

# Reducing Precarious Work

## Protective Gaps and the Role of Social Dialogue in Europe

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# Overview

Precarious work is a headline agenda issue for policymakers and social partners alike across Europe. Although often characterised as concentrated in a peripheral segment of the labour market or resulting from exploitative employer strategies, since the economic crisis problems of precarious employment seem to have become increasingly widespread, affecting a wider range of workers' labour market experiences. The approach we take here is to recognise that all forms of employment may be at risk from poor working conditions and insecurity related to four types of **'protective gaps'** in the system of economic and social protection. These include gaps in employment rights, in social protection, in representation and in enforcement of rights.

The extent to which the work is becoming precarious varies by country and relates to the weakening of employment protections, restricted social protections, greater employer use of subcontracting and false self employment, inequalities among standard and non-standard employment forms, diminished capacities to exercise collective voice and reduced government resources for enforcing the law. These changes pose significant long-term problems for all stakeholders, especially employers, governments, trade unions and civil society organisations. Not only do they risk growing labour market segmentation, as policies to deregulate and level down standards often impact more on those in already precarious work, but they also undermine efforts to sustain and develop 'high road' models equipped for today's grand challenges of technical change, global competition and a properly resourced, modern welfare state.

To explore these issues, a major two-year research programme involving experts in six countries -**Denmark, France, Germany, Slovenia, Spain and the UK**<sup>1</sup>- investigated first of all the extent and form of protective gaps and how they interact to generate patterns of both more inclusive and more exclusive labour markets. After reviewing the coverage and effectiveness of systems of protection we analysed the risks of precarious work in both standard (full-time, permanent) and non-standard forms of employment (variable and part-time hours, temporary and subcontracted work, including false self employment).

To identify how precariousness may be reduced through **innovative forms of social dialogue** we identified case studies of social dialogue at sector, workplace and supply chain levels in the six countries. These examples reveal promising mechanisms for advancing social protection rights, reducing ambiguities in employment status, closing enforcement gaps, negotiating social value procurement rules, and giving voice to vulnerable workers. The combined research evidence contributes to policy debates by demonstrating both the potential for European regulatory regimes to promote or mitigate precariousness at work and the scope for social dialogue to create more inclusive labour markets in contradiction to the perception that social dialogue always protects those in stronger positions in the labour market- the so-called insiders.

## Analysing precarious work through **'Protective Gaps'**

The financial crisis and subsequent austerity policies have exacerbated social and economic disparities within and across member states in Europe<sup>2</sup>, leading to calls for greater clarity in designing suitable labour market policy responses. To date the policy debate has crystallised around two positions. The first is to call for a more inclusive approach to labour market regulation to combat the growing inequalities and

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<sup>1</sup> Full details of members of the six-country research team and internet link to the detailed research reports are on the back page of this Briefing.

<sup>2</sup> EC (2013) *Employment and Social Developments in Europe*, European Commission; OECD (2011) *Divided We Stand*, OECD; Karamessini, M. and Rubery, J. (eds.) (2015) *Women and Austerity*, Routledge; Vaughan-Whitehead, D. (2015) *the European Social Model in Crisis: Is Europe Losing its Soul?*, Edward Elgar.

insecurities experienced across a wide spectrum of occupations and employment types, evidenced by diminished protections among workers in standard full-time, permanent jobs as well as reduced securities for non-standard employment. This could mean a move away from protections associated with the standard employment relationship to focus on more universal protection.<sup>3</sup> The second position is to argue for a general levelling down of protection standards as the crisis has reinforced a tendency for employment protection to favour those already in core or standard jobs (the so-called 'insiders') at the expense of the interests of workers in more precarious and often non-standard employment ('outsiders'). This is held to be due in part to trade union support for protections for core members at the expense of non members on the margins of the labour market.<sup>4</sup>

Our research aimed to move beyond these polarised positions<sup>5</sup> by first of all identifying across the six countries the effect of current regulatory systems and recent reforms in promoting inclusion or exclusion. This investigation both takes into account multiple dimensions of precariousness and considers how these may be related to specific employment forms. The implications of new or divergent employment forms for access to social protection are investigated alongside access to employment rights in recognition of their joint role in shaping employment and income security.

Secondly it seeks to identify how social dialogue can foster more inclusive labour markets by reducing precarious work. This approach does not assume that social actors are motivated only by a concern to maintain or strengthen protection for the core workforce. Instead, it explores to what extent the increasing role of non-standard employment forms in the labour market is changing approaches to employment regulation and protection. Protections available to those on standard employment contracts are not considered to be guaranteed but instead as potentially at risk of erosion where non-standard employment arrangements emerge as unregulated and low cost alternatives.

The interconnected problems of protection for all workforce groups may also be a basis for possibilities for collective action among diverse groups of workers against a general levelling down of their conditions often supported by trade unions or so-called core workforces. This more encompassing approach can be used to better understand under what conditions -specifically what types of industrial relations systems- it may be possible to realise the Europe 2020 vision of 'inclusive growth in which the 'benefits of growth and jobs are widely shared'.

Our framework considers that varieties of both precariousness and inclusiveness in employment arise out of differences in four types of '**Protective Gaps**' (figure 1). In each case, policy and practice reflect diverse country-specific bundles of legal regulations and collective bargaining, with varied implications therefore for recommended reforms. **Employment protection gaps** derive from the fixing of low minimum standards (in minimum wages or the right to unfair dismissal for example), exclusive eligibility rules (e.g. against those working short or variable hours or in temporary jobs), weak mechanisms for the regular upgrading of standards, and limited integration opportunities for workers to upgrade skills, pay and/or employment status, or indeed to retain standard employment status.

