

**The Collective Bargaining and Representativeness of temporary workers in Europe.
*Development and reinforcement of Industrial Relations Systems in response to changes
in the European labour market***

VS/2014/0543

Final report: overview and suggested guidelines



With financial support from the European Union



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VIADRINA
FRANKFURT (ODER)



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The Collective Bargaining and Representativeness of temporary workers in Europe. Development and reinforcement of Industrial Relations Systems in response to changes in the European labour market - VS/2014/0543, was set up in 2015 and 2016 and coordinated by CESOS srl Impresa Sociale (Italy) on behalf of the European Commission - Employment, Social Affairs and Inclusion DG. The project was carried out by some prestigious Universities of Germany, Italy, Portugal, Spain and the most representative trade union Confederation of FYR Macedonia.

The research was carried out by



CESOS Srl Impresa Sociale – Centro di Studi Sociali Economici e Sindacali

(Lead Applicant)

Vilma Rinolfi (PM)

Flavia Pace

Sofia Sanz Alonso



CCM Federation of Trade Unions of Macedonia

Lidija Naskovska

Zhivko Mitrevski



EUROPA-UNIVERSITÄT
VIADRINA
FRANKFURT (ODER)

Europa Universitat Viadrina – Frankfurt (ODER)

Jens Lowitzsch

Gyula Kocsis

Elhadj Abdoulaye Séne



UNIVERSITÀ DEGLI STUDI
DI MILANO
DIPARTIMENTO DI SCIENZE
SOCIALI E POLITICHE

University of Milan

Roberto Pedersini

Massimo Pallini

Stefano Guadagno

Diego Coletto



DINAMIA'CET
CENTRO DE ESTUDOS SOBRE A MUDANÇA
SOCIOECONÓMICA E O TERRITÓRIO
IUL

DINÂMIA'CET-IUL - Centro de Estudos sobre a Mudança Socioeconómica e o Território

Paulo Marques Alves

Maria da Paz Campos Lima

Lidia Fernandes

UAB
Universitat Autònoma
de Barcelona

QUIT, (Sociological Research Centre on Everyday Life and Work) – Universitat Autònoma de Barcelona

Antonio Martin Artiles

Oscar Molina Romo

Alejandro Godino



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*Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
Everyone, without any discrimination, has the right to equal pay for equal work.
Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
Everyone has the right to form and to join trade unions for the protection of his interests.*

The Universal Declaration of Human Rights (Article 23, 1948)

This report is divided into three sections.

The first one synthesizes the results of the desk research, where applicants collected data in order to assess:

- the implementation of the Council Directive 1999/70/EC of June 1999 in the EU Member States;
- differences in the definition of temporary workers and their actual and regulatory environment in the partner countries;
- the collective bargaining and representativeness of temporary workers in the partner countries.

The results of this phase of the project have been placed in seven research grids: five regarding the countries involved in the project and two regarding the EU28. Data from European and national sources are included in the overview tables attached to this report.

The second section of this report regards the results of the field research undertaken in this project. In this phase of the research, partners consulted trade union representatives (including among others the main trade unions for temporary workers and the principal trade unions of the sectors with the highest incidence of temporary workers from a sectoral point of view, and the main confederal trade unions from an inter-sectoral point of view). Partners also consulted a number of Employer organisations. The aim of this second phase of research was to establish guidelines in order to create a framework of the representativeness and collective bargaining of temporary workers, good practices in the countries involved in the project and proposals by the actors involved in the research.

In the third section, some conclusions are drawn by the applicants of the project in order to highlight certain relevant aspects of the research. The aim of this section is to supply some suggestions and contribute to the debate between European social actors on the protection and representativeness of temporary workers.



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FIRST SECTION

Results of the desk research

1.1 Area of investigation

The quantitative analysis presented in this section provides an overview of temporary employment based on Eurostat – Labour Force Survey data as well as an analysis based on collective agreements.

This analysis was performed considering the Eurostat definition of temporary work: a “work under a fixed-term contract, as against permanent work where there is no end-date. A job may be considered temporary employment (and its holder a temporary employee) if both employer and employee agree that its end is decided by objective rules (usually written down in a work contract of limited life). These rules can be a specific date, the end of a task, or the return of another employee who has been temporarily replaced (e.g. people in seasonal employment; people engaged first by an agency or employment exchange and then hired to a third party to do a specific task - unless there is a written work contract of unlimited life; people with specific training contracts; etc)”.

However, in the second section of this report, the analysis has been expanded to include another type of worker. In fact, the qualitative analysis, based on focus-groups, also considers the case of “fake” self-employment or “fake” independent work, whereby provision-of-service contracts (officially contracts for self-employed workers) that are used to disguise subordinate employment relationships, essentially to reduce labour costs and avoid social security contributions (see paragraph 2.1).

1.2 Dynamics of temporary work over time (2008-2014)

In 2014, the number of temporary employees amounted to 14% of the total number of employees in EU28, which is a slight decrease (-0,1%) compared with the 2008 data but higher than the figures for 2013 (+0.3%). Similar percentages of temporary workers for 2014 are reported from FYR Macedonia (15.5%), Germany (13.6%) and Italy (13.6%) while those in Portugal (21.4%) and in Spain (24%) are much higher (Figure 1).

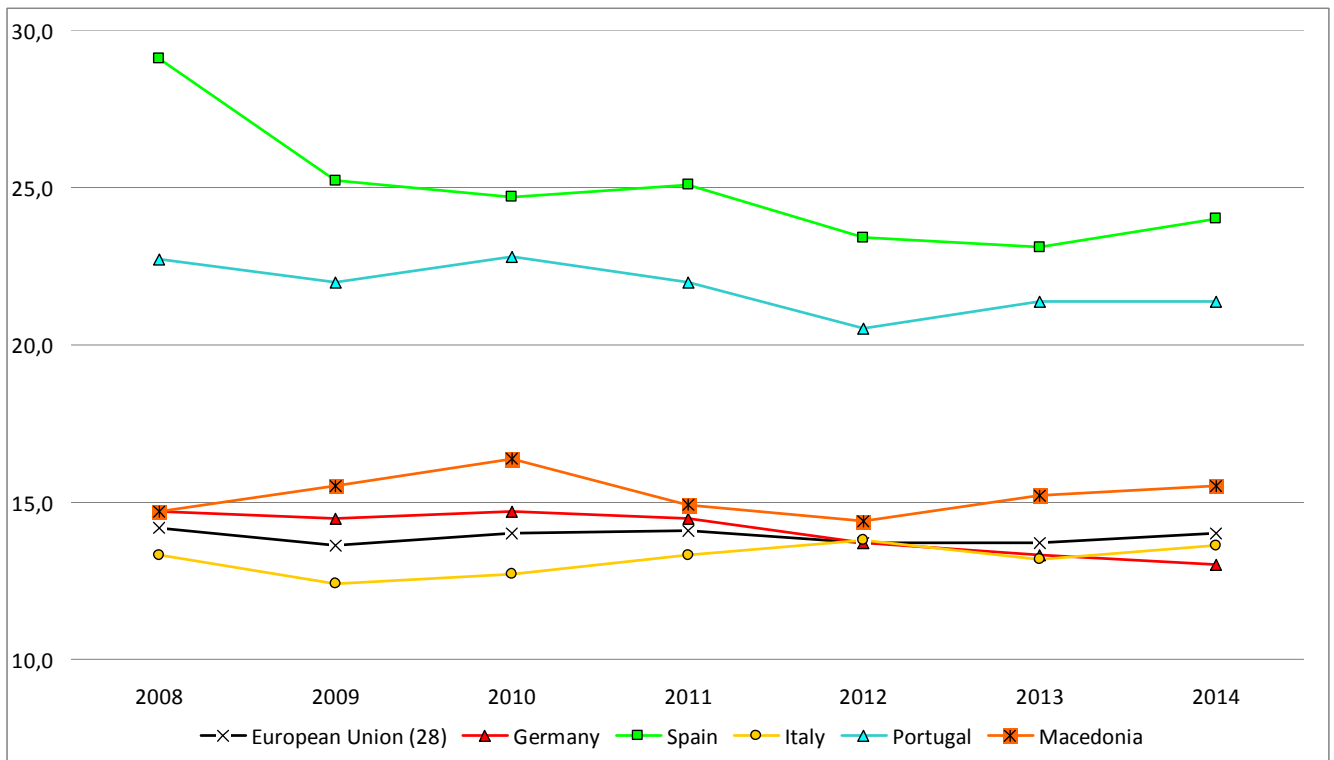
Comparing unemployment data and temporary work in EU28 evidences some important differences. While unemployment increased between 2008 and 2013 (+3.9%), temporary work rate was more or less stable in the same period. However, between 2013 and 2014, while unemployment dropped, temporary work increased (Figure 2).

These data suggest that the decrease of unemployment in EU28 between 2013 and 2014 (-0,7%) may be partly due to an increase in temporary work in the same period.

Trends in unemployment and temporary work are very different among the countries involved in the project. Unfortunately, it is impossible to present such analysis for FYR Macedonia, because no unemployment data are available for this country.

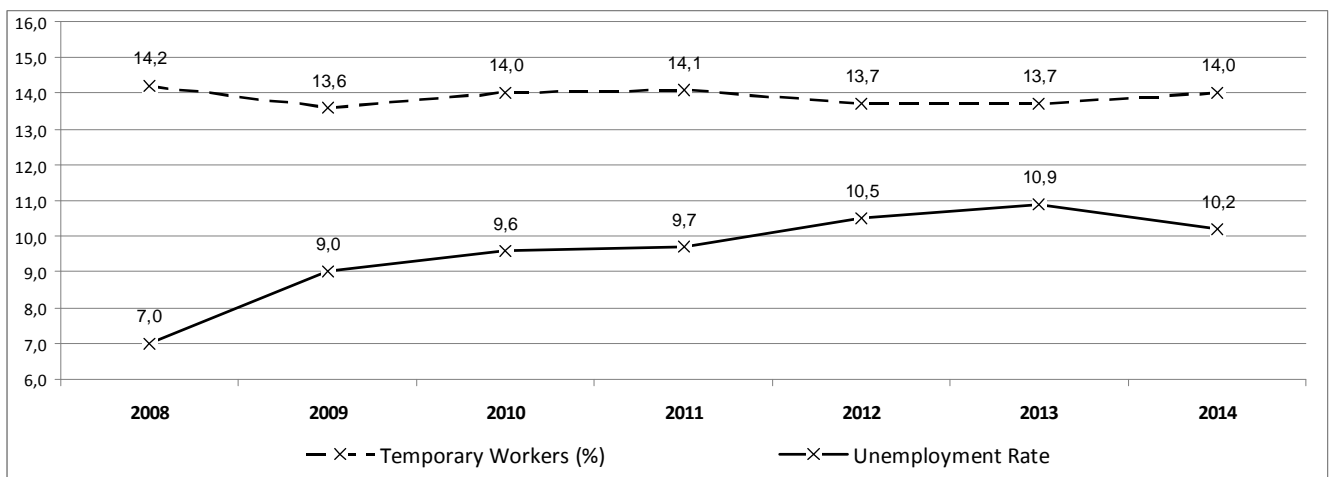


Figure 1: The number of temporary workers between 2008 and 2014 compared to the total number of employees (in %)



