed at introducing more flexibility into labour markets, were said to be temporary and implemented only as a means to solve the crisis, and therefore ephemeral in nature. Yet, as the crisis continues into its seventh year without real signs of abatement, these reforms are becoming more permanent, and questions have arisen as to the effectiveness of such prolonged reforms in resolving the financial and economic crisis in the long-term.

When it comes to making the labour market more ‘flexible’ and adapting it to the changes imposed by the economic crisis, working time reforms and atypical forms of employment contracts are usually considered efficient and accessible tools to adjust the alleged constraints imposed by labour law.

Therefore, this paper will try to demonstrate how working time (Section 1) and contracts of employment (Section 2) are still affected by the adoption of deregulating measures in national labour laws, and it will examine the effects of such measures.

Section 1 will focus on the issue of working time and aims to demonstrate that Member States are pursuing reforms in this field by either extending or reducing working time duration, and are sometimes even granting greater freedom in how employers can allocate working time.

Section 2 takes a more in-depth look at the issue of changes in employment contracts. Not only are existing contracts being subject to deregulation and made more flexible, but innovative forms of employment are also being created, in order to allow even more flexibility.

With a view to providing an updated and global vision of recent reforms adopted in the Member States, we highlight the main trends and tendencies recently observed, using a country-by-country analysis. First, some Member States have been selected to provide vivid examples of the measures adopted. Following these non-exhaustive examples, we analyse the effects such measures might have. In doing so, this publication will build on substantive previous research conducted by the ETUI on these subjects (Clauwaert and Schömann 2012, Lang *et al.* 2013a and b), but will also extend and complement this work by including the most recent developments in these fields.

1. Working time as an adjustment variable

Working time has been defined at EU level by Directive 2003/88/EC as ‘any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practice’.

Although this definition is imposed on each Member State and the issue of working time is regulated by a European Directive, Member States are still granted significant room for manoeuvre in implementing reforms and flexible working time arrangements. This appears to be a key adjustment mechanism for most governments in accommodating labour market fluctuations.

The beneficial sides of flexible working time arrangements have often been put forward, especially when introduced at the request of employees, mainly in order to reconcile work and family life. In this respect, the United Kingdom (PlanetLabor 2013a) has recently enlarged the possibility for employees to request flexible working time. As of April 2014, any employee with at least 26 weeks continuous service will be able to claim this right, whereas before, this right was reserved for people taking care of children or dependent relatives.

However, flexible working time measures are also advocated as a way to mitigate the adverse effects of the crisis, and various solutions have been adopted in order to introduce greater flexibility into the relevant legislation.

Some Member States have chosen to extend the duration of working time authorised by the law so that companies are allowed to ask their employees to work longer hours. Contrariwise, due to work shortages, reforms have also been adopted in order to enable companies to shorten working hours. More generally, mechanisms have been implemented or altered to give companies further possibilities to arrange the allocation of working hours according to their needs.

1.1 Extension of working hours

Among the multiple ways of extending working hours, raising the maximum working time authorised by law is one of the most frequently chosen options.

Sometimes, this limit has been increased for particular sectors only, as is the case for **Ireland** (Sheehan 2013). With a view to saving €1 billion in public service costs, under pressure from the Troika, the Irish government started negotiations with trade unions on January 14, 2013 on pay and working conditions, with one of the proposals discussed aiming to increase working time for civil servants working less than 40 hours a week. After various failures to reach an agreement, in May, 2013 the so-called ‘Haddington Road Agreement’ was adopted. According to this agreement, the standard working hours of public servants will increase as follows:

- Those with a working week of 35 hours or less will see their hours increase to a minimum of a 37 hour week.
- Those with a working week that is greater than 35 hours but less than 39 hours will see their hours increase to a 39 hour week.
- Working hours of those currently with a net working week of 39 hours or greater will remain the same. However, an hour of overtime worked each week by these grades will be unpaid until 31st March 2014.