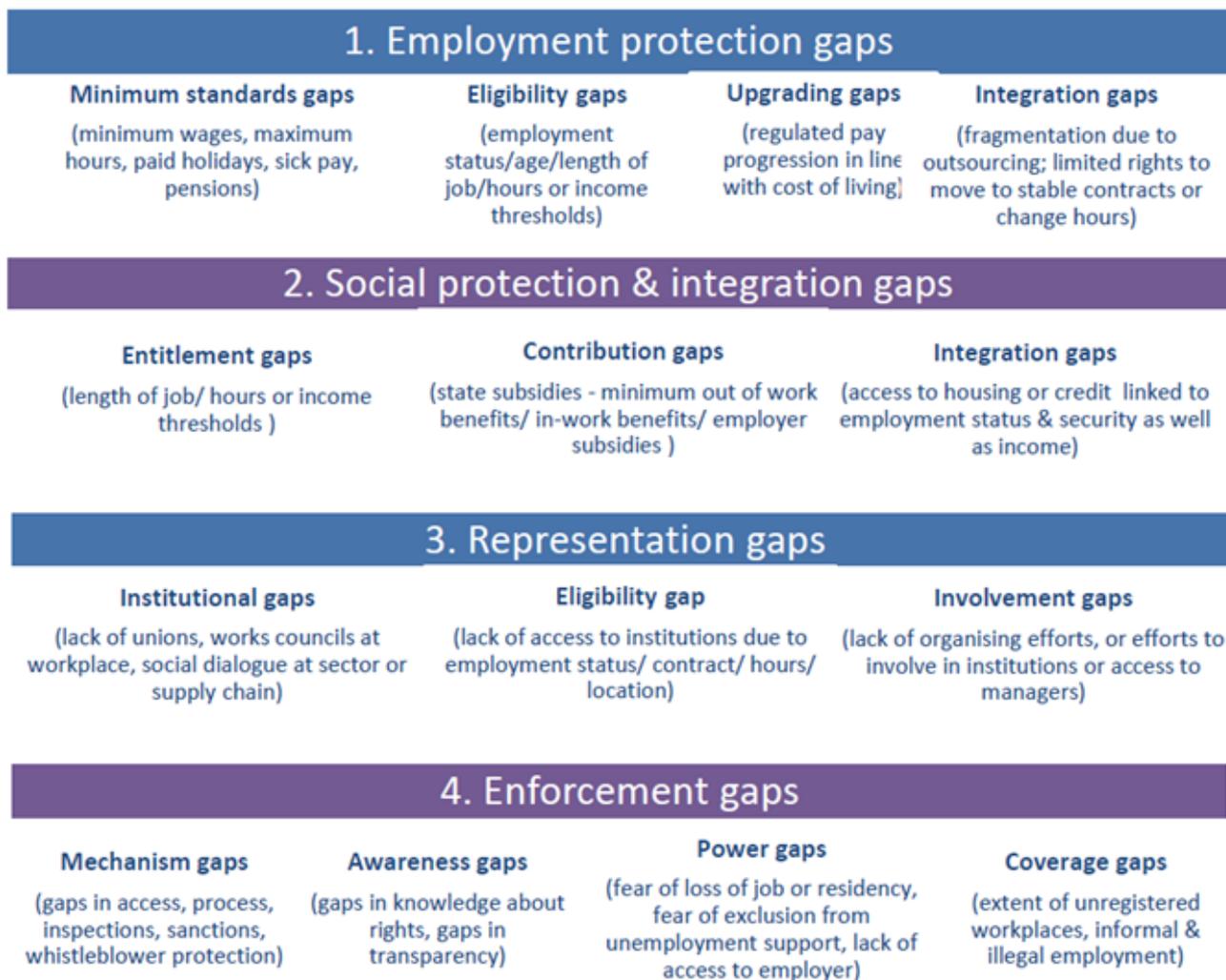
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<sup>3</sup> See for example Standing, G. (2011) *The Precariat: The New Dangerous Class*, London and New York: Bloomsbury Academic.

<sup>4</sup> See, for example, Rueda D. (2006) 'Social democracy and active labour market policies', *British Journal of Political Science*, 36: 385-406; Palier, B. and Thelen, K. (2010) 'Institutionalizing dualism: complementarities and change in France and Germany', *Politics & Society* 38(1): 119-148.

<sup>5</sup> This positioning builds on arguments by Rubery, J. (2015) 'Re-regulating for inclusive labour markets', Geneva: ILO; and Crouch, C. (2015) 'Labour market governance and the creation of outsiders', *British Journal of Industrial Relations*, 53(1): 27-48 and on arguments with respect to the negative effects of reforms on vulnerable workers by the ETUI (2014) *Benchmarking Working Europe 2014*, Brussels: ETUI; Schömann, I. (2014) 'Labour law reforms in Europe: Adjusting employment protection legislation for the worse?', *ETUI Working Paper 2014.02*.

Figure 1. Protective gaps shaping precarious employment



These interact with **social protection gaps** that deprive workers from, for example, unemployment benefits, maternity leave and pensions. On the one hand, gaps arise where hours, earnings and job continuity thresholds exclude many job types and work patterns and, on the other, rules may generate inequalities in levels of contributions or subsidies towards social protection. **Representation gaps** occur where there are absent or weak institutional arrangements for representation via unions or works councils, as well as employer engagement in collective employers’ organisations (e.g. in workplaces where many temporary agency workers are employed, or among subcontractor workplaces). Workers may also fall outside of coverage where eligibility rules exclude them on the basis of self-employment status for example, and there may be unequal patterns of involvement when unions make limited efforts to recruit workers employed on non-standard contracts.<sup>6</sup> The related problem of **enforcement gaps** reflect growing awareness among social partners that more needs to be done to ensure statutory rules and collective agreements are abided by. Workers may lack information about their rights, or be fearful of contesting the issue, or face considerable constraints where the work is organised in the informal economy. The following summaries for each gap provide a snapshot of country issues.

<sup>6</sup> Our research also finds many unions face diminished resources and capacities in the wake of the financial crisis -see, also, Glassner, V. (2013) ‘Central and eastern European industrial relations in the crisis: national divergence and path-dependent change’, *Transfer* 19(2): 155-169.

## Employment protection gaps: minimum wages, job security and working time

Workers are less exposed to precarious conditions the more that employment protections over pay, job security and working time are set at a decent level and extend to all workers regardless of employment contract. In reviewing gaps in employment protection we found that:

- i) decent protective standards in some countries have already been extended to some workers with non standard, part-time and short tenure contracts;
- ii) a regulation may have both *inclusive* and *exclusive* features -for example a minimum wage may be fixed at a low level (exclusive) but have high coverage (inclusive);
- iii) interactions between legal regulations and collective bargaining vary across countries; and
- iv) reducing precariousness associated with a type of employment contract may require policies that take an unequal or targeted approach.

Protection against low pay for people in precarious employment depends to a great extent on the **inclusiveness of minimum wage rules**. In five countries a statutory national minimum wage applies to all employees regardless of tenure or hours and in the UK, Spain and France some categories of the self-employed may also be eligible. Denmark relies on collective bargaining agreements for minimum wage setting (and for job security and working time regulations) but coverage is not guaranteed for those working under eight hours per week or with less than one month's tenure. Levels of minimum wages relative to median earnings also matter: they are high in France and Slovenia (and in industry agreements in Denmark), medium in Germany and the UK, and low in Spain. Since 2010 Slovenia and the UK have been raising the minimum wage level while Spain has abandoned a policy of improvement. Germany introduced a new minimum wage in 2015 and tied it closely into the collective bargaining systems to prevent it becoming a 'going rate' for low-wage jobs –a problem that has become quite extensive in the UK.

Compared with minimum wages, workers in precarious jobs face many more gaps in employment security protection due to eligibility based on minimum job tenure or hours thresholds. Consequently many recent entrants (young people or those previously unemployed or inactive) and many on temporary contracts are excluded from protection. Job tenure requirements vary from 6 months or less in Spain, Slovenia and Germany to 9 to 24 months in the UK and France. In Denmark time periods vary from short to long according to the collective agreement. Spain is notable for granting employment protection to temporary workers after just one month's service with a contract of less than six months and for raising redundancy compensation per year of fixed-term employment<sup>7</sup> from 8 to 12 days. Thus despite having still the highest share of temporary employment in Europe, Spain now provides some of the strongest employment protection standards for these workers. These improvements for temporary workers are matched by deteriorating protection for standard contracts in Spain, a trend also found in Slovenia from a high level and the UK from an already low level.

The growth of zero hours contracts (UK), short-hours mini jobs and 'work on demand' contracts (Germany) and 'reserves' (Denmark) indicates the importance of a right to a minimum number of hours of paid work per shift or per week. Only France sets statutory minimum hours, though collective agreements in Denmark may also set minima of 20-28 hours per week. In France many exceptions are allowed to the high minimum of 24 hours per week such as for students and those in subsidised jobs. In Germany minimum hours

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<sup>7</sup> This right applies to workers with 'temporary contracts for employment promotion', *contrato temporal de foment del empleo*.

guarantees only apply to ‘work on demand’ and not to regular part-time workers, and collective agreements can even reduce the protections<sup>8</sup>.