Source: Eurostat Labour Force Survey

Figure 2: Temporary work vs. unemployment rate in the EU28 between 2008 and 2014 (in %)



Source: Eurostat Labour Force Survey

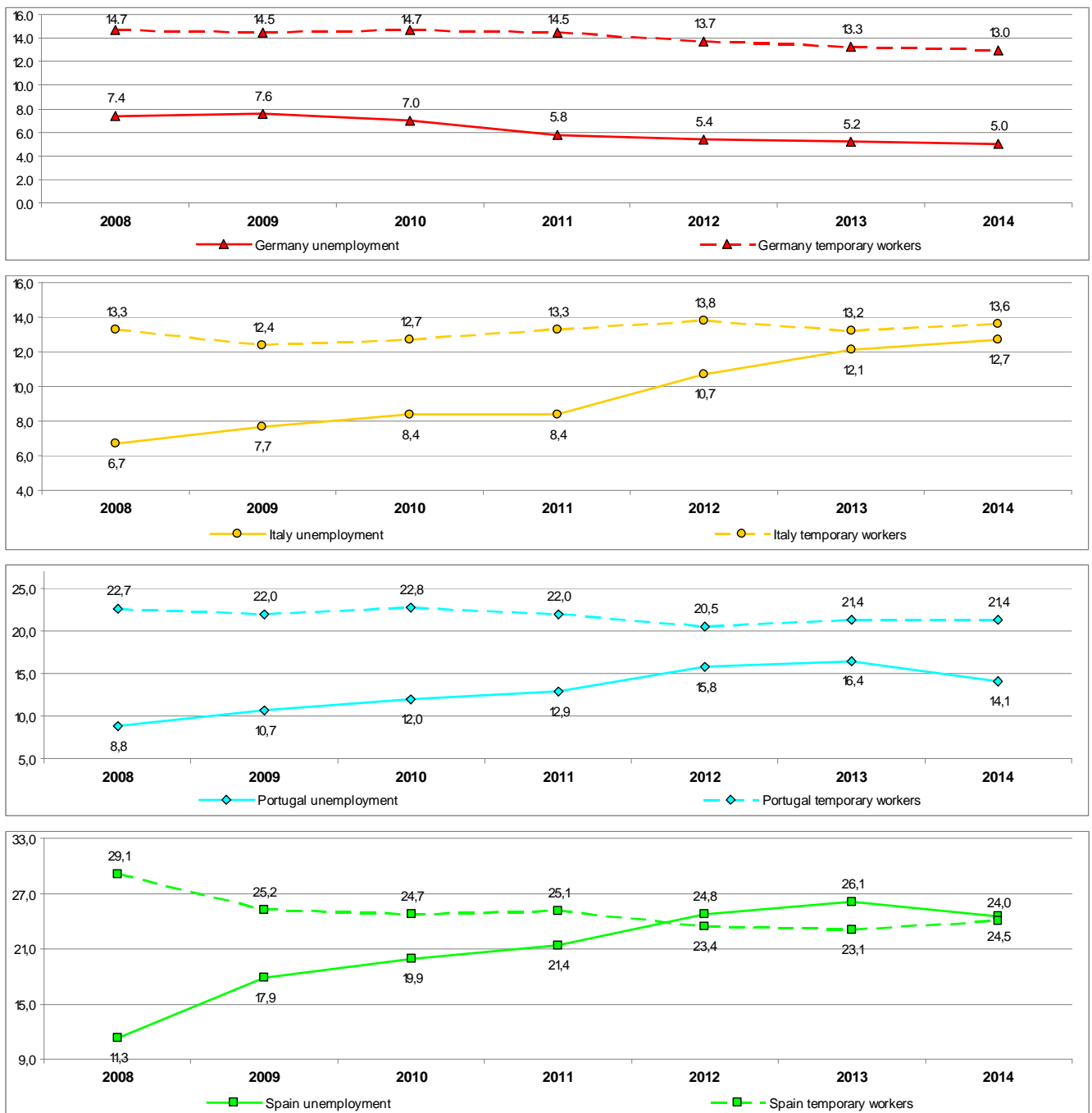
Analysing country by country (Figure 3), we can see that in Germany the trends are different: both unemployment and temporary work decreased over time. Although these numbers are encouraging at first sight, they hide the worrying development of "fake" or "false" self-employment which, however, is not included in the Eurostat definition.



There is a different situation in Spain and Portugal, where the decrease of temporary work is correlated with the increase of unemployment and vice versa. These data suggest that in these two countries the decrease of temporary work could be connected with the general loss of jobs instead of an increase of permanent employment.

In Italy, the decrease of temporary work does not appear to be strictly connected with the increase in unemployment and vice versa, except in 2008, 2011, 2012.

Figure 3: Temporary work vs. unemployment rate between 2008 and 2014 per country (in %)

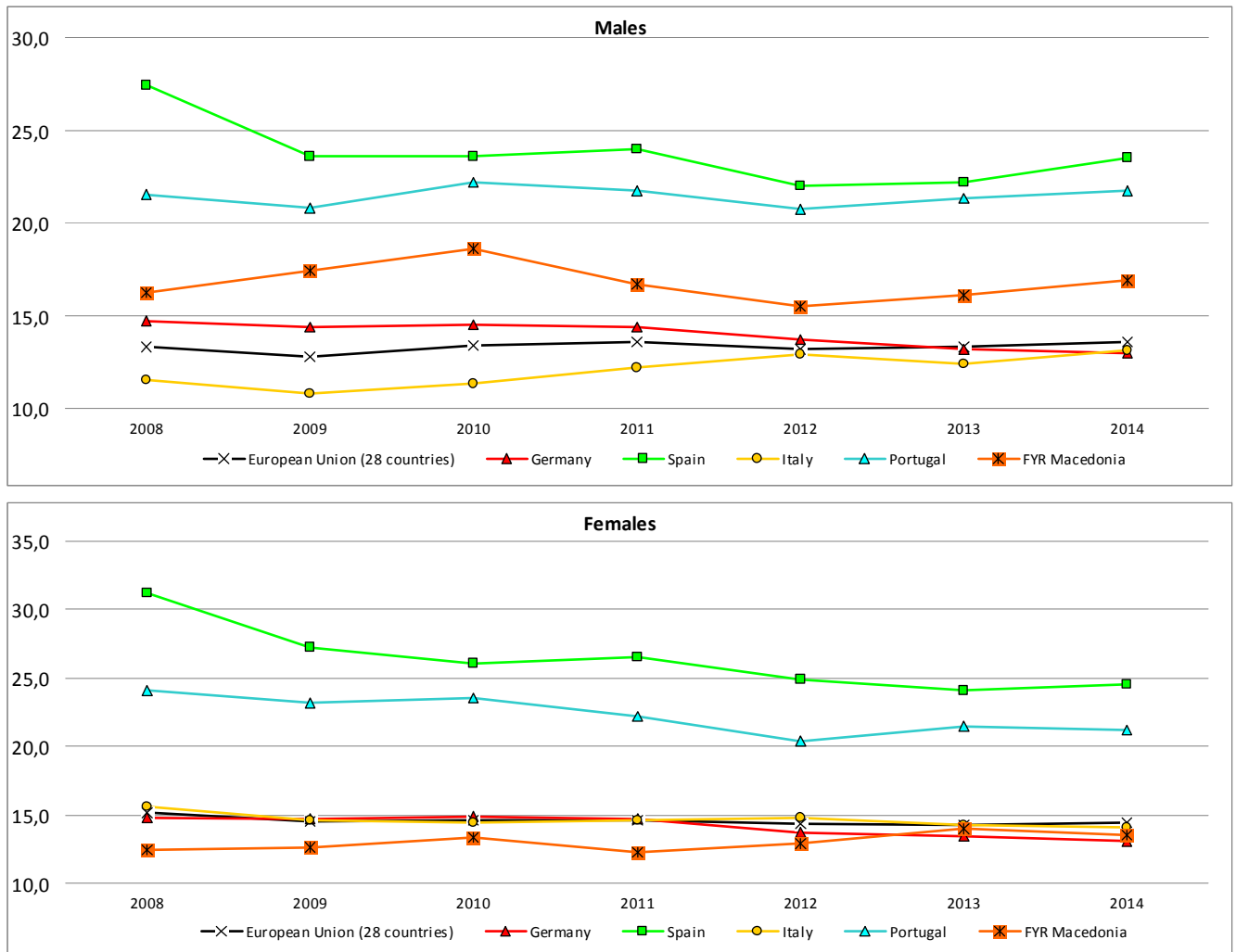


Source: Eurostat Labour Force Survey



Across the EU28, in 2014, compared with the year before, temporary work increased among males (+0.3%) and females (+0.2%). If we compare the current figures with the 2008 data, we can see that temporary work decreased by 0.6% among females and increased by 0.3% among males. We found similar trends in all the countries involved in the project with some exceptions in FYR Macedonia and Spain (Figure 4).

Figure 4: Temporary work between 2008 and 2014 according to sex in EU28 and in 5 chosen countries (in %)