Likewise, **Portugal** (Darcy 2013a) is also under the scrutiny of the Troika and reached an agreement in May 2013 on the new package of austerity measures that the country had to adopt in order to meet the budgetary targets imposed by the Troika. Longer weekly working hours for civil servants were included in this package, and since September 28, 2013, civil servants have been working 40 hours a week instead of 35, without financial compensation.

In August 2013, the conservative party in **Austria** (Risak 2013) proposed an increase in the daily maximum working time from 8 hours (or 10 if negotiated in a collective agreement) to 12 hours. However, the social democratic party overwhelmingly opposed this proposal, as this would have amounted to a reduction in workers’ wages.

Without having to extend legal working hours, overtime is another way for employers to require their workers to work longer hours. Therefore, throughout the crisis, particular efforts were made to facilitate the use of overtime.

On July 17, 2013, the **Belgian** (PlanetLabor 2013b) Parliament adopted a bill to modernise labour legislation, which notably makes the overtime system more flexible, following previous agreements between employers and unions. The maximum number of hours an employee can work in addition to usual working time has been raised from 65 to 78 hours per quarter and 91 per year. A collective agreement can even bring this limit up to 130 hours and a sectoral collective agreement can raise the limit to 143 hours.

Changes have not only been made to the amount of overtime allowed, but have also aimed at reducing overtime pay. In **Poland** (Mrozowicki 2013), discussions that took place in February 2013 in the Tripartite Commission on Social and Economic Affairs brought up the idea of reducing the overtime bonus from 50% to 30% for normal working days and from 100% to 80% for overtime performed on night shifts, Sundays and public holidays. Likewise, in **Latvia** (Dupate 2013), draft amendments to labour law were submitted to Parliament and were adopted in the first reading on October 3, 2013. As part of these reforms, the Employers' Confederation in Latvia claimed that the current requirement to pay double salary for overtime work is excessive and expressed a wish to decrease it to 150% of the normal pay.

Recent developments have also shown frequent attempts to turn times usually considered as non-working periods (Sundays, public holidays, nights) into working periods. Although this can be presented as a way to create new jobs, in practice unions are concerned that it could have a detrimental effect on the workers' health and family situations, as the periods they are likely to be asked to work extend over the whole week and could result in fragmented working schedules without long rest times.

Therefore, such changes remain a sensitive issue. In **France** (Kessler 2014), for example, unions are strongly opposing companies that are putting pressure on the government, arguing that other EU countries do not have such restrictive legislation.

In December 2013, Decree n°2013-1306 gradually extended derogations so as to be more flexible about working on Sundays.

Similarly, at the request of the Civic Platform in **Poland** (Mitrus 2014a) (a liberal-conservative political party), Article 15110 of the Labour Code, which outlines situations when work on Sundays is permissible, was amended on December 12, 2013, so as to include work performed by means of electronic communication for employers located abroad or a branch of an employer located abroad. Furthermore, a bill was introduced, amending the Labour Code, concerning a ban on work on Sundays in commercial establishments. On January 29, 2014 this proposal was criticised by the government (Mitrus 2014b). Working on Sundays is considered by the government to strike a reasonable balance between the needs of employees, employers and clients; introducing a ban would cause a reduction of jobs in commercial establishments and in the undertakings that cooperate with them, such as the transport sector.

The choice to facilitate longer working hours may well be of dubious benefit in an employment crisis. In the context of a shrinking labour market, working more is for those who already have a job and does not help to create employment, but rather ignores the concepts of work sharing and social inclusion.

Pay cuts or a lack of financial compensation are not the only drawbacks of introducing longer working hours. Working time is also closely linked to health and safety issues, and long working hours are considered to have negative impacts on workers' health and well-being (ETUI 2012). When it is claimed that because of the crisis facing the EU, it is necessary to increase working time in order to remain competitive compared to non-EU countries that are not subject to the same working time restrictions, flexibility is clearly being given priority over worker safety.