## Social protection gaps

Precarious work may deprive individuals of access to decent levels of social protection, including **unemployment benefits, maternity pay and pensions**. Employers’ use of precarious employment forms may also increase the need for income supplements for those in work. Moreover, where precarious employment is low paid and/or exempt from social contributions it may create problems for the funding of social protection.

Access to social protection often depends upon meeting hours or earnings thresholds to make contributions, on numbers of contributions over specific periods and on employment status. **More inclusive systems** (figure 2) have low thresholds, allow for discontinuity of employment, and extend to the self employed. They also set minimum benefits per person that recognise that individuals in precarious work have similar minimum support needs and may give credits for non-wage work activities such as care work. Trends over recent years towards more inclusivity, associated with the ‘normalisation’ of non-standard forms of work, vary across the six countries and coincide with trends towards **more exclusive systems** as levels of benefits decline or overall eligibility requirements for benefits increase.

*Figure 2. Inclusive and exclusive social protection systems*



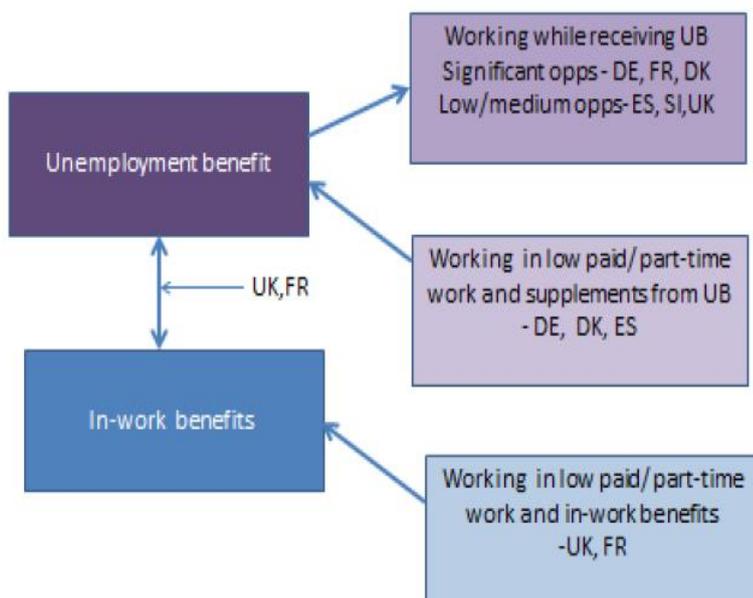
<sup>8</sup> This is a general feature of German legislation on working time whereby many standards are in fact set out as non-mandatory or concessionary law, *tarifdispositives Recht*, so that they can be adjusted to the needs of occupations/industries by collective agreement.

Of the three types of benefits considered, **maternity pay** is the most inclusive, as all countries except the UK have short or flexible continuity requirements and no or low earnings thresholds. France, Slovenia and Denmark also cover the self employed and they can opt in in Spain and Germany. Spain has made specific arrangements to require only a very limited employment history for those under 26 in recognition of high youth unemployment. In contrast, the UK pays the lowest benefit and requires 6 months continuous employment with the same employer for full rights. Pension protection has also taken on some inclusive dimensions including: compulsory cover for the self employed (all except Germany); minimum pensions that provide partial compensation for low pay or short hours (again except Germany<sup>9</sup>); and eligibility of part-timers to insure on higher benefit schemes designed for full-timers (Denmark only). Exclusions from pension contributions due to earnings or hours thresholds are still issues in the UK, Germany and France, although in France minimum contributions have been reduced.

**Unemployment benefits** are the most exclusive benefits as most self employed are not eligible except in Slovenia (registered businesses only) and Denmark (full-time self employed only); voluntary opt ins in Spain and Germany are not widely used. Minimum benefit levels support the low paid and part-time workers (except Germany), while Spain, France and Denmark seem to have done most to help the intermittently employed to accumulate rights to unemployment benefits. Countries vary considerably in the availability of social assistance once contributory rights are exhausted. Differences in social protection reflect differences in employment and family systems: Denmark and Slovenia assume women will be engaged in continuous full-time employment and compensations are made against this standard model. At the other extreme Germany still relies on the family to provide support as indicated by the lack of any minimum individual contribution-based social benefits.

Precarious work is also at the heart of changes to social protection systems. It influences the trend to provide benefit support for those in work, but also shapes ‘work-first’ policy reforms designed to encourage the unemployed or inactive to take up work whatever its quality. The UK and France, and to a limited extent Germany, provide extensive in-work benefits that subsidise low earnings caused either by low hourly

**Figure 3. Integrating out-of-work and in-work benefits**



pay or short hours. Spain and Denmark allow only short-term support and Slovenia so far is not providing benefit support for low wage work (figure 3). These trends are blurring the divide between being unemployed and being employed. Moreover, there is a risk that the social security contributions system is incentivising the use of precarious work, especially low and variable hours, low-wage and self employment. The posted worker directive also provides a strong incentive for employers in high social security contribution countries as it allows contributions to be paid on home country rules.

<sup>9</sup> Also, in Slovenia part-time work results in only pro rata credits unless it is agreed under the right to reduce hours for parents of young children.

## Representation gaps

Gaps in representation depend firstly on the institutional structure of representation for all workers. These can be considered along two dimensions: collective bargaining coverage and coverage of information and consultation at the workplace. On this basis we find that Denmark and France have relatively high coverage along both dimensions; Spain and Slovenia have high collective bargaining coverage but moderate workplace representation; Germany has moderate bargaining coverage but low workplace participation and the UK scores low on both dimensions.

There are relatively few specific provisions to assist in the organisation and representation of precarious workers; one positive example is the right for agency workers in Germany to participate in works council elections after three months employment, but this is not that effective due to the short length of placements. Despite many initiatives to organise and represent precarious workers, key challenges remain:

- 1) part-timers still tend to be under-represented, in part due to working in sectors with low coverage;
- 2) there are dilemmas as to whether the main objective is to represent those in non-standard employment or to reduce the number of such contracts; and
- 3) variations in collective bargaining strength and employment conditions across sectors complicates strategies to protect precarious workers –for example, work may be outsourced to other sectors that have lower collectively agreed wages.

Overall, the limited success of representing workers in precarious employment and resisting the erosion of conditions may be considered more an outcome of structural aspects (weak unions, absent unions in certain industries and among certain employment types) than a lack of union commitment. This suggests that within the environment of precarious work, trade union activities are often precarious themselves. Labour market dualism thus appears to be more related to structural deficits than to union strategies to favour workers in standard employment. Strong representation in the overall labour market is also found to generally have positive effects on the conditions of those that could be considered ‘outsiders’. Yet all six countries face similar challenges of how to improve representation in precarious labour markets, how to overcome increasing blind spots in knowledge (e.g. about working conditions and about employer tactics to avoid regulatory constraints<sup>10</sup>), and how to prevent employers using subcontracting to evade representation strategies (especially via use of false self employment).

## Enforcement gaps

Enforcement gaps reflect the complex relationships between legal protections and systems of social dialogue in different countries and in different sectors. The six countries display three broad types of enforcement regime (figure 4). In the first type, enforcement is embedded within the system of social dialogue (Denmark, Germany and Slovenia). In the second, enforcement mechanisms are complementary to the system of social dialogue (France and Spain), and in the third enforcement is a counterweight to the weakness of social dialogue (UK).