Source: Eurostat Labour Force Survey

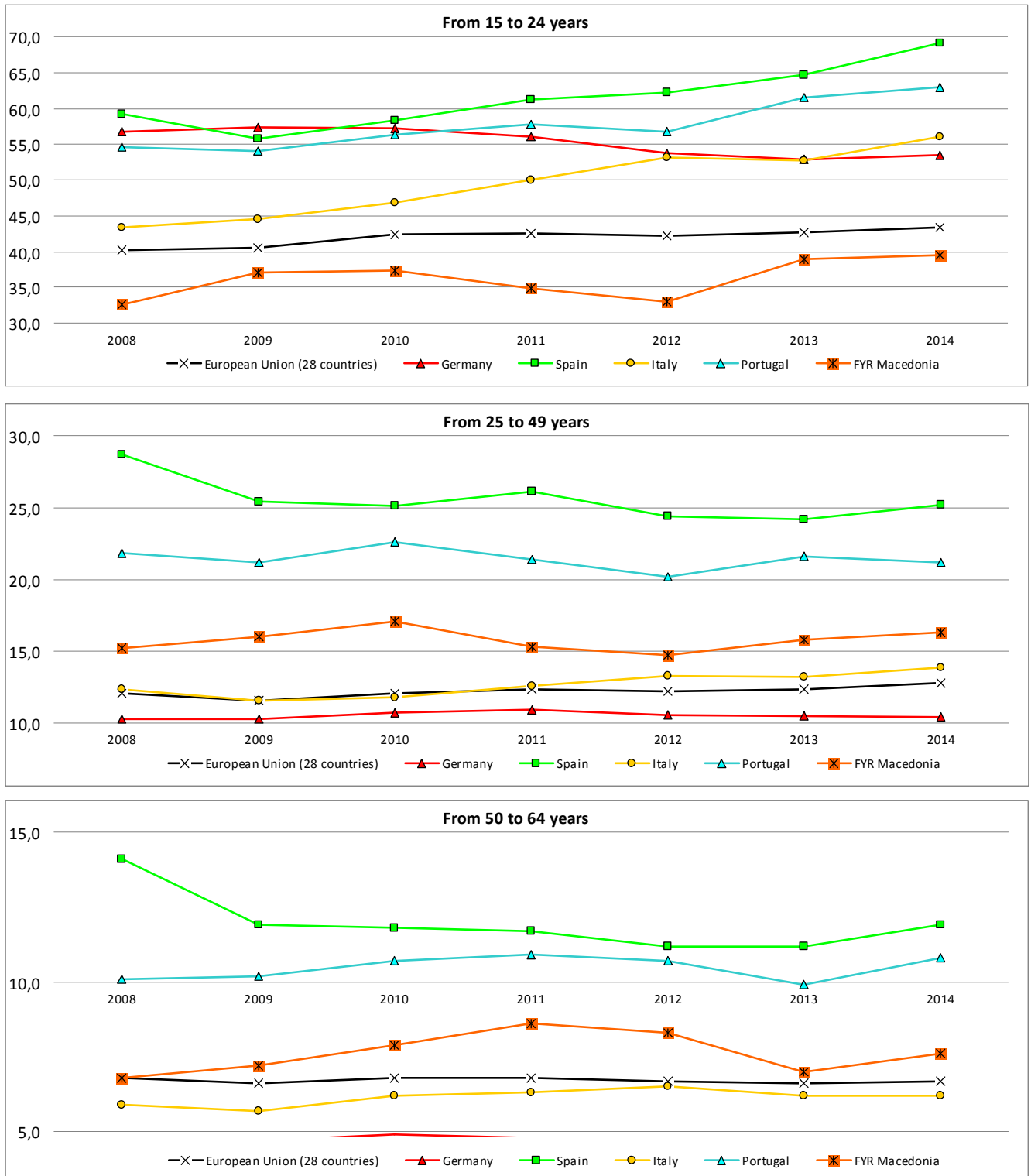
In the EU28, the incidence of temporary work for young people (15-24 years) increased by 0.8 percentage points between 2013 and 2014 (from 42.5% to 43.3%). If we compare 2014 and 2008 data, the increase is more than 3 percentage points. While, generally, it is young people that are mostly involved in temporary work we can see a similar trend with regard to people in the age group between 25-49 years (+0.4pp compared to the previous year and +0.6pp compared to 2008) (Figure 5).

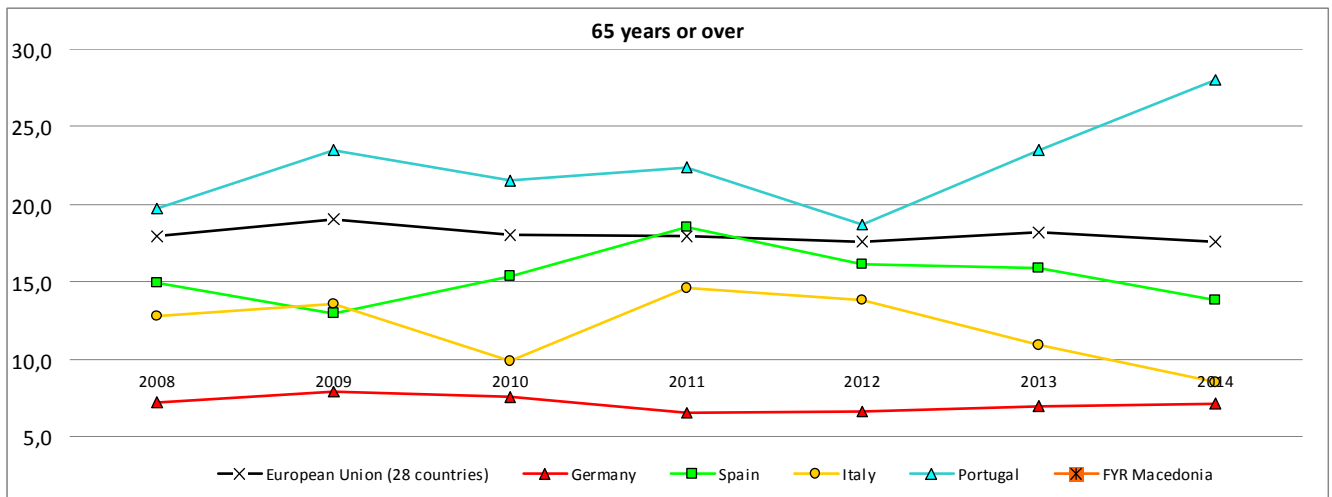
Although the general trend is similar in all the countries under investigation, the absolute percentages of temporary work in the different age groups are very different. In 2014, in Spain, 69.1% of young people (15-24 years) had some form of temporary work while the percentages were 63% for Portugal, 56% for Italy, 53.4% for Germany and 39.5% for FYR Macedonia. The percentages for the 25-49-year age group are considerably lower. However, if we consider that this is the age when people usually start to have a family, these percentages are still high and worrying. In 2014, in



this age-group, the percentage of temporary workers was 10.4% in Germany, 13.9% in Italy, 15.3% in FYR Macedonia, 21.2% in Portugal and 25.2% in Spain (Figure 5).

Figure 5: Temporary work according to age groups in the EU28 and in the 5 chosen countries between 2008 and 2014 (in %)





No data are available for FYR Macedonia regarding the age group 65 years or over.

Source: Eurostat Labour Force Survey

Regarding education levels, the available data show that between 2008 and 2014 – with the exception of Spain and FYR Macedonia – temporary work is decreasing among less educated workers (levels 0-2 ISCED¹) and increasing among workers with higher education (levels 3-8 ISCED). These data suggest an effect of displacement, where workers with a low educational level tend to become unemployed and workers with a higher level of education move towards more temporary forms of employment. Germany, Italy and Portugal follow a similar trend. In Spain, temporary workers are decreasing in all education-level groups while in FYR Macedonia the number is increasing. However, it must be underlined that these data are absolute values and these trends could be directly related to the general employment trend.

In the EU28, the incidence of the main occupations of temporary employees has remained more or less unchanged in 2014 when compared with the 2013 figures, while there are important changes regarding the 2008 data. In 2014, as well as in 2008, service and sales workers constituted most of the temporary employees, with an increase of 2.7 percentage points (21.4% on total temporary employees in 2014 and 18.7% in 2008). As mentioned above, some important changes have to be underlined:

- the incidence of Professionals increased from 12.2% (2008) to 15.8% (2014) among temporary workers;

- in the same period, this incidence decreased from 15.2% (2008) to 12.1% (2014) for craftsmen and workers of related trades.

Regarding these two occupations, we find a similar trend between 2008 and 2014 in all the countries involved in the project: FYR Macedonia (Professionals +1pp and Craftsmen and workers of related trades -3.8pp), Germany (respectively +2.9pp and -2.5pp), Italy (+3.6pp and -1.2pp), Portugal (+6.9pp and -7pp), Spain (+4.2pp and -7.4pp) (Table 1).

¹ ISCED: International Standard Classification of Education - <http://www.uis.unesco.org/Education/Pages/international-standard-classification-of-education.aspx>



Table 1 - The five main occupations² of temporary employees in the EU28 and in the 5 chosen countries between 2008 and 2014 (in % of the total number of temporary employees)

		2008	2009	2010	2011	2012	2013	2014
EU28	Service and sales workers	18.7	19.5	19.3	21.4	21.7	21.4	21.4
	Elementary occupations	16.9	16.5	16.7	17.1	17.1	16.8	16.6
	Professionals	12.2	13.1	12.9	15.3	15.3	15.8	15.8
	Technicians and associate professionals	13.6	13.9	14.2	11.8	12.3	12.4	12.6
	Craftsmen and workers of related trades	15.2	14.0	13.5	12.8	12.3	12.0	12.1
FYR MACEDONIA	Service and sales workers	16.4	16.6	16.5	20.8	20.7	20.9	21.7
	Craftsmen and workers of related trades	23.6	24.0	22.9	19.9	18.8	18.1	19.8
	Elementary occupations	20.3	18.5	17.8	17.6	18.3	17.3	18.3
	Plant and machine operators and assemblers	16.2	15.1	14.3	10.9	14.5	16.2	16.6
GERMANY	Professionals	8.6	11.2	11.9	14.5	13.9	12.9	9.6
	Technicians and associate professionals	21.6	22.1	22.3	17.4	19.7	20.3	20.3
	Service and sales workers	15.0	15.6	15.7	19.1	17.6	17.8	17.4
	Professionals	12.9	13.8	13.9	15.7	14.8	15.5	15.8
	Craftsmen and workers of related trades	17.5	17.3	16.7	15.6	15.3	15.1	15.0
ITALY	Clerical support workers	12.6	12.2	11.7	12.4	13.5	13.9	13.7
	Service and sales workers	18.0	18.8	18.9	21.2	21.7	22.6	23.0
	Elementary occupations	18.7	20.4	21.3	20.6	20.7	20.6	20.6
	Professionals	9.0	9.1	7.7	12.0	12.5	12.9	12.6
PORTUGAL	Craftsmen and workers of related trades	13.1	12.5	13.0	13.1	12.6	11.9	11.9
	Clerical support workers	13.7	13.9	13.8	11.8	11.8	11.4	11.3
	Service and sales workers	19.0	19.9	19.9	18.8	18.5	20.0	19.7
	Professionals	11.5	13.9	13.2	18.6	18.6	17.9	18.4
	Elementary occupations	19.3	17.6	18.7	18.7	19.2	18.6	18.0
SPAIN	Craftsmen and workers of related trades	19.2	17.1	16.2	14.2	13.7	13.5	12.2
	Plant and machine operators and assemblers	6.7	7.2	7.8	8.4	8.5	8.5	9.1
	Elementary occupations	24.7	24.9	24.7	24.0	24.4	25.0	23.7
	Service and sales workers	18.6	20.0	20.6	21.5	23.1	23.3	23.4
	Professionals	11.2	12.6	12.7	15.3	15.5	15.7	15.4
SPAIN	Craftsmen and workers of related trades	18.9	15.6	14.5	13.3	11.9	10.8	11.5
	Technicians and associate professionals	8.5	8.9	9.5	8.3	8.3	8.0	8.3

Source: Eurostat Labour Force Survey

The above-mentioned data suggest that in the EU28, the professional profiles of temporary employees have changed during the economic downturn. In fact, according to the following table it seems that temporary employment is spreading to include highly skilled occupations (Professionals and, in Portugal and Spain, managers) while decreasing in the medium-skilled occupations and in craft activities – with the exception of service and sales workers – and remains more or less stable among the low-skilled workers, with the exception of Italy and Portugal.

² According to the International Standard Classification of Occupations 2008 – Isco08.