Overtime also remains a significant issue in working time discussions across Europe, as it is regarded by many employers as a vital element in achieving flexibility, and on the other hand by many workers as an important – though irregular – source of income. By reforming overtime in this way, the burden is placed on the workers: they can be asked to work more if needed, with all the consequences this can have on their health and well-being, but often at a lower rate than before.

Their security – financial security and health – is being undermined in the cause of flexibility.

1.2 Reduction of working hours

Whereas some reforms are intended to lengthen working time, others aim at temporarily reducing it. These two options might seem contradictory, but they can be explained by a difference in the context in which they are applied. Extending working hours is a solution that has been adopted by many Member States, for the most part in Eastern Europe, as many companies were attracted to relocate to these Member States with their cheaper manpower and more flexible labour legislation. By contrast, the ‘old Europe’ and Nordic Member States seem to be increasingly promoting the use of short-time working schemes in the face of economic downturns, with such a mechanism appearing a reliable solution for companies.

Germany has a long tradition of short-time working (*Kurzarbeit*) and used it extensively during the recent crisis. Short-time working was actually presented as the means that prevented Germany from sinking further into recession and facing the same unemployment levels as other Member States. Nevertheless, at the beginning of 2013 the government extended short-time working allowances from 6 months up to one year, with the measure set to remain in force until December 31, 2013 (PlanetLabor 2013c). Consequently, the extension of short-time working can be considered evidence that Germany has not yet overcome the crisis. This measure of frequently – if not permanently – extending short-time working schemes is dubious, as it undermines the temporary nature of such schemes. Although, moreover, short-time work avoids the need for employees to be dismissed, its use in the long-term may be detrimental to their situation.

Likewise in **Austria**, amendments to the Short-time Working Act came into force at the beginning of 2013 and were designed to make it easier for employers to have recourse to such schemes by, among other things, removing the obligation to gain the consent of the works council, so as to make the procedure less complicated and time-consuming.

In **Luxembourg**, during a meeting held on October 4th, 2013, the Council of Government adopted a governmental amendment of bill No.6594 concerning notably the prolongation of certain temporary adaptations of the Labour Code. This amendment aims to extend until December 31, 2014 the provision that allows for short-time working schemes of up to 10 months, in cases caused by structural factors.

In **France**, 2013 was a landmark year for reforms intended to extend the possibilities of reducing working time. France initially chose to promote overtime work by adopting the so-called ‘TEPA’ law in 2007¹, based on the counter-cyclical concept of ‘working more to earn more’. This policy was abandoned in 2012 when the new left-wing government took up office. The law adopted by the French Parliament in May 2013 is the result of a national cross-industry agreement adopted by social partners on January 11, 2013. However, it was not signed by all trade unions and had to face a barrage of criticism, with strikes denouncing social regression.

Short-time working has been merged into a system called ‘partial activity’. In the event of adverse economic conditions, supply difficulties, disaster, exceptional circumstances, or the transformation, restructuring or modernisation of a company, the employer can ask to place all or some of his employees in partial activity, if those employees are suffering a loss in pay due to the partial or total closure of the company or because working time has been decreased to below the legal threshold. In this case, workers are compensated by the employer by receiving 70% of their gross salary. Placement under this scheme can last for a renewable period of 6 months and does not constitute a change in the employee’s contract of employment: he can not, therefore, refuse it.

Besides, with the objective of preventing dismissals, the French government introduced at the same time a new type of agreement: the ‘employment guarantee agreements’. In the event of severe economic difficulties, it is possible for companies to temporarily adjust working time and pay. In return, employers have to maintain employment throughout the duration of the agreement. Recourse to this system is

1. Loi n° 2007-1223 du 21 août 2007 en faveur du travail, de l’emploi et du pouvoir d’achat.

supervised: the agreement has to be signed by a union majority (i.e. one or several union organisation(s) having secured at least 50% of votes at the professional election); it cannot last for more than two years; and it cannot reduce salaries below 1.2 times the minimum wage. Once the agreement is signed, employees have to give their consent and will be laid off on individual economic grounds if they refuse, meaning that the company will not be subject to collective redundancy regulations even if the numbers meet the criteria. Therefore, even if the purpose is to safeguard jobs and prevent employees from being dismissed, this mechanism is quite unfavourable to employees.