Differences in enforcement regimes give rise to particular problems such as awareness gaps, power gaps, and coverage gaps. In countries with strong or coordinated systems of social dialogue (Germany, Denmark

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<sup>10</sup> On this issue our research complements other evidence of employer ‘exit options’, see Doellgast, V., Lillie, N. and Pulignano, V. (eds.) (2017) *Reconstructing Solidarity: Labour Unions, Precarious Work, and the Politics of Institutional Change in Europe*, Oxford University Press.

and Slovenia), minimum standards are typically regulated through collective agreements, with responsibility for monitoring and investigating breaches shared between employers and unions and labour inspectorates accorded a relatively narrowly defined role. Workers in non-covered sectors or occupations will be disadvantaged due to a lack of both strong collectively agreed minimum standards and a fall-back position of a strong legislative system. State-centred systems (France, Spain) may combine social dialogue to establish ‘norms’ with a clear role for state agencies in monitoring and enforcing standards. In contrast with Denmark, Germany and the UK, labour inspectorates in France and Spain are ‘generalist’ in that they have responsibility for enforcing a wide range of standards (e.g. health and safety, working time, equal treatment, wages), though gaps in effectiveness are a problem especially in the large informal sector. In the UK, where social dialogue is weak and fragmented, the law plays a greater role.

*Figure 4. Enforcement regimes*



In all countries, much depends on the scope and remit of inspection agencies and social partners, as well as the ‘bite’ of minimum standards (e.g. the relative value of minimum wages); standards may be well enforced but at a low level. Furthermore individual legal challenges over mistreatment, underpayment or discrimination are severely constrained by the resources and knowledge needed to construct a case, as well as accessibility, as demonstrated by the recently introduced expensive fees to take a case to a tribunal in the UK. There is also evidence of increasing reliance on a corrective rather than a preventative approach to enforcement and compliance. This means only inspecting after a serious incident instead of committing resources to raising awareness among workers and sharing information and best practice among companies to avert problems. Although the number of inspectors has increased in France and Spain (to deal with social security checks and undeclared labour), in Denmark, Slovenia and the UK numbers appear to be declining although data are unreliable. One counter-measure adopted by all countries is to increase fines for specific breaches of workers’ rights. However, without a minimally effective inspectorate, employers may be increasingly tempted to take a chance that breaches will not be detected or reported by workers.

# Comparing Protective Gaps for Four Types of Precarious Work

## i) Resilience or erosion in the SER?

The standard employment relationship (SER) is a cornerstone of systems of production, employment relations and social protection (figure 5). While most European citizens are employed under the SER, the weakening of labour market institutions, such as collective bargaining, and the fragmentation of production through outsourcing has left many workers even in full-time permanent employment at risk of low wages and limited career prospects. The evolution and form of the SER varies across the six countries, reflecting differences in regulation, gender relations, and systems of employment and social protection (table 1). These in turn give rise to differences in the size of protective gaps with other employment forms.

Employment protection for the SER has remained relatively stable in four countries but declined in Spain and Slovenia. However, the UK still has much lower overall protection than the other five countries. There is clearer evidence of erosion of the SER in data on wages which show common trends towards lower wage shares and widening wage inequality (except in the already unequal UK). Moreover, among permanent workers, the economic crisis increased the risk of in-work poverty in all countries, with no evidence yet of decline in Spain and the UK.<sup>11</sup>

We find limited evidence to support the notion that the SER is in terminal decline. Full-time and permanent work is still the main form of employment relationship across the EU even in liberal market economies such as the UK. Although self employment has grown in Slovenia, Spain and the UK, more people are in work (even after the financial crisis) underpinned by steady growth in female participation rates (with the exception of Denmark).

Figure 5. Institutional anchors of the SER



Table 1. Historical SER context in the six selected countries

	Regulation of SER	Male breadwinner 'norm'	Labour market flexibility for permanent workers	Gaps in standards between employment forms
<b>Denmark</b>	Voluntarism	Weak	High (but with strong social wage)	Moderate
<b>France</b>	State-centred voluntarism	Moderate	Low	Moderate
<b>Germany</b>	Hybrid	Strong	Low	High
<b>Slovenia</b>	State-centred voluntarism	Weak	Low	Low
<b>Spain</b>	State-centred voluntarism	Strong	Moderate	High
<b>UK</b>	Employer-led voluntarism	Moderate/ strong	High (but without strong social wage)	Low/moderate

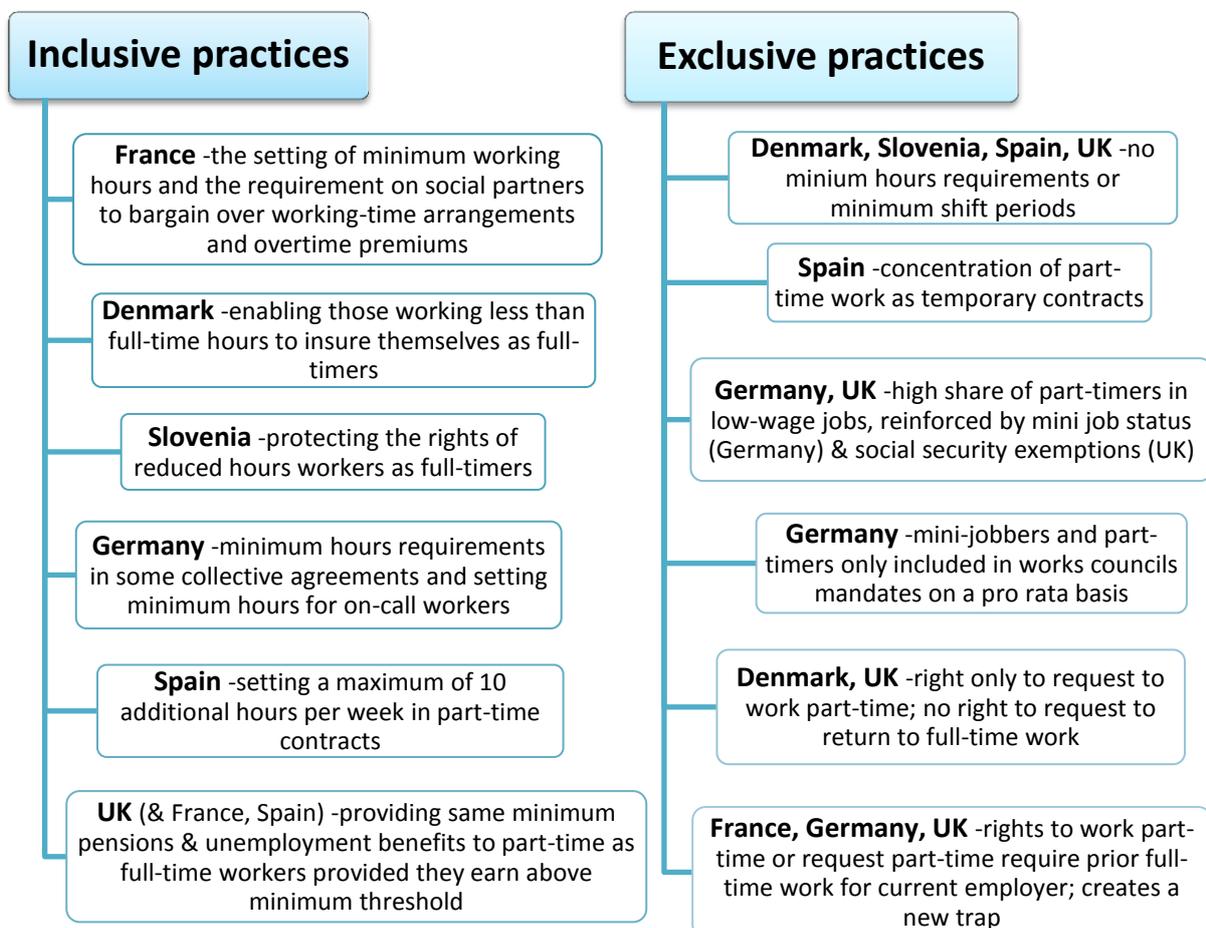
<sup>11</sup> Data from Eurostat *EU-SILC survey [ilc\_iw05]* show in-work poverty among permanent workers in Spain rising from 4.8% in 2007 to 6.0% during 2008-2009 and still at 5.9% by 2014, and in the UK from 5.0% in 2007 rising to 6.4% in 2012 and still at 6.0% by 2014.