Table 2 - Incidence of temporary work according to occupation (in % of the total number of temporary employees)

	FYR											
	EU28		Macedonia		Germany		Italy		Portugal		Spain	
	2008	2014	2008	2014	2008	2014	2008	2014	2008	2014	2008	2014
Managers	1.5	1.4	1.1	n.a.	1.5	1.0	0.8	0.5	0.6	1.7	0.5	0.7
Professionals	12.2	15.8	8.6	9.6	12.9	15.8	9.0	12.6	11.5	18.4	11.2	15.4
Technicians and associate professionals	13.6	12.6	6.1	6.1	21.6	20.3	15.7	10.0	9.0	8.6	8.5	8.3
Clerical support workers	11.2	9.9	4.2	4.3	12.6	13.7	13.7	11.3	11.0	8.3	8.4	8.0
Service and sales workers	18.7	21.4	16.4	21.7	15.0	17.4	18.0	23.0	19.0	19.7	18.6	23.4
Skilled agricultural, forestry and fishery workers	1.7	1.7	1.2	1.7	1.8	1.1	1.9	1.9	2.4	2.9	1.0	1.5
Craftsmen and workers of related trades	15.2	12.1	23.6	19.8	17.5	15.0	13.1	11.9	19.2	12.2	18.9	11.5
Plant and machine operators and assemblers	8.1	7.8	16.2	16.6	5.5	4.7	8.1	7.7	6.7	9.1	7.8	7.2
Elementary occupations	16.9	16.6	20.3	18.3	9.4	8.6	18.7	20.6	19.3	18.0	24.7	23.7
Armed forces occupations	1.0	0.9	2.3	1.8	2.2	2.3	0.9	0.6	1.1	1.1	0.5	0.3
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Eurostat Labour Force Survey

The duration of temporary-employment contracts varies greatly from country to country. Across the EU, the most common contract ranged from 7 to 12 months (27.8%) in 2014, with few differences compared to the previous year and to 2008. In 2014, a similar situation can be found in Germany (28.8% of contracts 7-12 months). Similarly, in Italy and Portugal the 7-12-month contracts are the most frequent but with an higher incidence compared to the European average (respectively 34.9% and 43%). However, in these two countries, around 80% of temporary contracts last less than one year. This percentage is much higher than Germany (44.9%) and FYR Macedonia (64.3%), where temporary contracts tend to have a longer duration, despite the fact that, in FYR Macedonia, contracts lasting 1 to 3 months are the most common (24%).

A completely different situation can be seen in Spain where - due to the continual changes in the labour market provoked by the high economic uncertainty, and the traditionally temporary nature of some core activities of the Spanish economy - 55.6% of the temporary contracts last from 1 to 3 months and 94% have a duration of less than one year (table 3).

Table 3 – Temporary work contracts in 2014 according to their duration (in % of the total number of temporary work contracts)

	EU28	FYR Macedonia	Germany	Italy	Portugal	Spain
Less than 1 month	5.7	8.2	0	3.2	7.7	6.0
From 1 to 3 months	18.8	24.0	3.8	17.6	9.4	55.6
From 4 to 6 months	16.8	18.5	12.4	24.1	28.8	16.8
From 7 to 12 months	27.8	13.6	28.8	34.9	43.0	15.7
From 13 to 18 months	4.2	5.2	3.0	1.4	1.9	0.2
From 19 to 24 months	7.8	6.1	11.8	3.4	2.3	0.9
From 25 to 36 months	10.0	6.3	27.2	8.6	2.3	1.0
Over 36 months	9.0	18.1	13.0	6.8	4.5	3.8
	100.0	100.0	100.0	100.0	100.0	100.0
<i>Less than one year</i>	<i>69.1</i>	<i>64.3</i>	<i>44.9</i>	<i>79.8</i>	<i>88.9</i>	<i>94.0</i>

Source: Eurostat Labour Force Survey



Regarding sectoral characteristics, our research analysed the four sectors with the highest number of temporary employees (absolute value) and the four sectors with the highest incidence of temporary employees (percentages on sectoral employees).

In 2014, the Agriculture, Forestry and Fishing sector (Nace rev. 2 code A) shows the highest incidence of temporary work across EU28 with 31.6% of the total employees being temporary workers and is among the top four sectors in four of countries under observation (FYR Macedonia 36.5%, Italy 59%, Portugal 33.1% and Spain 62.4%) (Tables 4 and 5).

In the same year, the second highest incidence of temporary work across EU28 is in the Accommodation and Food Service Activities sector (Nace rev. 2 code I). This sector is in the top four in all the countries under observation (i.e., Germany 15.8%, FYR Macedonia 32.9%, Italy 32.7%, Portugal 32.5% and Spain 39.4%).

Table 4 – Incidence of temporary work in all sectors (Nace Rev.2) in the EU28 and 5 chosen countries in 2008 and 2014 (in % of the total number of sectoral employees)

	FYR											
	EU 28		Macedonia		Germany		Italy		Portugal		Spain	
	2008	2014	2008	2014	2008	2014	2008	2014	2008	2014	2008	2014
Agriculture, forestry and fishing	28.9	31.6	n.a.	36.5	19.9	13.7	49.4	59.0	29.6	33.1	57.7	62.4
Mining and quarrying	7.8	7.5	n.a.	8.1	9.8	7.5	11.3	n.a.	n.a.	n.a.	17.8	16.8
Manufacturing	11.6	11.9	n.a.	14.3	12.0	10.6	9.6	9.9	16.3	17.5	20.9	18.4
Electricity, gas, steam and air conditioning supply	6.5	6.6	n.a.	n.a.	10.5	9.0	5.0	6.6	n.a.	n.a.	18.5	13.6
Water supply; sewerage, waste management and remediation activities	10.8	11.0	n.a.	10.5	12.6	10.7	10.1	11.0	26.4	18.9	17.0	14.2
Construction	18.4	15.5	n.a.	32.3	13.5	11.0	12.5	15.1	31.6	28.3	48.7	36.3
Wholesale and retail trade; repair of motor vehicles and motorcycles	13.2	13.4	n.a.	17.0	14.2	12.9	13.8	14.5	21.7	19.1	22.8	20.1
Transportation and storage	9.5	10.7	n.a.	12.1	10.9	10.4	8.4	10.1	17.7	19.6	20.9	21.1
Accommodation and food service activities	22.8	23.3	n.a.	32.9	19.3	15.8	25.8	32.7	32.5	32.5	37.7	39.4
Information and communication	11.0	10.5	n.a.	15.4	12.6	10.6	10.0	8.9	31.0	26.5	21.1	19.6
Financial and insurance activities	6.7	6.6	n.a.	n.a.	8.4	8.0	6.9	3.2	12.5	6.7	11.4	7.5
Real estate activities	8.8	10.1	n.a.	n.a.	9.9	9.3	13.5	12.0	n.a.	23.1	15.7	16.3
Professional, scientific and technical activities	12.1	11.4	n.a.	8.7	14.9	13.2	12.2	13.5	26.8	25.4	23.0	19.0
Administrative and support service activities	19.9	18.7	n.a.	20.8	19.2	14.7	16.9	17.0	29.5	30.9	29.9	23.6
Public administration and defence; compulsory social security	11.5	11.3	n.a.	7.0	12.7	12.1	8.3	6.0	14.2	13.6	22.2	15.6
Education	16.4	16.4	n.a.	10.3	21.8	21.3	19.2	15.1	24.1	22.2	28.1	23.4
Human health and social work activities	14.2	13.7	n.a.	6.8	18.1	15.8	10.3	9.6	23.3	19.4	32.8	25.6
Arts, entertainment and recreation	23.1	23.0	n.a.	23.2	24.5	21.2	31.5	28.3	40.1	36.0	39.6	34.8
Other service activities	17.0	16.1	n.a.	20.0	18.2	13.2	16.1	16.9	25.9	28.7	26.9	22.1
Activities of households as employers; undifferentiated goods and service-producing activities of households for own use	23.2	17.9	n.a.	90.0	7.6	4.2	7.4	6.0	26.6	24.2	36.4	25.3
Activities of extraterritorial organisations and bodies	14.3	11.8	n.a.	n.a.	20.2	n.a.	13.6	13.5	n.a.	n.a.	n.a.	n.a.

Source: Eurostat Labour Force Survey



Arts, Entertainment and Recreation (Nace rev. 2 code R) comes next in the ranking of the first four sectors with the highest incidence of temporary workers across the EU (23%) in 2014. It is the number one sector in Portugal (36%), the second in Germany (21.2%), the third in Italy (28.3%) and the fourth sector in Spain (34.8%).

Construction (Nace rev. 2 code F) can be found in the top four only in FYR Macedonia (32.3%) and in Spain (36.3%). Education (Nace rev. 2 code P) has a high level of temporary work only in Germany (21.3%) where it is the first sector. Together with Education, Human health and social work activities (Nace rev. 2 code Q) is among the first four sectors only in Germany.

Finally, in FYR Macedonia, temporary work has a very relevant incidence 90% of (90%) on the total sectoral number of employees working in Activities of Households as Employers; Undifferentiated Goods-and Service-producing activities of Households for Own Use (Nace rev. 2 code T). This sector is absent in the top-four of all the other countries.

According to the data in our tables, Germany is currently the country where the incidence of temporary work is lower compared to the other countries. There are also differences regarding the sectors where temporary work is particularly common. In fact, in Germany we found two sectors (Education and Human Health and Social Work Activities) that are not in the top four of the other countries, education being the one with the highest incidence.

Table 5 – The four sectors (Nace Rev.2) with the highest incidence of temporary employees in the EU28 and in 5 chosen countries between 2008 and 2014 (in % of the total number of sectoral employees)

		2008	2009	2010	2011	2012	2013	2014
EU28	Agriculture, forestry and fishing	28.9	30.2	31.3	30.9	31.1	30.7	31.6
	Accommodation and food service activities	22.8	21.8	22.1	22.4	22.3	22.7	23.3
	Arts, entertainment and recreation	23.1	22.5	23.6	24.2	23.0	22.3	23.0
	Administrative and support service activities	19.9	18.7	19.6	19.8	19.5	18.8	18.7
FYR MACEDONIA	Activities of households as employers, etc.	n.a.	n.a.	n.a.	81.8	100.0	90.0	90.0
	Agriculture, forestry and fishing	n.a.	n.a.	n.a.	36.4	26.4	26.9	36.5
	Accommodation and food service activities	n.a.	n.a.	n.a.	31.5	24.5	28.0	32.9
	Construction	n.a.	n.a.	n.a.	26.9	26.8	30.3	32.3
GERMANY	Education	21.8	22.9	22.6	22.6	21.7	22.1	21.3
	Arts, entertainment and recreation	24.5	24.9	25.0	24.6	21.2	21.9	21.2
	Accommodation and food service activities	19.3	19.7	18.9	18.5	16.6	15.5	15.8
	Human health and social work activities	18.1	18.1	18.2	18.0	17.2	16.4	15.8
ITALY	Agriculture, forestry and fishing	49.4	53.4	54.1	58.1	61.5	60.1	59.0
	Accommodation and food service activities	25.8	26.8	27.9	29.0	30.9	30.4	32.7
	Arts, entertainment and recreation	31.5	30.1	28.5	33.9	29.9	29.0	28.3
	Administrative and support service activities	16.9	15.3	16.0	16.9	18.3	17.9	17.0
PORTUGAL	Arts, entertainment and recreation	40.1	45.6	38.1	31.5	33.8	40.3	36.0
	Agriculture, forestry and fishing	29.6	28.2	30.7	31.6	29.6	31.2	33.1
	Accommodation and food service activities	32.5	30.1	31.6	30.9	27.3	31.9	32.5
	Administrative and support service activities	29.5	30.5	30.5	29.0	29.1	28.1	30.9
SPAIN	Agriculture, forestry and fishing	57.7	58.7	58.5	56.9	59.6	59.7	62.4
	Accommodation and food service activities	37.7	33.8	33.6	36.0	35.6	37.9	39.4
	Construction	48.7	41.9	41.1	39.9	35.9	34.0	36.3
	Arts, entertainment and recreation	39.6	35.7	34.1	38.8	39.6	34.4	34.8

Source: Eurostat Labour Force Survey



Another important aspect to underline regards FYR Macedonia. In this country in 2014, we found the highest sectoral incidence (90%) in the Activities of Households as Employers; Undifferentiated Goods-and Service-producing Activities of Households for Own Use sector, which is absent in the top four across EU28 and the other countries involved in the project.