More generally, although short-time working has been praised as an efficient instrument in preventing dismissals and has therefore been promoted by many Member States during the crisis, its negative side effects have also been underlined.

As emphasised by Jean-Yves Boulin and Gilbert Cette (2013), this mechanism 'may actually increase labour market segmentation, since short-time working schemes are generally backed by unemployment insurance funds, meaning that the money used for protecting insiders will not be available for active labour market policies'. In addition, this mechanism can only be sustained if it is meant to deal with a cyclical shock and not a structural shock. Short-time working can have adverse effects in the case of any structural crisis, impeding adjustments and leading to restructuring processes. Short-time working is not the right solution when it only serves to postpone the maturing of a structural problem, heightening the risk to workers' employability when a company is no longer adapted to market needs.

Moreover, short-time working has direct short-term negative effects for workers as it reduces their purchasing power and as they are once more asked to be more flexible by contributing to the effort through their loss of earnings.

Some Member States, then, have decided to extend working hours, while others have chosen to reduce them; the question of which strategy is best remains unanswered.

In their paper (2013), Jean-Yves Boulin and Gilbert Cette compare France – which has been promoting the use of overtime for several

years – and Germany, known for its extensive use of short-time working schemes. Although the German strategy seems to have been effective, with few job losses, ‘would the German choice be socially sustainable in the case of longer and repetitive downturns?’ On the other hand, they point out that ‘the French strategy – encapsulated by the slogan “work more for more money” – which prevented the negotiation of work-sharing agreements until the recent national agreement of last January (2013) is potentially dangerous due to its unemployment and social exclusion consequences’.

1.3 Variable allocation of working hours

Because of the particular context of the economic crisis, employers complain that they have to switch from economic downturns to slow recoveries. This instability requires them to be even more flexible, especially when it comes to organising their employees’ work schedule. At the request of employers, therefore, several Member States have adopted measures intended to give the former more flexibility in arranging working time, without necessarily taking into consideration the workers’ position. One of the solutions adopted is to extend the reference periods used to calculate working time.

In **Belgium** (PlanetLabor 2013d), the social partners held a meeting in January 2013 to discuss the modernisation of labour law. Among other matters, they discussed the option of calculating working time on an annual basis. Weekly working time (usually 38 hours) has to be respected over a one-semester reference period. However, as the reference period is already annual in several sectors, since this was negotiated in a collective agreement or in the working regulations, the social partners proposed, in the social agreement for 2013-2014, that the one-year reference period be extended across the board.

In **Poland** (Mrozowicki 2013), new legislation amending the Labour Code and the Trade Union Act was passed by parliament on July 12, 2013 and came into force on August 23, 2013. As early as 2009, the Anti-Crisis Act had extended the reference period to twelve months. As is rather common with anti-crisis measures, these provisions were supposedly introduced on a temporary basis, but as they were renewed over the years, it became increasingly difficult to return to the initial

legislation. Poland is here the perfect example of this process: this twelve-month period has now been enshrined in law, since it was felt that it would help companies to cope with seasonality, decreasing orders and temporary financial difficulties.

A variable allocation of working hours is very useful for companies that enjoy greater flexibility. However, this flexibility is imposed on workers, who in return see their working conditions becoming less and less secure, as they have to adapt between periods when they are asked to perform overtime and periods when there is not enough work. Drawing on this, it seems that the win-win relation implied by the concept of flexicurity is only working for companies.

Throughout the crisis, working time has remained a sensitive issue. At the European level, negotiations between social partners were launched to revise the Directive in 2010 but reached a dead-end in December 2012, demonstrating that in the current context, it is unlikely that a compromise can be reached that would suit both employers' and employees' interests. In addition, reforming working time has indirect impacts on many other areas, such as workers' health, safety and well-being, as well as living conditions and incomes.

