

# Towards a European Pillar of Social Rights

## FLEXIBLE AND SECURE LABOUR CONTRACTS

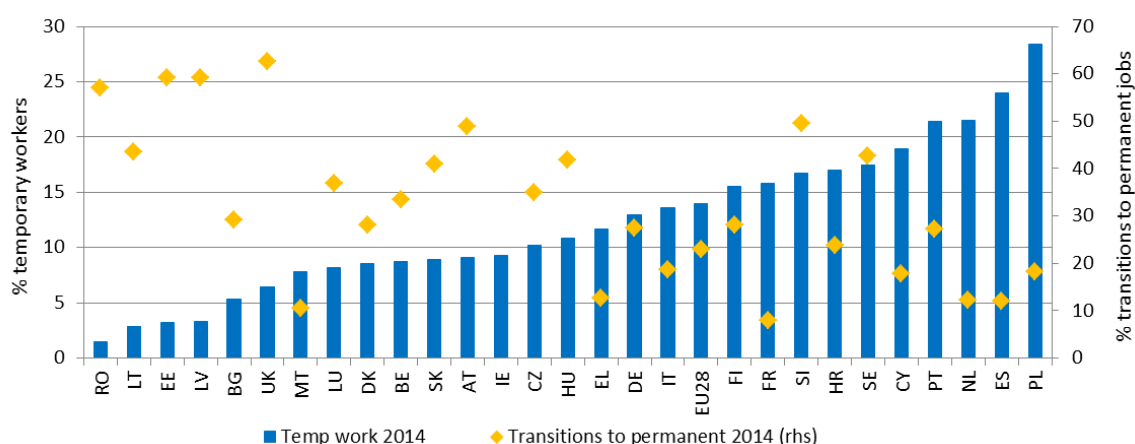
Over the last two decades, changes in economic structures and work organisation have highlighted an increasing need for flexibility in the conditions of employment. This can offer new opportunities on the labour market and promote career transitions, while providing a good response to fluctuation in business needs. However, when flexibility relies mostly on precarious contractual forms, it can lead to dual labour systems where part of workers have less security, lower opportunities for training and face barriers to access social protection and social security benefits.

### Challenges

Large differences in employment conditions across contracts may contribute to precariousness and labour market segmentation. The overall share of temporary employees grew from 11.5% to 13.9% between 1995 and 2014. Part-time employment grew from 15.6 to 22.9% over the same period. Temporary workers were hit harder by lay-offs at the outset of the crisis, in particular where temporary work was widespread, but the crisis also reinforced the trend toward a growing recourse to flexible employment arrangements in several Member States where they previously accounted for a low proportion of total employment.

In many countries the transition from temporary to permanent contracts remains low, which renders temporary contracts "dead ends" rather than "stepping stones" into the labour market.

**Figure: Share of temporary employment (2014) and transition rates from temporary to permanent contracts (2014)**



Source: Eurostat, LFS and SILC. 2013 data for labour transitions EU28, DK, DE, IE, EL, HR, NL, RO, SK, SE and UK.

The situation is further complicated by the emergence of new contractual typologies, some of which (such as zero-hour contracts, on-call contracts) offer workers very limited security and social coverage. New forms of work have

blurred the distinction between "employees" and "self-employed", giving rise to uncertainty for workers and businesses on the applicability of labour law rules as well as coverage of social protection.

## Situation at EU level

The Charter of Fundamental Rights of the European Union sets a number of employment contract-related social rights to which 'every worker' should be entitled. The 1989 Community Charter recognises the need to improve workers' living and working conditions notably as regards forms of employment other than open-ended contracts. Several EU Directives, with a basis in social partner agreements, set out minimum rules relating to equal treatment in employment.<sup>1</sup> Some instruments address specific types of employment relationships which are described as 'atypical' employment contracts<sup>2</sup> (part-time work; fixed-term work; temporary agency work). When a worker is employed under such an atypical contract, he or she should generally not be treated in a less favorable manner than comparable open-ended and/or fulltime staff concerning employment conditions unless there are objective reasons for different treatment. Anti-abuse clauses are also established to prevent unjustified successions of atypical contracts. The main challenge is that these directives do not cover all precarious workers, mainly because of a lack of a uniform definition of "worker" at EU level that would determine a wide scope of application of these directives, comprising new forms of employment.

Self-employed are not directly covered by EU law adopted on the basis of Article 153 – working conditions, as it only gives competence to adopt legislation protecting workers.

The EU Guidelines for the employment policies of the Member States<sup>3</sup> call to take into account the flexibility and security principles to enhance the functioning of labour markets.

## Situation in the Member States

Based on EU legislation minimum standards, specific aspects of labour law related to the equal treatment of workers employed under different contracts are regulated at national level. Yet, the way in which Member States regulate employment contracts varies substantially. Reform efforts from 2008 onwards have largely concentrated on more flexibility in the rules on job protection for permanent contracts while the protection for temporary workers has increased too. The main goals are to encourage permanent hiring and improve labour market transitions, and to provide sufficient protection for those on non-permanent contracts – this contributes to reduced labour market segmentation and ultimately greater resilience of labour markets to shocks.

## International dimension

The European Social Charter<sup>4</sup> provides "all workers" with the right to just conditions of work, to safe and healthy working conditions, to a fair remuneration, to freedom of association and to collective bargaining. Different ILO instruments, including both ILO recommendations with a general scope and specific ILO standards (such as the Part-Time Work Convention), contain a specific right to equal treatment regardless of the type of employment contract.

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<sup>1</sup> This the case, inter-alia, of Directive 2000/78/EC and Directive 2006/54/EC establishing standards for equal treatment in employment and occupation (irrespective of religion or belief, disability, age or sexual orientation or gender); or, more recently, of Directive 2014/36/EU of which promotes equal treatment between EU nationals and third-country nationals for the purpose of employment as seasonal workers.

<sup>2</sup> Directive 97/81/EEC on part-time work; Directive 99/70/EEC on fixed-term work; Directive 2008/104/EC on temporary agency work.

<sup>3</sup> Council Decision (EU) 2015/1848 of 5 October 2015.

<sup>4</sup> The European Social Charter is a Council of Europe treaty which was adopted in 1961 and revised in 1996.