In 2014, the incidence of temporary work ranges between 18.7% (Administrative and Support Service Activities) and 31.6% (Agriculture, Forestry and Fishing) in the four top ranking sectors across EU28. However, only Germany shows a similar relatively low incidence of temporary work across sectors (i.e., between 15.8% and 21.3%). In the other four countries, the incidence of temporary workers at sectoral level is much higher. In FYR Macedonia, it is between 32.3% (Construction) and 90% (Activities of Households as Employers; Undifferentiated Goods-and service-producing Activities of Households for Own Use). In Italy, it is between 17% (Administrative and Support Service Activities) and 59% (Agriculture). In Portugal, it is between 30.9% (Administrative and Support Service Activities) and 36% (Arts, Entertainment and Recreation). In Spain, the figure ranges between 34.8% (Arts, Entertainment and Recreation) and 62.4% (Agriculture) (Table 5).

According to the tables above, the trend between 2008 and 2014 of the incidence of temporary work seems stable in the top-four sectors in EU28 as well as in Italy and in FYR Macedonia (between 2011 and 2014). In Germany, the incidence of temporary work tends to decline in the top-four sectors, while in Spain and in Portugal, the trends vary. In this latter country, the first sector (Arts, Entertainment and Recreation) fluctuates considerably from year to year. However, apart from Italy, there were also annual variations in the countries where this sector is present in all the seven years of the study.

1.3 Temporary-employment contracts

There is no general statutory definition of temporary work in EU28 or in any of the countries involved in the project, but a number of temporary-employment contracts are established and regulated by law.

In all the countries under investigation, the law foresees the possibility to use fixed-term contracts, which means they must all last for a definite period. Furthermore, these contracts are regulated in matters concerning duration and renewal.

In FYR Macedonia and Italy, seasonal work is specifically regulated by law and is connected with the sectoral jobs that are needed only in specific periods of the year: e.g., in specific agricultural seasons, in high seasons in the tourist industry, etc.

Together with the above-mentioned employment contracts, the law, in the countries involved in the project, sometimes allows the use of temporary work: e.g., in order to cover very short periods of work, casual work, the first job for young people, jobs for workers that risk social exclusion, jobs connected with a specific project, etc.

However, as already mentioned, the misuse of self-employment contracts currently seems to be increasing in all the countries investigated in this study. It is important to underline that there seems to be a significant use of “false” and “fake” self-employment and that the phenomenon appears to be rising in all the countries involved in the project, although to a varying extent. Data available regarding the effective level of misuse of self-employment is scarce. However, some studies that have already been carried out regarding this phenomenon makes it possible to estimate how widespread it is when compared to the total of self-employed workers. In Italy, in around 2005, the percentage was about 20%³, while in Spain in 2014 the figure was around 7.7%⁴, and in Portugal, in 2010, it was around 14%⁵.

³ Isfol Plus survey.

⁴ Spanish-applicant calculations based on Encuesta de Población Activa (EPA), Central Institute of Statistics.

⁵ Portuguese-applicant calculations based on the number of ‘fake’ self employed workers provided by [Official Statistics Portugal](#) and the total number of self-employed (without employees) in that same year (Eurostat).



1.4 Representativeness and collective bargaining of temporary workers

Desk-research findings show that no specific trade unions exist for temporary workers at intersectoral level, while in all the countries involved in the project, trade unions (sectoral or occupational) that represent permanent workers also represent temporary workers, and collective agreements apply to both types of employment relationship.

However, it was not possible to assess the incidence of temporary workers on the membership of these organisations because, in general, the trade unions do not have data concerning the employment relationship of their members.

In Portugal, temporary workers are represented by trade unions, but also by non-union associations which represent only temporary workers and sustain their rights. Non-union associations have been playing an important role organising temporary workers and formulating their demands.

While national legislation plays the major role in the regulation of temporary work, collective agreements are also involved, since they generally cover temporary workers under the general rules of collective agreements and in some cases they comprise additional specific clauses concerning temporary work.

However, specific agreements that regulate only temporary agency work have been signed in Germany, FYR Macedonia, Italy and Portugal. These specific national agreements usually complement legislation by regulating issues such as the business and the activities where temporary agency work is permissible as well as matters concerning equal treatment and rights for temporary workers compared to permanent workers (regarding training, pay grade, pay, etc.).

Collective agreement provisions, in all of the countries involved in the project, apply both to permanent and temporary workers. In addition, collective agreements, when they specify rules on temporary work, cover issues such as the conditions for use of temporary work, equal treatment and rights for temporary workers compared to permanent workers in relation to pay, training and pay-grade classification. This is the case of collective agreements in Italy and Germany and in some limited cases in Portugal. In Portugal, some collective agreements also guarantee equal treatment regarding working hours.

At sectoral level, only Germany has specific agreements for temporary work in the Manufacturing and Accommodation and Food Service Activities sectors, while in the other four countries, temporary work is covered as a subtopic in general sectoral agreements.

It is important to underline that, at sectoral level, temporary work is regulated by a well structured system of industrial relations, which helps guarantee a positive outcome for the needs of temporary-workers.

1.5 Collective bargaining and representativeness of temporary workers at European level and in the Member States not involved in the project

At European level, two important agreements have been signed:

- the joint declaration concerning the draft Directive on working conditions for temporary agency workers.
- the Framework agreement regarding fixed-term work.

The first agreement was signed, on May 2008, by UNI-Europa and Eurociett, the sectoral organisations which represent workers and employers of temporary work agencies. It regards a sector where, according to the project findings, temporary workers are comparatively better represented and protected than in other sectors.

The Framework agreement concerning fixed-term work is the only intersectoral agreement regarding temporary work at European level. This agreement was signed, on 18 March 1999, by the general cross-industry organisations (ETUC, UNICE and CEEP) and it sets out “*the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations*”.



This agreement was then incorporated into the **Council Directive 1999/70/EC** of June 1999. The Directive has been implemented in all Member States and this implementation has been monitored by the European Commission and reported in the following documents:

- European Commission (2006): Commission Staff Working Document. Report by the Commission Services on the Implementation of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, Brussels, 11.08.2006 SEC(2006) 1074 on Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, the United Kingdom
- European Commission (2008): Commission Staff Working Document. National Legislation Transposing Directive 1999/70/EC on fixed-term work in the EU 10, Brussels, 17.09.2008, SEC(2008) 2485 on Czech Republik, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia
- Milieu, Environmental Law & Policy (2009): Executive summary. Implementation Report for Bulgaria. Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;
- Milieu, Environmental Law & Policy (2009): Executive summary. Implementation Report for Romania. Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

At European sectoral level, no agreements have been signed specifically for temporary workers. However, a brief analysis reveals that, in some Member states not involved in the project (Belgium, the Netherlands, the United Kingdom and Austria) we can find some good practices of collective bargaining. However, most of these agreements regard only the workers of temporary work agencies.

Among the above-mentioned agreements, the most important seems to be the Belgian “Collective Agreement 108 on temporary work and temporary agency work” signed in 2013. This is a cross-sectoral agreement and covers the use of temporary work, the type of contract and equal rights for temporary workers and permanent workers regarding pay, working hours, training, pay grade/classification. The agreement also establishes business activities or services which foresee the use of temporary work, excluding the use of temporary-agency work in the transport and logistics sector and limiting it to the replacement of a permanent worker on sick leave in the construction sector.

An important aspect of the Dutch agreement, signed in 2009, regards the introduction of a system for the accumulation of employment rights. For example, this agreement establishes, for temporary-agency workers, the same pay as permanent workers after 26 weeks of employment in a user company.

The Austrian agreement, signed in 2002, establishes, among other matters, that a minimum wage is applicable even when the temporary-agency worker is not hired out to a user company.

The British agreement, signed in 2008, establishes equal rights for temporary workers and permanent workers and it strongly influenced the political agreement at European level on temporary agency work Directive (2008/104/CE) and the revision of the working time Directive.

Regarding representativeness of temporary workers at European level, only one European trade union is active: the UNI Global Union – Europa representing temporary agency workers. This organisation has 7,000,000 members, 5% of which are temporary workers (estimated data).

Finally, at sectoral level, temporary workers are represented by unions, which represent also other workers.



SECOND SECTION

Results of the focus groups

2.1 Area of investigation

There is no statutory definition of temporary work in the EU Directives. Despite the fact the first-section analysis was performed considering the Eurostat definition of temporary work, the qualitative analysis, based on focus-groups, we present in this section, also considers the case of “fake” self-employment or “fake” independent work, whereby provision-of-service contracts.

Today, a significant number of freelance workers end up in “false” or “fake” self-employment in all the countries involved in the project, though to varying extents. Provision-of-service contracts (officially contracts for self-employed workers) are sometimes used as a substitute for subordinate employment relationships and are adopted to avoid social security contributions. Although data regarding the effective level of misuse of self-employment is scarce, we would like to stress that “false” and “fake” self-employment is significant and apparently increasing in all the countries under investigation. This, above all, concerns freelancers who – although their contractual arrangement is that of a self-employed person – work under the factual circumstances (integration in work organisation; subordination under the discretionary power of the employer; etc...) which are that of dependent work. However, self-employment is outside the scope of this research project and thus will only be referred to where necessary to understand the phenomenon of temporary work.

“Temporary workers”, thus, in the qualitative analysis have been classified according to the following three groups, each encompassing various subgroups:

- Workers with fixed-term contracts (e.g., seasonal work, probation work, employment contracts as an apprentice);
- Workers with temporary agency work contracts;
- False self-employment (e.g., by provision-of-service contracts).

All the focus-groups underlined that employees with temporary contracts have different needs compared to workers with open-ended contracts. The qualitative analysis identified some of their specific needs:

- National social security and welfare: paid maternity/paternity/parental leave, guaranteed minimum income during non-working periods, sickness and accident benefits, etc.
- Mortgage or support for the purchase or the rental of houses.
- Pension contributions for the non-working periods.
- Support in order to facilitate national/international mobility for work reasons (e.g. support for accommodation and food, reduced transport tickets, etc).
- The payment of taxes, connected with the income of the previous year, which could be a problem for people who have no constant income year by year.

Although temporary workers face particular challenges, it is important to underline that, according to the trade union representatives who participated in the focus-groups, precarious work is seemingly increasing in all the countries involved in the project, and this is not necessarily connected with temporary work. For instance, the Spanish focus-group conclusions highlighted how it has become gradually easier for companies to hire and to fire and, therefore, the conditions of permanent and temporary workers are becoming more similar. It is also important not to overlook the



problem of poor low-paid workers on permanent contracts but in a precarious social situation. This phenomenon is also emerging in many countries.