Nevertheless, norms of fairness, redistribution, and job security have to an extent been hollowed out. The ‘feminisation’ of the workforce, focus on labour market activation and weakening of the welfare state have served to ‘normalise’ the principle of employment flexibility and the risks of low wage and short-working hours. At the same time, there is also evidence that in particular contexts the SER can and does adapt and extend its protection to non-standard forms of employment, as considered in the next sections.

## ii) Part-time and variable hours work

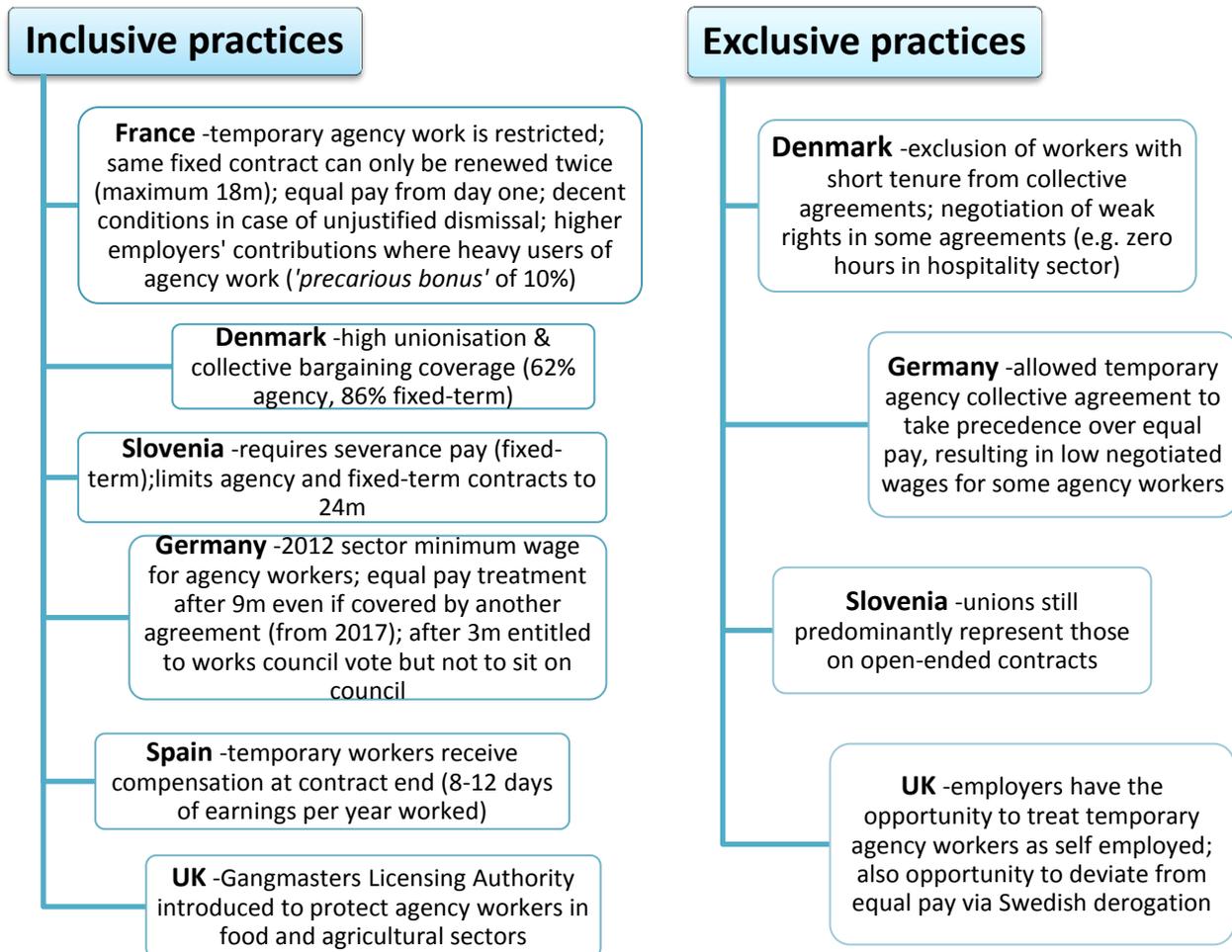
The six countries revealed strong differences in the incidence of part-time work, in who works part-time and in the extent to which it results in poor working conditions. Germany and the UK both have a high incidence of part-time work, mainly concentrated among adult women, reinforced by distinctive tax and social security arrangements. Part-time work is mainly voluntary but much of it is precarious in offering only low pay, poor progression, and with risks of exclusion from benefits and employment rights.

In contrast in Denmark and Slovenia part-time work is primarily associated with young people and is mainly voluntary, although Denmark has a high and Slovenia a low overall incidence. Continuous employment by women is the norm in both countries and in Slovenia although parents of young children have the right to reduce hours all are expected to return to full-time work when children are older, while in Denmark there is more of a choice. Spain and France, two medium incidence countries, also have very high shares of involuntary part-time workers, indicating a lack of acceptance of part-time work. In Spain most part-time work is temporary, low paid and concentrated in the private rather than the public sector. France retains a high share of involuntary part-time work despite having reduced protective gaps for part-time workers in many respects. The following picture shows country examples of inclusive and exclusive practices that are reversing or reinforcing the precariousness of part-time work.



### iii) Temporary employment

The incidence of temporary employment varies by country with shares in the UK (6%) and Denmark (9%) relatively modest, but significant in Germany (13%), France (16%) and Slovenia (18%) and high in Spain at 25% despite recent strong declines<sup>12</sup>. Fixed-term contracts dominate over agency work in all six countries with the latter almost non-existent in Spain. Spain, Slovenia and France tend to offer only short duration contracts while duration tends to be longer in Germany and Denmark where 41% and 30%, respectively, of temporary workers enjoy contracts of more than two years duration.<sup>13</sup>



The forms of protective gaps again vary greatly between countries. The UK stands out for providing the least protection for temporary workers: it allows agency works to be treated as self employed, provides no specific compensation for termination of fixed term contracts, requires agency workers to wait 12 weeks for equal pay and provides a loophole to this known as the Swedish derogation. In contrast Spain, Slovenia, Germany and France offer equal pay for agency workers and severance pay to those on fixed-term contracts from the very start of employment, with France in particular using a range of regulations to reduce protective gaps. Spain has introduced employment protection and redundancy rights after short duration in part to compensate for its high use of temporary contracts. Denmark excludes short duration workers from collective agreements but on the other hand has a high rate of unionisation of such workers and high collective bargaining coverage. Collective bargaining coverage is also achieved through specific temporary agency agreements in France and Germany and by the extension of agreements in France,

<sup>12</sup> Online 2015 Eurostat data, 'lfsa\_etpga'.