Therefore, awareness should be raised concerning this trend: the prolongation – if not permanent adoption – of austerity measures supposed to be temporary, and which are of questionable effectiveness, given the length of the crisis.

2. Changing forms of employment: more frequent use of atypical and flexible contracts

Traditional forms of employment, usually considered full-time permanent contracts of employment with a unique employer, have decreased over the decades, and the crisis has accelerated fundamental changes in forms of employment. As Jan Buelens and John Pearson (2012) observed, although standard work undisputedly remains the major form of employment, atypical contracts seem to have gained a sustainable foothold in the labour market, confirming the trend that some allegedly temporary austerity measures are actually rooted in national legislation.

When it comes to ‘flexibilisation’ of the labour market – the watchword used by EU institutions during the crisis – atypical workers are first in line to suffer changes, if not dismissals, as their status is less protected than that of permanent workers.

Atypical work is a relatively broad notion. According to the definition used by the Dublin Foundation, ‘atypical work refers to employment relationships not conforming to the standard or “typical” model of full-time, regular, open-ended employment with a single employer over a long time span’².

For the purpose of this research, we will consider that fixed-term and part-time contracts, as well as new kinds of employment contracts, are all covered by the concept of atypical work. Temporary agency work contracts are obviously also atypical; however, since the deadline for the implementation of Directive 2008/104/EC on temporary agency work was set in December 2011, and some Member States implemented it late, most amendments in this area were made because of the transposition of the Directive, and not because of the crisis context³.

2.1 Reforming fixed-term and part-time work contracts

Directive 1999/70/EC was introduced mainly to improve the quality of fixed-term work by ensuring that workers with fixed-term contracts are not discriminated against when compared to workers with open-ended contracts, and to establish a framework that will prevent abuse involving successive fixed-term work contracts or relationships with the same employer.

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

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2. Eurofound industrial relations dictionary (<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/atypicalwork.htm>).
 3. For more information on that topic, see Schömann and Guedes (2013).

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

Since the beginning of the crisis, there has been an on-going trend towards lowering the threshold of these protective measures.

Although Member States still have to comply with the requirement of providing objective reasons, the solution found to partially circumvent this requirement has been to extend the list of objective reasons. **Lithuania** adopted a temporary provision in June 2010, making it possible to conclude fixed-term employment contracts for ‘newly created jobs’, including certain particular conditions such as a 2-year limit on their duration or 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. In this case, the expiry date of this temporary objective reason has been extended from July 31, 2012 to July 31, 2015.

In early 2013, **Spain**⁴ decided to take comprehensive measures to tackle its particularly tough situation regarding youth unemployment (55.2% of the youth population at the end of 2012⁵). Among the one hundred 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. This measure will remain in force until unemployment drops to below 15%.

4. 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_Resumen_Ejecutivo_INGLES.pdf (Accessed 01.06.2014).

5. 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 (Accessed 01.06.2014).

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

Law Decree No.76 of 28 June 2013 in **Italy** (Ales 2013) established urgent measures for ‘the promotion of youth employment, for the enhancement of social cohesion and in relation to VAT and other taxes’. Under the new decree, it is possible to sign fixed-term and temporary contracts without giving a reason in two cases: for the first fixed-term contract if it does not last more than 12 months, and for all cases listed in collective agreements, including company agreements, signed by the union and employers’ organisations which are comparatively the most representative at national level. The ban on extending fixed-term contracts with no indicated reason is abolished.

Another lever used by many Member States to introduce more flexibility in the conclusion of fixed-term contracts is to extend the maximum length of the contracts or to allow multiple renewals.

Like several other Member States, **Portugal** (Darcy 2013b) had already adopted a temporary measure to extend the maximum duration of fixed-term contracts during the crisis. This temporary measure came to an end in July 2013. However, the National Assembly unsurprisingly decided to adopt another ‘extraordinary’ measure that allows fixed-term contracts to be renewed two more times, up to 12 months in addition to the current 3 year maximum, making it possible to have 4 year-long contracts.