Therefore, it seems that the critical problems of temporary work exist in a context of declining employment quality.

2.2 Barriers blocking the representation of temporary workers

Research findings show that temporary workers employed in temporary work agencies are the most represented and protected through specific trade unions or associations.

In some countries, a department for temporary work is often present in many confederal trade unions but their role is more to provide advice rather than ensure representation. In Portugal, many non-union associations are active in representing temporary workers. These associations do not participate in collective bargaining but support and represent temporary workers in many situations.

Very often, the representation of temporary workers is entrusted to union organisations or the union departments that represent young workers, who are the most involved in fixed-term contracts. This representation is, in many cases, absent for a great number of temporary workers and, above all, those who are self-employed and provide services.

Currently, more or less in all the countries involved in the project, it seems that a considerable number of temporary workers is neither protected nor represented. Trade unions highlight that there are several barriers that make it difficult to organise temporary workers or facilitate their participation in union activities, such as rotation of employment, mobility across companies, occupations, sectors, geographical locations, etc. According to trade unions, another barrier is that temporary-workers fear being publicly linked with trade unions because they are afraid it could compromise the possible renewal of their employment contract. Furthermore, trade unions stress that, in general, the economic crisis has caused a reduction of social standards and working conditions together with a general loss of confidence in trade unions and in collective bargaining. The role of unions, therefore, in many cases is considered to be useless due to the weak results of union action, which, very often, ends in the dismissal of workers that have reported irregular situations.

The representation of temporary workers, in many countries, is also limited by the law, which does not legally permit people on short-term contracts to be representatives: e.g., in Spain, the Act on Union Freedom (*Ley de Libertad Sindical*) does not permit workers to become representatives if their permanence in the company is less than six months (three in the construction sector).

The focus groups underlined many other limits in representing and protecting temporary workers:

- the size of the enterprise: the larger the company, the more temporary workers are protected and represented. In micro and small enterprises, the situation is like a “jungle”;
- the shorter the duration of the contract, the less temporary workers are protected and represented;
- the fragmentation of some sectors hinders the capacity to provide sufficient controls and this makes it possible to elude the law, especially regarding the use of temporary contracts;
- some employers use temporary-work contracts as a probationary period;
- the representation of workers with service contracts (which may be fake self-employed workers) is difficult, because, in many cases, the law does not foresee how they could be represented.

According to the participants in the focus groups, the protection of many workers is deteriorating. A new equilibrium has to be found between actors in order to regulate flexibility, taking into account the new characteristics of the labour market.

In all countries comprised in the study, the focus group participants agreed that a single organisation could not represent temporary workers as a whole. In fact, almost all the participants at the focus groups agreed that a single cross-sectoral trade union representing temporary workers is not the best solution, and recommend that the representation of temporary workers should be left to the sectoral trade unions. However, the sectoral model frequently has to face several problems such as tensions between permanent and temporary workers at company level, which are provoked - as already mentioned - by the differences between wage scales, different collective bargaining agreements



and many *ad personam* clauses regarding specific benefits, supplementary wage, etc. applied to older workers but not to new recruits, especially temporary workers. This determines very different working conditions among workers within the same company.

2.3 The problem of false self-employment

In general, the participants in the focus-groups, especially the union representatives, underlined the fact that there is a frequent abuse of temporary work in their countries. This phenomenon regards temporary employees but also includes many other different forms of *de facto* temporary contracts, such as false self-employment or provision-of-service contracts, which are not covered by the Eurostat definition of temporary work⁶. With regard to self-employment, naturally, this concerns only the part of freelance work whose factual circumstances (integration in work organisation; subordination under the discretionary power of the employer; etc...) are those of dependent work; in other words, situations where two groups of workers perform the same or similar tasks for the same company but one on the basis of permanent employment contracts and one on the basis of a contractual arrangement of self-employment which leads to severe disadvantages in pay and benefits for the latter. In these cases, the contractual arrangement of “self-employment” is used amongst others to avoid paying social security contributions which consequently are due as the false self-employed person is legally treated as an employee. However, due to the structural asymmetry of the worker, it may prove difficult for him or her to gain access to these lawful claims.

One of the ways of combating such abuse, according to the participants in the focus groups, could be to increase the number of controls by labour inspectorates in order to prevent the improper use of all forms of temporary contracts and to ensure compliance with labour legislation. However, as underlined by the Spanish focus group, neither the labour authority nor the trade unions have the means or the resources to investigate all irregular temporary employment situations. In Spain, if one considers that 40% of business organizations are micro-companies, it is evidently particularly difficult to contrast such abuse. A similar situation exists in the micro and small enterprises in Italy, where, according to the participants in the focus group, the access of trade unions is very difficult. The same is true in the case of Portugal.

Therefore, a series of multiple interventions is required.

An example of action in this field is the 2015 campaign against provision-of-service contracts, including fake self-employment recently started by the Confederation of German Trade Unions (DGB). The action is called "Klare Regeln für Werkverträge" (Transparent rules on provision-of-service contracts). It aims to prevent the establishment of a two-class workforce, i.e. workers performing similar tasks but with severe difference in pay and benefits. The DGB makes six suggestions to fight the abuse of provision-of-service contracts: 1) establishing the legal consequences of an abuse in using provision-of-service contracts; 2) strengthening the co-determination process; 3) extending inspections and the right to file an action; 4) consistent monitoring and detection of fake self-employment; 5) limitation of consecutive contracts; 6) better protection of foreign workers. Because of the societal changes and the increasing number of workers with this type of contract, the initiative should raise public awareness, give momentum to the issue, and eventually reduce precarious work (<http://www.dgb.de/schwerpunkt/werkvertraege-und-leiharbeit>).

2.4 Coverage and limits of collective bargaining for temporary workers

Regarding the effective use of collective bargaining in limiting precariousness, the Spanish trade union representatives underline the importance of ensuring that there is union representation in companies in order to guarantee the correct application of collective agreements. In Spain, the application of various collective agreements

⁶ In Germany, for instance, the difficulties in recognising these different types of contractual relations with regard to the question whether or not social security contributions are due have produced a third category, i.e., the “employee-like” employment relation. Employee-like persons must contribute to the pension fund and may not have employees, however, they may call on the labour court (Section 5 ArbGG). Whereas in the case of self-employment, there is no legal obligation to pay social security contributions, since they are assumed to be independent.



within the same company (agreements regarding different sectors and territorial levels) is an illegal practice that often involves temporary workers. This situation creates a sort of social dumping linked to the application of different collective agreements, also through the use of outsourcing. Due to the latest Spanish labour reform, in Spain, companies that provide outsourced services can apply specific company agreements to the outsourced workers. The main consequence of this is that the salary of these outsourced workers can be 30-40% lower compared to the salary of the rest of workers, even though they are performing the same tasks and sharing the same work-centre. This situation is thought to be becoming more frequent today in Spain.

The Statute of Workers (Real Decreto Ley 3/2012) has been reformed in order to decentralise collective bargaining at company level. This is to achieve more flexibility in wages, improve the correlation between productivity and wages and adapt working conditions and working time to the specific conditions of each company. However, the reform also represents an employer strategy to reduce the power of unions outside companies. Since the reform of the law, the main issues to be negotiated at company level have been optouts in collective bargaining (not only salary). The justification for these optouts is usually economic (decrease in profits, economic losses for two consecutive quarters, etc.). In order to approve an optout, union approval is not required: it is enough to create a commission of a maximum of three members (company workers) in order to adopt the optout. Prior to this reform, company level agreements represented an improved regulatory framework for working conditions compared to those established in the sectoral agreement, but now they represent the opposite. In this sense, many companies are reinforcing collective bargaining at company level and the objective of the trade unions should be to increase union control before companies start adopting the collective bargaining optout.

Concerning the contents of collective agreements, it is interesting to highlight that in Portugal, the majority of the collective agreements have clauses that foresee the use of fixed-term contracts, while only some contain the principle of equality of all workers regardless of their contractual relationship. In this country, many collective agreements are strongly protective towards workers with open-ended employment contracts, giving them priority regarding the filling of vacant job positions. However, among the agreements analysed, three establish that, when filling vacancies, preference must be given to the workers with fixed-term employment contracts. In one exceptional case, a sector collective agreement (textile industry) sets a maximum threshold of 20% of temporary workers in each company.

Besides these specific issues, a general problem underlined in the Spanish and Portuguese focus groups is the weakening of collective bargaining following some legislative modifications.

For instance, in Portugal, the participants of the focus group criticised the requirement of the Memorandum of Understanding (MoU) signed by the Portuguese government with the Troika demanding the introduction of stricter criteria for the extension of collective agreements to non-unionized workers and to companies that are not affiliated to employer associations. This has led to a dramatic reduction of collective bargaining coverage.

Meanwhile, Germany has made a significant step towards fighting ill-paid jobs. Being one of the remaining countries within the EU without such a policy, the German federal government introduced a general minimum wage. This law became operative on 1 January 2015. With the large support of trade unions, this had mainly affected low-paid employees, mostly those without or only weak union representation. However, it has had little or no effect on self-employed people. Nevertheless, this step is considered as a major step to fight ill-paid jobs. Moreover, the German Ministry of Employment recently drafted a law on temporary agency work and provision-of-service contracts. It foresees limiting temporary agency work to 18 months and a stricter control of service contracts. Companies would be only obliged to inform works councils about using provision-of-service contracts, but do not receive any control rights. The responses of the social partners have been controversial and heterogeneous. While employer organisations refer to the proposal as being unfeasible, the largest trade union, IG Metall has expressed doubts concerning the real impact of the bill regarding the mechanisms to fight, e.g., contractual abuse. The second largest union, ver.di, similarly criticises the draft as failing to prevent wage dumping and to protect the people in need of support. The Confederation of German Trade Unions (DGB) in contrast considers the draft law as a first step towards addressing the problems. The bill must be discussed next year and will probably enter into force in 2017.



2.5 Collective action

The participants of the various focus groups, and especially the union representatives, emphasized not only the importance of collective bargaining but also the importance of union action on the workplace. In fact, they stressed the importance of considering the demands of workers outside the framework of collective bargaining.

However, the difficulty in representing temporary workers also includes the fact that it is difficult to organize collective action. In fact, most of the participants of the focus groups declared that temporary workers are often afraid of losing their jobs. They feel that being a temporary worker is better than being unemployed, and that earning something is always better than earning nothing at all. Therefore, the workers often prefer not to participate in any form of protest or activity for fear of losing their jobs. For instance, as underlined in some focus groups, many workers with fixed-term contracts go to the unions declaring that they earn less than the workers with an open-ended contract but they only want legal information and to know what their rights are. They do not want the company to know about them having contacted a union because they are afraid of provoking conflicts. Moreover, according to the union representatives, there are tensions between permanent and temporary workers at company level for several reasons: existence of a double wage scale, permanent workers viewing “temporary” as a shield against labour force adjustment plans, existence of *ad personam* clauses and application of different collective bargaining agreements. These tensions between permanent and temporary workers strongly limit the union capacity to organize and mobilize temporary workers.