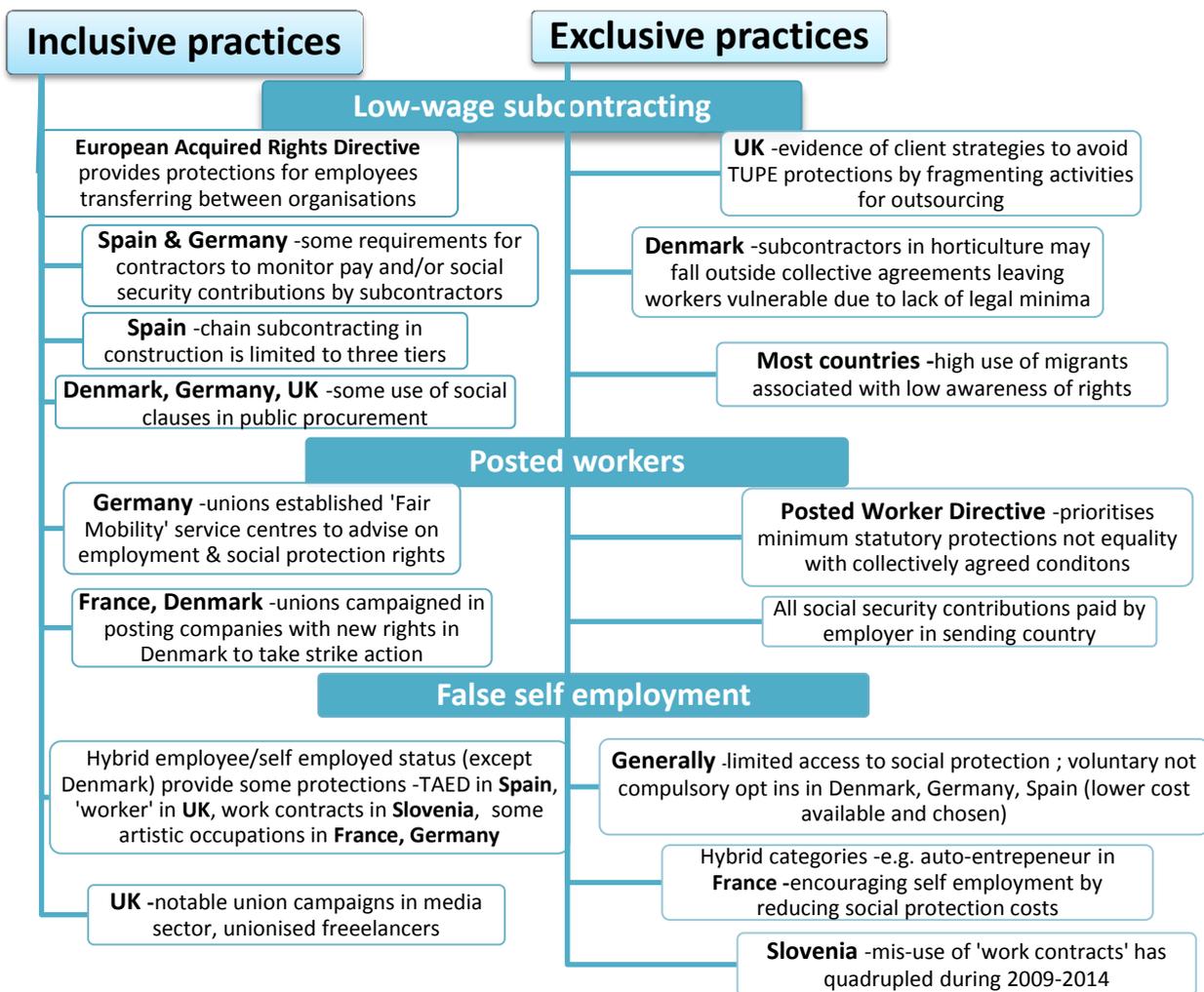
<sup>13</sup> The large share of missing responses in the UK survey data mean reported patterns are not statistically reliable.

Slovenia, and Spain. However, such agreements in Germany have set relatively low wages, thereby levelling down equal pay, though this has been somewhat reversed recently.

Overall, the requirements for equal pay in all six countries cannot prevent the predominance of poor pay, precarious representation, unenforceable transitions to open-ended contracts, and a lack of seniority rights. Indeed the temporary character of employment implies the absence of a continuous employment relationship and therefore no mutual employer-worker investment or the ability and incentive to enforce better employment conditions. The above inclusive and exclusive practices towards temporary work (fixed-term and agency) shape its precarious character, but without regulations to increase the costs of temporary contracts to employers or to ensure mutual benefits to employees and employers, the outcomes may be limited.

#### iv) Subcontracted work

Three types of precarious subcontracted work are considered: i) subcontracted employees, ii) posted work and iii) false self-employment. Each form of subcontracting poses different challenges when it comes to practices to limit precariousness: examples of inclusive and exclusive practices by employment form can be summarised as follows.



There are limited official data, but table 2 indicates the recent post-crisis trends and cross-country variations in use of posted workers and own-account self employed. Employer policy and practice constitute a key trigger for the use of precarious subcontracted work particularly when there are strong financial incentives to contracting –for example to pay low social security contributions for posted workers or for self-employed contractors. Government policy may also play its part promoting precarious work. For example, stringent conditions on the unemployed to seek paid employment of any form in Slovenia and the UK have encouraged moves to self employment -in Slovenia, a 2008-2014 scheme paid the unemployed €4,500 if he/she remained self employed for 24 months.