These sets of reforms and their effects clearly help to limit the scope of the European Directive on fixed-term work, as they are intended to reduce the level of protection guaranteed by the ‘anti-abuse’ measures provided in clause 5.

Likewise, part-time work is also regulated by a European Directive. Council Directive 1997/81/EC, together with 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.

As a matter of fact, part-time work is still often not voluntary⁶, and a study carried by Eurofound in 2011 (Eurofound 2011) 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.

Therefore, measures have been taken to try to address these drawbacks. In early 2014, **France**, following the national cross-industry agreement adopted by social partners on January 11, 2013, and the law adopted by the French Parliament in May 2013, reformed its legislation on part-time work. From January 1, 2014, it will no longer be possible to engage part-time contracts for less than 24 hours a week. The objective of this reform is to grant workers more security and to try to avoid part-time workers ending up in precarious employment situations. However, young people under the age of 26 who are still in school can work fewer hours, and other derogations from this minimum duration can be made via an extended sectoral agreement or at the employee's request by negotiating with the employer. Moreover, given the crisis context, the government has decided to postpone this new condition to July 2014, so as to allow time for the branches to negotiate on derogations. This bill is well-intentioned, but here again, the crisis is used as a pretext and takes precedence over any attempt to provide more security for workers.

In 2013, as part of the steps **Spain**⁷ has taken to fight youth unemployment, legislation concerning part-time employment for this category of the population was made less stringent. The hiring of young workers on part-time contracts is being encouraged. For companies recruiting people under the age of 30, without a job, with no (or less than 3 months) professional experience 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 more than 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

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6. For an overview country by country, see the OECD database available at http://stats.oecd.org/Index.aspx?DataSetCode=INVPT_D# (Accessed 01.06.2014).
 7. Strategy for Entrepreneurship and Youth Employment 2013/2016, p. 11-12. Document available on Document available on http://www.empleo.gob.es/es/estrategia-empleo-juven/descargas/EEEJ_Resumen_Ejecutivo_INGLES.pdf (Accessed 01.06.2014).

specifically geared to the new job. This measure is aimed at improving training for young unskilled jobseekers and their chances of entering the labour market. This incentive may be extended for a further 12 months on the 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.

The rationale behind the adoption of the two European Directives on fixed-term and part-time work was to prevent such contracts from contributing to an even more segmented labour market, which would result in discrimination against those atypical workers. Nevertheless, with part-time work becoming more marginal and targeted to specific categories of the population, and fixed-term contracts used as a mere flexibility tool and not as the stepping-stone towards full-time employment they should in fact be, evidence shows that the reforms being adopted are further dividing up the labour market.

Furthermore, the position adopted by the EU institutions vis-à-vis fixed-term work is rather ambiguous. Their role should be to ensure that Member States comply with the content of the Directive. However, during the crisis, the EU did not really raise its voice against Member States that undertook to deregulate labour standards in this area. Quite on the contrary, the jurisprudence of the Court of Justice of the European Union, adopted over the crisis years, seems rather to encourage or help Member States to continue along the same lines⁸.

Moreover, does the use of part-time work really encourage youth employment? The question is whether encouraging the use of part-time work, especially for a group of people already in a difficult and precarious situation, might not rather contribute to a rise in inequality by isolating these workers even more on the labour market.

8. See the case-law concerning the non-regression clause and the anti-abuse clause: Mangold, C-144/04 [2005]; Angelidaki, C-378/07 [2009]; Sorge, C-98/09 [2010]; Küçük, C-586/10 [2012].

2.2 Inventing more flexible employment contracts

Through adopting new types of contracts, Member States have often opened up ways of circumventing the legal framework of the Directives. Such contracts frequently offer less employment protection than standard contracts, by weakening, for instance, rights to unemployment or social benefits, severance pay, or by offering reduced wages.

In **Poland**, service contracts, also known as ‘trash contracts’, were adopted during the crisis (Pańków 2012). 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.

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 under 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’⁹.

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’¹⁰.