Most participants stressed that, even if it is difficult, an important way to fight the abuse of temporary contracts and to eliminate the different working conditions between temporary workers and permanent workers is union action and collective bargaining. For instance, in Germany, the trade union IG Metall started a campaign with public events in 2008 called “Equal work - equal pay (Gleiche Arbeit - gleiches Geld)” to raise awareness on wage differences between temporary agency workers and permanent employees. Approx. 50,000 new members have supported the undertaking of IG Metall to improve wage conditions of temporary agency workers. The union succeeded in concluding a favourable sectoral collective agreement in 2012 as well as arranging 1,200 company level agreements.

Portugal also reported some interesting, although isolated, examples of collective action. The first regarded the protest (with strikes and demonstrations) of the workers that deliver pizzas against the decision of Ibersol/Pizza Hut to reduce the payment for each delivery made. This protest occurred in Oporto in two periods (beginning of 2014 and beginning of 2015) and had the support of the Union of Workers in Hotels, Tourism, Restaurants and similar Industries of Northern Portugal affiliated to FESAHT. These workers have contracts for the provision of services. The protest was successful. The second example concerned the protest against the dismissal of 50 workers of several restaurants of McDonalds in Lisbon. The workers elected an ad-hoc committee and held a demonstration in October 2013. The Union of Workers in Hotels, Tourism, Restaurants and similar Industries of Southern Portugal supported these workers and their ad hoc committee, which was able to “stabilize the situation”.

Another important example of collective action is the case of the action carried out by the workers of the call centres of EDP (electricity distribution and supply). These workers were part of the temporary work agency CNH which had a contract to provide services to EDP. After CNH went bankrupt, EDP made a contract with a new temporary work agency, the Team Time, following which the previous contractual rights and wages of the workers were put in question, with the justification that they were being transferred to a new company. The workers of call centres together with the trade union SIESI (electricity sector) launched a wave of strikes to maintain workers contractual rights, wages and seniority. Their action was successful and the new company was obliged to comply with their demands. In this episode, workers joined the union and elected union representative at the call centres. For instance, in Lisbon 400 of the 700 workers of the EDP call centres became members of the union.

As highlighted in the various focus groups, collective action of temporary workers is crucial to improve their employment conditions and to combat the frequent arbitrary use of temporary work.

These are some interesting cases of collective action of temporary workers but considering that, as highlighted in the various focus groups, there is a frequent arbitrary use of temporary work, most participants stressed the importance of highlighting these situations through union action and an increase in labour inspections.



2.6 Good practices

2.6.1 Good practices in representing temporary workers

Portugal seems to be the country where non-union forms of representation of temporary workers has become most important, not only considering the number of associations but also their role in formulating temporary-worker demands. Some of these are specific for areas where temporary work is very frequent (Arts and Audio-visual sector, Research and Scientific Activities, etc.) but the Association for the Fight against Precariousness, the so-called “Inflexible Precarious”, is a social movement that represents a large number of temporary workers. This association has no legal competences in the area of collective bargaining but stimulates discussion in society regarding precariousness and supports specific temporary worker disputes. Their initiatives include their important petition against precariousness, in 2011, it made a significant contribution to the changing of the legal framework regarding temporary work, in particular, concerning ‘fake’ independent work.

The Spanish CEAI (National Coordination of Associations for Temporary Workers and Workers with Substitution Contracts in the Public Sector) represents all temporary workers but only in the public sector. In Italy, in the same sector, we can find an example of involvement of temporary workers in bargaining delegations. In 2009, the Cgil sectoral organisation for the public sector modified its statute, which, now, foresees the involvement of representatives of temporary workers (collaborators) in the union delegation for national collective bargaining. However, for both of the above-mentioned examples, it must be taken into account that, usually, the public sector is considerably more regulated than the private sector, where the conditions of the various sectoral segments vary greatly.

Currently, in Italy, representatives of trade unions of temporary agency workers are involved in sectoral collective bargaining together with the sectoral trade unions. Furthermore, in workplaces, there is strong collaboration between the delegate responsible for workers’ safety and temporary agency worker representatives on the workplaces. Temporary agency workers are also protected through a well-structured bilateral system which manages two funds, one for welfare and one for vocational training. Finally, participants in the Italian focus group mentioned that some European Work Councils (EWCs) are being organized in some large temporary work agencies (Adecco, APL). However, the setting up of these EWCs is proving rather difficult.

2.6.2 Good practices in collective actions

Together with the already mentioned collective actions, focus group participants reported some more examples.

In Portugal, there are some cases where temporary workers have acted to claim their legal rights. However, in some of these cases, no trade unions supported their actions.

The first case regarded the labour conflict at Linha Saúde 24, a health helpline. Almost 400 nurses of the two call centres of this company protested through strikes and demonstrations against wage cuts and because they wanted their contracts changed from provision-of-service (self-employment) into employment contracts. These workers organised themselves through an informal works council elected by the workers. In this case, the labour inspectorate recognised that the activity of these nurses had “the typical characteristics of an employment contract”. However, during this event, the Union of Portuguese Nurses (SEP) declared that it could not support the action of the nurses because the SEP does not represent workers with provision-of-service contracts. The same problem arose during a similar case at Portugal Telecom. Also on this occasion, the unions represented only the workers with an employment contract with the company and not the workers with a provision-of-service contract.

However, in Portugal, we can find some good, but isolated, examples of the involvement of trade unions in the actions of temporary workers. The first one, called “Luto pela Ciência” (Mourning for science) was organised in order to protest against the assessment made by FCT (The Foundation for Science and Technology) of the R&D Centres. It was supported by the trade unions SNESup (National Union of Higher Education), FENPROF (National Teachers’ Federation composed of seven unions affiliated to CGTP, ABIC and OTC).



There are also other Portuguese examples, already mentioned above (the collective actions of workers that deliver pizzas in Oporto, the workers of McDonald in Lisbon and of workers of EDP call centers, where the unions have been involved in successful collective actions.

Furthermore, in Portugal, trade unions frequently support legal disputes in the courts in order to reverse decisions of companies and some non-union associations for temporary workers have promoted numerous legislative initiatives and petitions against precariousness.

In Germany, an interesting interactive online platform has been launched by the IG Metall (the most important metalworkers' union in Germany). On this platform, crowdworkers (digital workers) can receive some aid and information regarding their general legal situation, about their peers and about crowdsourcing platforms. As already mentioned above, another good example of trade union action concerns the 2008 German campaign called “Equal work – equal pay” organized by the IG Metall (please, see chapter 2.5 for additional details).

2.6.3 Good practices in collective bargaining

In Spain, the Collective Agreement for Agriculture in Cadiz, signed by UGT, CCOO and ASAJA, establishes the automatic transformation into open-ended contracts of the fixed-term contracts of workers that have been working without interruption (or with interruptions of less than fifteen days) for at least 11 months. In Spain, in the construction sector, we can find “Fixed contract work” which links the duration of the contract to the duration of specific work. Also in the construction sector, through trade union intervention Temporary Employment Agencies are prohibited in this sector.

Despite the above-mentioned examples, there are very few good practices in collective bargaining. More or less in all the countries involved in the project, some aspects of temporary work are regulated by sectoral collective bargaining (such as the admissibility of fixed-term contracts). However, some participants in the focus groups underlined the importance of bargaining on the workplace and provided some examples.

In Portugal, in the Volkswagen plant Autoeuropa, the work council (Comissão de trabalhadores) succeeded in establishing internal agreements, which led to the transformation of many fixed-term contracts into open-ended contracts. In the same company, another agreement, resulting from the initiative of the work council, foresees specific rules for temporary agency workers hired by Autoeuropa in order to replace the company workers on sick leave. The agreement includes not only Autoeuropa but also a Volkswagen temporary work agency responsible for the temporary replacement of workers. According to this agreement, the temporary agency workers will be hired directly by Autoeuropa under fixed-term or open-ended contracts, once the workers return to the workplace following illness. Their recruitment depends on production needs.

In Italy, trade unions, in order to protect temporary workers, have signed collective agreements to cover all the workers operating in certain specific sites (e.g. shopping centres, airports, EXPO, etc.). This “Site contract” protects all the people working on the site, regardless of whether they are employed in different sectors or on different types of employment contracts, and it regulates working conditions on the entire site.

In Portugal, the company collective agreement between the Sociedade Pauta das Flores and the SITESE (Union of Service Workers and Technicians) represents possibly the most comprehensive example of regulation of fixed-term employment contracts, in that it integrates regulations regarding the conditions for their use, duration and renewal, severance pay, conversion of fixed-term contracts into open-ended contracts, etc. Although this company agreement mainly reproduces the law provisions on these issues, it also includes a provision, not foreseen by law, according to which temporary workers are first in the queue to fill permanent positions when the employer carries out external recruitment for the performance of permanent work and it decrees that the violation of this rule obliges the employer to pay the temporary employee a compensation equal to six months of pay. Also in this country, it is important to mention the sector collective agreement in the textile industry which sets a maximum threshold of 20% of temporary workers in each company.

However, a considerable number of the above-mentioned procedures are weak or missing in the world of micro and small enterprises. Due to the difficulties in regularising the situation in small enterprises, the Italian sectoral trade



unions of the Tourism sector are currently involved in collective bargaining at provincial level in order to protect specific seasonal and temporary workers (e.g. lifeguards).

2.7 Proposals by participants in the focus groups

The proposals put forward by the participants of the focus groups cover a wide range of issues, and they reflect both cross country common issues and country specific issues: improvement of temporary workers organization and representation; improvement of collective bargaining provisions protecting employment rights and conditions of temporary workers; reinforcement of competencies and resources of labour inspection to combat the misuse of temporary work and to secure that their rights are respected; mechanisms to combat effectively the misuse of temporary work in its different forms, including stronger penalties for companies; improvement of temporary workers social rights and protection (sick leave, pensions, unemployment insurance); measures to combat the problem of “fake” independent work aiming at the integration of such workers in employment relationships.

According to many participants in the focus groups, temporality should be regulated through policymaking and legislation. The role of collective bargaining and actions should be to adapt these norms to fit the characteristics of the various productive sectors.

According to the participants in the Italian focus group, temporary work should be regulated through two levels of collective bargaining:

- at national level: sectoral collective agreements should guarantee the same rights for all workers, and collective bargaining at intersectoral level should establish how, when and why temporary work can be used.
- at second-level bargaining, temporary workers could be more protected by increasing the number of “Site Contracts”, collective agreements covering specific sites that involve different sectoral activities (see the previous paragraph).

Furthermore, the Italian participants suggested that impersonal vouchers should be introduced at legislative level in order to overcome the job on-call, which, at the moment, is based on personal calls. The Italian participants also suggested that a law should be promoted that defines “temporary worker” as a specific category of workers.

According to some participants of the focus groups, temporary contracts should be made economically inconvenient. For example, the Spanish focus group suggested increasing the severance pay of temporary workers to the same level as permanent workers. Participants reported the example of the “General Agreement of Trade sector in Girona”, signed in 2014, which establishes an increase of 15% of the salary of Temporary Agency workers compared to the salary of the sectoral workers.