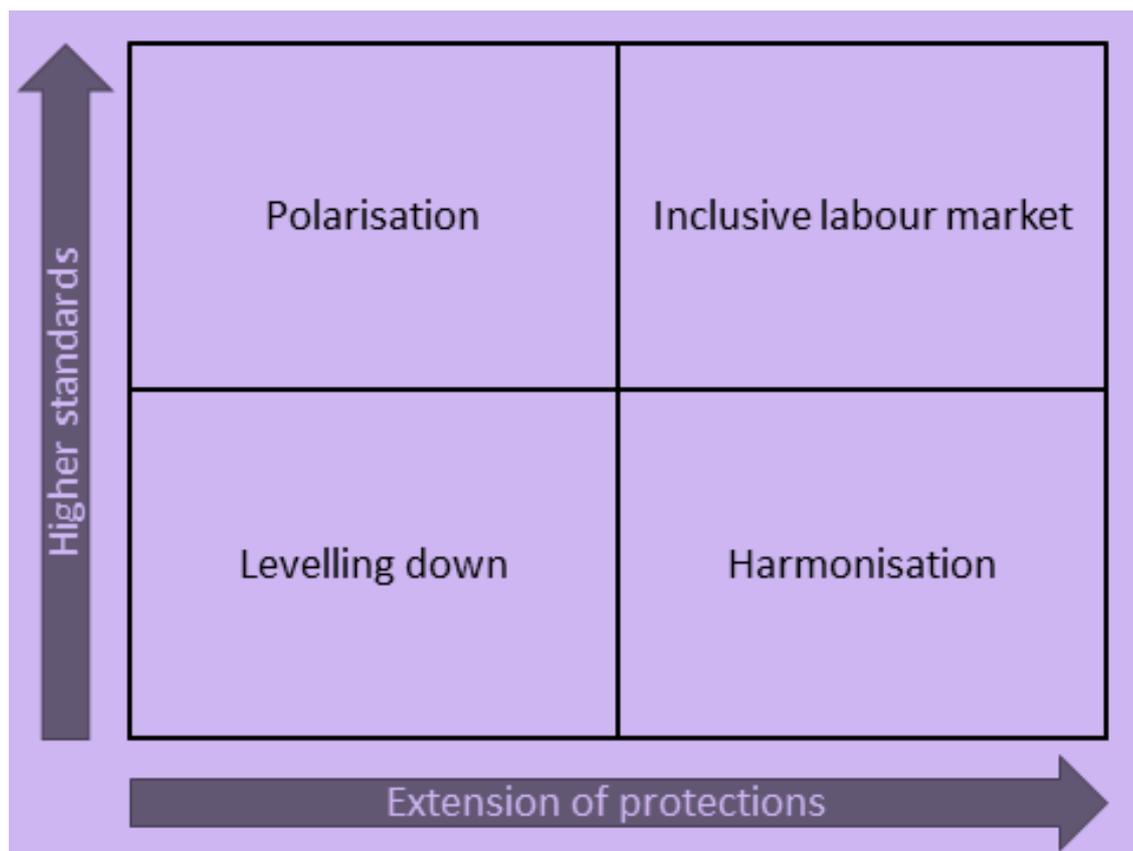
**Table 2.** Summary of patterns and trends in six countries: posted work and self employment

	Denmark	France	Germany	Slovenia	Spain	UK
<b>Posted work:</b>						
<i>Post-crisis trend in sending posted workers</i>	small rise	large fall	rise	large rise	large rise	stable
<i>-volumes sent</i>	low	high	high	very high	medium	Low
<i>-volumes received</i>	low	very high	very high	very low	medium	low
<b>Self employment:</b>						
<i>Post-crisis trend</i>	stable	rise	fall	large rise	rise	large rise
<i>Own-account workers (share of total SE)</i>	low	low	low	average	average	very high
<i>Gender difference</i>	wide	wide	wide	narrow	narrow	narrow

## Re-regulating the employment relationship

A key question is whether the efforts of social partners should be focused on restoring the position of the standard employment relationship, or on the stronger regulation of non-standard work. Four scenarios can be identified (figure 6). The two left-hand scenarios represent strategies that are exclusive in nature: standards may be **levelled down** to the lowest comparators or there may be a **polarisation** of standards between different sectors or workforce groups (e.g. via social security reforms that favour full-time male breadwinners over women in part-time roles), reinforcing the differential bargaining power of workers. The right-hand strategies are more inclusiveness through extending protections. When achieved without an increase in standards, through **harmonisation**, it likely involves winners and losers. **Inclusive labour market** changes, via government policy or the efforts of social partners, extend protections to workers in precarious employment and raise standards for all. Through almost 20 detailed case studies in the six countries, our research investigated different positive forms of social dialogue that sought to reduce precarious work via paths of either harmonisation or inclusive labour markets.

Figure 6. Alternative models of labour market regulation



## Closing Protective Gaps through Social Dialogue

Social dialogue can involve traditional channels of union-employer collective bargaining, or novel and innovative forms of collaboration involving multiple stakeholders, such as government agencies, civil society organisations, regional and local government and training bodies. The following five themes summarise the empirical evidence from detailed case studies conducted in all six countries.

### Integrating social protections for part-time, casual and variable hours workers

Systems of welfare and social protections are arguably the foundation of the Standard Employment Relationship (SER), and gaps in protection may exist where workers are on less than full-time hours, or on other forms of casual and variable hours contract where earnings are low or fluctuating. Evidence from the case studies suggests that localised action through social dialogue to stabilise working hours and earnings can potentially have a positive impact on social protections by increasing hours and earnings.

Trade unions were instrumental in ending the use of zero hours contracts in the **UK local authority care work case**, and local collective agreements set longer working hours for both **care and retail** workers in **France** and subcontracted **catering workers** in **Spain**. Similarly, unions have been at the forefront of efforts to stabilise working hours in the **retail sector in Slovenia**. Longer hours for mini-jobbers in **Germany** combined with tax changes would give **retail** workers (mostly women) higher earnings independent of their spouses.

### **Utilising ‘wide social dialogue’ to combat precarity among domiciliary care workers in France**

A crisis in recruitment and retention and ‘hidden precarity’ among care workers in the French region of *Provence Alpes Côte d’Azur* provoked a new political will among regional government and social partners to diagnose and address the problem together. An impressive array of stakeholders including regional development agencies, training bodies, public employment services, health insurance fund, trade unions, employers and local government negotiated a regional cooperation agreement in 2010 aimed at: i) reducing involuntary part-time work (and addressing unpaid travel time via smarter spatial distribution of the workforce); ii) financial assistance for training and professional pathways, iii) qualifications for job seekers to the sector extended in 2014 to also securing pathways into other healthcare jobs.

During 2012-14 3,700 care workers benefited from increased hours, training, higher pay (an extra €320 per month) and improved protections. Moreover, this agreement has improved social dialogue in this sector, building ‘a genuine arena for negotiation’. More still needs to be done however to improve working conditions as many women were unable to step up to full-time hours because of fatigue and burnout.

### **Addressing ambiguities in employment status**

As technologies and production systems evolve, we are observing rapid changes in employment relationships that test customary practices about what constitutes an ‘employee’ or ‘self employed’ and challenge countries to establish clarity and equality of employment status. Segmentation of workers by employee, agency worker and self employed status impacts directly on entitlement to employment rights and social protections. In addition, ambiguities in legal status of many workers deemed to be self employed presents employers with significant scope to transfer risks onto workers. Evidence from the country case studies suggests that social dialogue can reduce the scope for employers to exploit ambiguities in employment status, but this can come at a cost where standards for all workers are levelled down. In **Slovenia**, around 250 **freelance media workers** at the state owned broadcaster RTV were transitioned onto permanent contracts following a management-union agreement, with significant union support from the Slovenian Labour Inspectorate and financial pressures on the employer from legal compensations paid to workers. Legal reform in **Spain** around economically dependent self employment (TAED<sup>14</sup>) in principle reduced ambiguities in legal status and reduced precarity. However, the case studies caution that while some employers may switch formerly self employed workers to better protected TAED status other employers may push workers with a standard employment contract into false self employment in order to reduce employers’ costs<sup>15</sup>.

Although take-up has been patchy, a joint union-employer task force for the manufacturing sector in **Denmark** (since 2014) has assisted social partners at local level to close protective gaps facing **temporary agency workers**, including examples of increasing job security by conversion to a permanent position after 3-6 months and training between assignments. In the **UK**, local union action was important to slow down the introduction of **agency workers in the food production case** but the gains were short lived as job losses followed shortly afterwards. Absence of effective social dialogue in **the UK logistics case** has meant that high use of agency workers has seen harmonisation achieved by a gradual levelling down of pay for permanent workers.