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9. Country Specific Recommendations 2012 for Poland available on <http://register.consilium.europa.eu/pdf/en/12/st11/st11267.en12.pdf> (Accessed 01.06.2014).
 10. Country Specific Recommendations 2013 for Poland available on http://ec.europa.eu/europe2020/pdf/nd/csr2013_poland_en.pdf (Accessed 01.06.2014).

Recent concern has been raised in the **United Kingdom** about a particular form of contract called ‘zero hour contracts’, under which no specific working hours or pay is guaranteed, with workers staying at home until their employer calls them (Inman 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 now¹¹. However, it turned out that these figures were not exactly accurate and that many more workers were actually working under this type of contracts. At the end of 2013, the government therefore launched a consultation¹² on the subject that will last 12 months (Gall 2013). Although the government was put under pressure to outlaw such contracts, the consultation document has, right from the outset, ruled out a complete ban on zero-hours contracts, saying they offer employers ‘welcome flexibility’ despite evidence of abuse of workers’ rights. To deal with this abuse, employers can be barred from using exclusivity clauses within zero hour contracts that prevent people working for another employer. Further efforts should also be made, regarding the fact that employees on zero hours contracts can be called into work at short notice and only paid for the hours they work, so that they can neither plan their time nor have a guaranteed income. Likewise, particular care should be taken to ensure that sick pay and holiday pay are included in the contracts, as in practice this is not always the case.

Another disputed invention coming from the UK is the introduction of a highly controversial new type of contract, whereby employees are given shares in exchange for waiving certain employment rights, including, notably, 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

11. Data available on <http://www.ons.gov.uk/ons/search/index.html?newquery=zero+hour> (Accessed 01.06.2014).

12. Official document from the Department for Business Innovation and Skills available on https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267634/bis-13-1275-zero-hours-employment-contracts-FINAL.pdf (Accessed 01.06.2014).

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 power¹³. 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 company (Silvera 2013). But there have been slight concessions: employers will have to offer free legal advice to employees who agree to the system¹⁴.

These new forms of contracts are also often implemented supposedly 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.

To this effect, France and Spain both adopted ‘generation contracts’ in 2013, based, however, on different provisions.

In **Spain**, this contract cuts social security contributions by 100% for young entrepreneurs recruiting experienced people for their projects for the first year. This measure targets young self-employed workers under the age of 30 and encourages them to recruit long-term jobseekers over 45. It should, however, be noted that when trying to promote the employment of young workers, the Spanish government is mainly providing incentives by cutting social contributions. Although encouraging youth employment is a laudable and much needed objective, it is important to ensure that this shortfall in social contributions will not have negative effects.

In **France**, companies are being encouraged to hire young workers under the age of 26 on open-ended contracts, while companies with fewer than 300 employees are being given financial support to retain older employees¹⁵. For larger businesses, there is an obligation to negotiate an agreement on this issue. The agreement must include

13. House of Lords blocks ‘shares for rights’ plan, BBC [Online], 20 March 2013 <http://www.bbc.co.uk/news/uk-politics-21871106> (Accessed 01.06.2014).

14. For a detailed overview, see Prassl (2013).

15. Loi n°2013-185 du 1^{er} 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 (Accessed 01.06.2014).

commitments concerning the training and long-term integration of young people, the employment of older workers, and skill and knowledge transfer.

Despite these commitments, it remains questionable whether such 'generation contracts' will be efficient in fighting unemployment among young and older workers. The causes of such unemployment are numerous, and retaining older workers in a company is not the only solution. Particular efforts are yet to be made in order to provide easier access to training and to promote skill development, as well as taking into consideration the stress caused by the reorganisation of work.

Atypical work reforms adopted since 2008 tend to show a change of objective. Previously, atypical work was promoted as a tool for implementing the concept of flexicurity. This type of work was put forward as a solution to various problems: it could contribute to reducing labour market segmentation and to creating new jobs. To this end, a fair balance had to be struck between these flexible forms of employment and greater security for workers.