In order to stimulate the use of open-ended contracts, many participants of the focus groups agreed that public policies are not sufficiently incisive in order to promote permanent contracts (economic subsidies, fiscal relief, etc.). According to many participants, the only way to reduce temporality and precariousness is to punish the use of fraudulent temporary contracts and, consequently, to increase the number of labour inspections.

Participants at the FYR Macedonia focus group identified health insurance as the biggest problem for temporary workers in their country. In fact, the unemployed in FYR Macedonia have health insurance provided by the state. When these people are hired, even if only for one day, they lose this insurance and, when their employment contract expires, they waste time because they have to reactivate their insurance. They underlined that specific software should be introduced to simplify the procedure for temporary workers when registering for health insurance. Furthermore, the FYR Macedonia participants suggested increasing the exchange of good experiences between countries in order to keep temporary workers well informed of their rights.

Participants of the focus group in Portugal presented several proposals:

Social security: access to unemployment benefits for all workers that have become unemployed in the last four years, including the “fake” self-employed; reducing the period of discounts for access to unemployment benefits.

Special tax on the profits of companies that use temporary employment on a large scale.



Reinforcement of the competences and resources of the labour inspectorate.

Reinforcement of the mechanisms to combat “fake” self-employment in order to ensure compliance of working conditions with the law prior to legal action (for example, if the labour inspectorate detects a “fake” self-employed, it should be able to oblige the company to transform the contract into an employment contract); change the procedures used in the courts taking into account the temporary worker’s vulnerability, in particular legal decisions concerning claims should be made simpler and faster and when the labour inspectorate detects situations that do not comply with the law and are exactly alike, instead of opening a number of individual court claims, it should open only one collective claim.

New regime of social security contributions and new rights for the self-employees: social security contributions of the self-employed should be based on their real income with reference not to the income of the previous year but to the income of the three or four prior months to the contributions; abolition of the requirement to pay contributions when there is no income; a fair employee social security contribution rate, which is substantially lower than the current 29.6%; and social contributions should entitle these workers to the same rights and benefits that the workers with an employment contract are entitled to.

Reinforcement of the regulation in temporary employment agencies: banning the use of temporary employment agencies in public administration; increasing the tax burden for the temporary employment agencies, and their contributions to Social Security.

Limitation of the scope of use of the contracts for the provision of services by self-employed workers to strictly temporary activities with a maximum of three allowable contract renewals.

Research grant holders: conversion of research grants into employment contracts; ratification of the European Charter for Researchers; binding of the grant holders to the research institutions; etc.

Internship contracts: introduction of severe penalties by the labour inspectorate for unpaid internships and for working conditions that do not comply with the law; the companies that use paid internships should be obliged to hire one in two workers, and pay 14 months’ salary as this is the rule for regular employment (fixed-term and open-ended contracts); etc.

Furthermore, many participants in the focus groups underlined the importance of actions on the workplace to protect temporary workers. However, many participants agreed that a deterioration among company agreements is taking place because the economic crisis is being used as an excuse to worsen company working conditions. In this sense, during the Spanish focus group, participants pointed out that proposals such as the “single contract” (a standardization of contracts making all of them permanent but reducing compensation) is a way not to reduce temporality but to introduce general precariousness.

During the German focus group, the proposal by the social democrat youth organisation “JuSo” to create a form of labour insurance instead of unemployment insurance was discussed.⁷ As the differentiation in the world of work is creating more and more risks, the risks associated with atypical forms of employment remain largely uninsured, and the costs are passed on to the employees who, however, often remain excluded from benefits. Apart from the income risk of atypical employment, we also have the problem of increasing risk of qualification. The proposal – which is an adaptation of the idea of unemployment insurance – aims at capturing this shift from the traditional risk of unemployment to the emerging risk of atypical employment by facilitating vocational training. Access to such training measures in the moment of need - i.e. on becoming unemployed or when the incumbent job becomes precarious - increases individual autonomy in relation to work throughout a person’s career. The instruments that can be used to broaden the financial basis for vocational training include individual drawing rights fed, on the one hand, by compulsory contributions to a solidary vocational training fund by both employees and employer and, on the other

⁷ See Schmid, G., "Von der Arbeitslosen- zur Arbeitsversicherung“ (From unemployment insurance towards work insurance), Leviathan, 2/2012, p. 248 – 270.



hand, subsidies by tax revenues.⁸ The overall aim is to improve the readiness for changes in employment on both sides of the labour market targeting in particular low skilled and low-income groups which are usually at a disadvantage regarding both their initial training as well as income risks during their professional life.

Finally, all applicants suggested that, due to the increase of provision-of-service contracts in all the countries involved in the project, a form of representation of these workers with these types of contract is particularly important.

⁸ Existing tax incentives, e.g., tax-deductibility of vocational training costs are missing out on those which are most in need since low- and medium income groups cannot benefit as on the one hand their tax liabilities are too low and on the other hand they are usually not in the position to pre-finance the training measures.



THIRD SECTION

Conclusions and suggested guidelines

We acknowledge that an economy requires flexible forms of employment in order to remain competitive. However, the spread of flexible forms of employment and new forms of atypical contracts might undermine employees rights and working conditions, compromise the wealth of citizens and generate general uncertainty. The following suggestions could help address these problems by stimulating dialogue and find practical solutions.

1. The concept of temporary work

The first problem we faced in this research regarded the concept of temporary work. According to the Eurostat definition, temporary work is a *work under a fixed-term contract, as against permanent work where there is no end-date. A job may be considered temporary employment (and its holder a temporary employee) if both employer and employee agree that its end is decided by objective rules (usually written down in a work contract of limited life). These rules can be a specific date, the end of a task, or the return of another employee who has been temporarily replaced*".

Currently, however, the concept of temporary work is wider and less clear. For example, we can find a potential misuse of contracts with no objective rules which makes it possible to determine the duration of employment contracts arbitrarily. Furthermore, there are other forms of employment that are adopted as a temporary arrangement, e.g. "false" self-employment with provision-of-service contracts.

The concept of temporary workers is also too narrow if one considers new forms of emerging contractual arrangements which favour precarious forms of employment with no labour protection. For example, digital and remote forms of work could cause additional issues. Much of this work occurs in a judicially grey area and challenges policy makers.

Thus, considering the many difficulties and in accordance with the suggestions of the social actors involved in the project, we identified four broad categories of temporary workers each encompassing subcategories:

- Workers with fixed-term contracts (e.g., project work, probation work, employment contracts as an apprentice);
- Workers with temporary-work-agency contracts;
- Workers involved in marginal employment (max. 70 working days per year; e.g. seasonal work);
- Workers involved in "false" self-employment (e.g. provision-of-service contracts).

2. Precariousness and working-social conditions

Other aspects highlighted by the research findings regard precariousness and the working and social conditions of temporary workers.

According to the project findings, the position of temporary workers has been worsening in recent years, in particular regarding working conditions and wages: the World Employment Social Outlook 2015 estimates that temporary workers receive on average 60% of the wage of permanent workers.

Temporary workers, therefore, are often precarious workers with lower wages and an uncertain future that makes the organisation of their personal and professional lives difficult. In some countries (e.g. in FYR Macedonia), where the contracts lasting 1 to 3 months are the most common, due to these short work-contracts (even of one or two days in length) workers must re-apply for health insurance every time they lose their job. This means that temporary workers are continuously involved in bureaucratic procedures.



Considering the extensive use of temporary work – also in cases where it is not required - some policies should be foreseen in order to reduce the volume of temporary employment and stimulate the adoption of long-term or open-ended work contracts. Public policies should foresee an increase in employers' taxes connected to temporary work and/or foresee a special tax on the profits of companies that use temporary employment on a large scale. Public policies should also consider revaluating the benefit and the costs of allowing the stipulation of contracts with no objective rules. Furthermore, they should foresee the regulation of new forms of work (e.g. crowdsourcing) together with some interventions to combat the abuse of temporary work (e.g. “false” self-employment), also reinforcing the competences and resources of official bodies (labour inspectorates, customs, fiscal authorities, etc.).

In order to reduce precariousness, public policies should foresee the introduction of some form of insurance in order to improve the incomes and the career path of temporary workers.

It should also be possible to increase access to unemployment benefit for all unemployed people, temporary workers and self-employed, by substantially reducing the requested period of contributions in order to be entitled to benefits and/or foresee a new regime of social security contributions for self-employed workers.

Finally, the computerisation of all bureaucratic procedures connected with the change of employment status will surely help temporary workers.

3. Representativeness

Our project findings highlight several barriers to organizing and representing temporary workers: e.g. short duration of contracts, mobility between companies and sectors, geographical mobility, the size of the enterprise (the larger the company, the more temporary workers are protected and represented), etc. However, the fragile position of temporary employees is also evident. In fact, they fear that their employers might not renew their contracts if they engage in union activities or in collective actions, a fear that increases in times of high unemployment, when it becomes extremely simple to replace them.

Perhaps unions and public authorities could improve their incentives in order to stimulate unionisation.

Trade unions should be encouraged to represent and organise workers under unconventional contractual arrangements, continue improving working conditions and pay more attention to certain groups that are particularly affected by temporary work.

Furthermore, trade unions should pay more attention to certain areas of work (accommodation and food service activities, education, human health and social work activities, arts, entertainment and recreation, etc.), due to the high level of temporary work in these sectors.

Temporary workers are represented by non-union organisations in some countries involved in the project, above all in Portugal. These organisations have a very flexible structure and have been successful in organizing temporary workers, in particular young people.

As union and non-union association agendas overlap in some issues, there is room for further cooperation between such organisations. However, some examples reported in this document show that trade unions have a mixed reaction towards cooperation with the non-union associations that represent temporary workers.

4. Collective bargaining and collective actions

There are no specific cross-sectoral agreements for temporary workers, while temporary work is, in most cases, well regulated by sectoral agreements. However, also in this case, the size of the enterprise and the organisation of the sector are two aspects to take into consideration in order to guarantee representativeness and protection of temporary workers.



In fact, the ongoing debate highlights that in small and micro companies, trade unions (and work councils) are very weak. Moreover, in many countries, sectoral collective agreements can be applied only to unionised workers and/or in companies that are affiliated with the signatory organisations. In these cases, it is necessary to extend the applicability of the collective agreements to all sectoral workers and companies.

The participants of the focus groups expressed great concern regarding the weakening of collective bargaining and the limitation of collective-agreement applicability in recent years. In fact, there have been changes in national legislations in order to fall in line with the policies established by the Troika (IMF, ECB and EU).

This research gives some examples of collective action and good practices which indicate that one of the best ways to organize temporary workers is to use a bottom-up approach starting from their claims in concrete situations. Work councils might play a very important role in these cases.

Cross-sectoral cooperation between unions should be strengthened in order to address common issues of temporary workers, and it should also involve non-union organisations that represent temporary workers.

Trade Unions should also be encouraged to represent and organise workers employed with provision-of-service contracts. Collective agreements should guarantee, together with equal rights in all respects for temporary and permanent workers, also provisions to protect this particularly vulnerable group.

5. Follow-up

Trade unions should organize a more in depth discussion on the specific claims of temporary workers and their inclusion in collective agreements.

Finally, additional research at EU and national level should be conducted in order to assess the impact of “false” self-employment, a phenomenon that is increasing in all the countries involved in the project.

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