Yet, since 2008, the balance has indisputably shifted towards more flexibility and more precarity in the employment relationship. Reforms in the field of atypical work have made a major contribution to undermining workers' security, which is giving cause for concern that the concept of flexicurity is actually turning into 'flexicarity', – i.e., more flexibility leading to more precarity. Finally, reforms of atypical employment have been adopted in parallel to reforms in employment protection and in particular to legislation on dismissals, as well as reforms concerning conditions of court access, leading to an even more precarious situation for workers.

Conclusions

It is thus clear from this article (and from the other research cited in it) that EU Member States are using the crisis as a justification for the adoption of such radical reforms. Basically, Member States seem to think (or are told by EU institutions) that no way to exit the crisis will be found if strict employment forms are maintained and, *a fortiori*, if social legislation remains too protective.

Following this line of thought, the concept of flexicurity is nothing but a facade. By deregulating working time and employment contracts, Member States are choosing to ignore the issue of workers' security. Consequently, the debate as to the effectiveness and relevance of the flexicurity concept has real significance, and the calls to reshape this notion are justified and urgent.

Based on the observations made in this paper, the effectiveness of such reforms must be called into question. These new measures contribute above all to ensnaring workers in situations of precarity. 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' (ILO 2013).

In November 2013, the ETUC took decisive steps to react to this situation, which has gone on for too long. The ETUC has called for 'A new path for Europe' and has presented its plan for investment, sustainable growth and quality jobs. In this plan, the EU is invited finally to respond to the alarming economic and social situation by giving up on austerity policies that have so far proven ineffective.

During the crisis, the EU has adopted a rather ambiguous position. It has activated several instruments to shape labour market reforms and to meet the objectives of the Europe 2020 strategy in the field of employment, innovation, education, poverty reduction and climate/energy. To ensure that the Member States properly respect these objectives, a system of economic governance has been put in place to coordinate policy actions between the EU and national levels. This economic governance is organised by means of the European Semester, a six-month period aimed at coordinating Member States' policies to ensure compliance with the objectives set by the EU. This six-month period ends with the publication of Country Specific Recommendations (CSR), intended to guide the adoption of new reforms in Member States. As a result, it appears that most of the reforms implemented by Member States are often dictated by the EU itself, in contradiction with its own core principle. Furthermore, the reforms have not lived up to the expectations raised by the European institutions, particularly given the catastrophic unemployment rate in the EU (especially among young people), the increase in long term unemployment, the increase in the number of precarious jobs, particularly with the relaxing of rules on

temporary contracts, the rise of in-work poverty caused by wage cuts and the worsening of working conditions (European Commission 2012 and 2013). Such developments clearly run counter to certain European and international concepts such as the quality of employment and decent work. They violate international norms such as Article 7 of the Revised European Social Charter on the right of young workers to protection¹⁶ and undermine the meaning and consistency of the European Social Model. The predominant principles today seem to be growth, competitiveness, flexibility and productivity, watchwords of a neoliberal Europe, instead of the promotion of the European values anchored in the Lisbon Treaty (Art.2.3): ‘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’.

While waiting for the EU to decide to finally react to these blatant violations of its own core principles, all eyes and hopes are fixed on international standards and institutions such as the ILO or the European Committee on Social Rights (the main supervisory body for the Council of Europe’s [Revised] Social Charter), which regularly make influential decisions that contribute to the protection of workers¹⁷. In a context of globalisation, companies are attracted towards the social and fiscal lowest bidder, and international labour law standards are able to restrain this backwards race. With the benefit of the hindsight and experience that are available to us, it is now quite clear that the time has come to move away from austerity policies.

16. Council of Europe, case GENOP-DEI and ADEDY v. Greece, Complaint No.66/2011.

17. See for instance the decisions of the ECSR in 7 collective complaints by Greek trade unions, alleging that recent reforms in relation to remuneration and working conditions, as well as recent pension reforms, are in breach of several articles of the European Social Charter (Collective complaints Nos.65-66/2011 and 76-80/2012 – all information available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp (Accessed 01.06.2014).

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