<sup>14</sup> TAED refers to *trabajador autónomo económicament dependiente*, defined in the 2007 Labour Code for the self employed.

<sup>15</sup> The Spanish case studies contrast developments at two large bakery firms, Bimbo and Panrico

## Closing enforcement gaps

Improved employment rights, along with rules and regulations which govern the behaviour of employers, do not necessarily translate into an effective system of protection if standards are not properly enforced or considered legitimate. Evidence of a greater reliance on a corrective rather than preventative approach is affecting each country's norms of compliance; employers may be more tempted to take a chance in the expectation that regulation breaches will not be detected and that workers will not raise concerns.

Case-study evidence shows that social dialogue operates in multiple ways to ensure that rules and regulations are properly enforced. For example, at the organisation level, unions in both the **UK higher education sector** and the **Slovenian media sector** have been successful at ensuring a wider range of workers' benefits from the rights and standards set down in the SER by pressing employers to reduce the share of non-standard contracts. In **Germany**, voluntary agreements which commit clients at the top of **meat and steel supply chains** to improve working conditions and enforce basic entitlements such as the minimum wage among subcontractors has seen a reduction in employers' use of non-standard work and posted workers that had been providing a means of evading obligations. In **Spain** a new legal limit placed on the number of subcontracting tiers is designed to maintain a stronger link between the top and bottom of the **construction** supply chain and ensure that health and safety issues are properly addressed by contractors at each level.

## Closing gaps along the supply chain

A combination of complex chains of subcontracting, cost-competitive procurement processes, and offshore transfer of liabilities (e.g. via a posting company) often place the subcontracted worker in a precarious position. Nevertheless, our case studies reveal many interesting developments involving coalitions of actors within and across countries seeking to close protective gaps and establish new forms of collective bargaining and/or strengthened social dialogue to exact greater social value from subcontracting practices.

In **Denmark**, **Germany** and **the UK**, social partners in the public sector have recently been incorporating 'social clauses' in public procurement contracts. In all three countries, subcontracted workers risked being covered by a less generous collective agreement (than workers in the public sector client organisation) or none at all. A case study of the **municipality government of Copenhagen** found social partners had negotiated labour clauses and chain liability in all procured services. They also benefited from new forums for social dialogue for subcontracted cleaning, construction and housing services. Key to the success (and lacking in other Danish municipality agreements) is the appointment of external, independent auditing of subcontractors' compliance.

Monitoring has also proved crucial in the **case study of Bremen municipality** which improved enforcement of minimum wages especially among construction sector subcontractors, although social partners are calling for tougher sanctions. In **the UK**, local authorities have been pressed by the public sector Unison to implement its 'Ethical Care Charter', which includes requiring subcontractors to pay the living wage (at least 15% higher than the statutory minimum wage) and to pay travel time among other conditions. Our case study of **Leeds municipality** shows how local social dialogue can make this effective, albeit severely constrained by the harsh, ongoing spending cuts imposed by central government since 2010 which also restrict capacities for independent monitoring and increase risks that other elements of workers' total pay will be cut (such as unsocial hours pay premiums).

In **Spain** a major legislative reform in 2006 has considerably reduced risks to workers of subcontracting in the construction sector in response to several years of trade union campaigns about the high rate of

accidents in the sector. New legislation limits vertical subcontracting of construction activities to three tiers and requires all firms to be registered. This was a very idiosyncratic form of social dialogue whereby the construction union (FECOMA<sup>16</sup>) campaigned for 600,000 signatures in support of a legislative initiative as allowed under the Spanish Constitution.

## Giving voice to vulnerable workers

While precarious work can be found among many diverse sectors and occupations of the economy, certain workforce groups tend to be over-represented –youth, the low educated, women, and migrant and posted workers. Several case studies therefore investigated social partners' efforts to improve representation gaps and strengthen rights of vulnerable workers to employment protection and social protection.

Efforts to extend the benefits of union protection to migrant workers are proving fundamental in many European countries. In **Denmark**, union membership is very low among migrants –estimated at just 12% among Polish workers. A positive case study of a **fish processing company in Northern Jutland** found that Romanian workers had approached the trade union (3F), despite fears of being fired by their employer, and started a lengthy process of building trust with local union representatives. A subsequent union media campaign highlighted the modern slavery conditions in the company. The union issued an industrial action against the company and eventually won collective agreement with conditions following industry norms. A similarly positive case in **France** involved the formation of a 'social space' for cooperation and dialogue among social partners and local elected officials to address poor housing conditions and improving awareness of rights among **seasonal migrant workers in the Languedoc-Roussillon region**.

In **Slovenia**, a great deal of public debate and collective action has focused on the increasingly **precarious situation of young people**. Problems of unpaid internships and unregulated freelancing (false self employment) have been a catalyst since 2010 for several new representative organisations, including the Movement for Decent Work and Welfare Society, the Trade Union *Mladi Plus* (Youth Plus) and the Trade Union of Precarious Workers. The largest is *Mladi Plus* with around 3,000 members and growing, and campaigning on unemployment, youth housing, career counselling and law counselling for their members.

## What recommendations?

Our research findings underpin the need for all stakeholders a) to be more aware of the extensive protective gaps across European labour markets and b) to design and implement effective policy and practice (via legal reforms and/or collective agreements) that will close gaps and reduce the pervasiveness of precarious employment. Our high-priority recommendations addressing all four protective gaps and drawing lessons from our case studies are as follows:

- ❖ **Establish minimum hours guarantees** accompanied by greater employee control over work schedules
- ❖ **Use levies and funds to compensate for risks encountered by workers in non-standard employment** such as targeted training subsidies or tax penalties to employers
- ❖ **Make collective agreements more inclusive**, including greater use of extension mechanisms
- ❖ **Improve capacities for social partners to perform socially responsible bargaining**, including on gender equality issues
- ❖ **Extend employment rights and social security protections to the self employed** especially health insurance and pension provision

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<sup>16</sup> The Construction Federation of the Spanish Trade Union Comisiones Obreras.

- ❖ **Extend rights to flexible working within standard employment** and from at the point of recruitment
- ❖ **Make social security protection more inclusive** to provide for high minimum benefits and facilitate access for workers in non-standard employment
- ❖ **Strengthen works councils' rights to act on reducing excessive employer use of non-standard employment forms**
- ❖ **Include workers on non standard contracts in workplace systems of representation**
- ❖ **Continue to develop strategies to mobilise migrant workers** especially in unregulated sectors
- ❖ **Commit additional resources to the monitoring and enforcement of labour standards**
- ❖ **Encourage (via legislation or industry agreements) the diffusion of good practice 'social value procurement' to reduce precarious work among subcontractors**

Our investigations also reveal new opportunities made possible through multi-faceted forms of social dialogue that engage a wider group of stakeholders and extend the traditional remit of industrial relations issues. Our evidence suggests this '**extended social dialogue**' (formal and informal) generates a better understanding and diagnosis of the issues relating to precarious employment. However, while often effective at local level we find little evidence of effective diffusion of mutual gains, suggestive of the need for increased capacities for trade unions in particular to coordinate strategies across regions.

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## Further details

The Comparative Research Report, six National Reports and six National Research Briefings are all available on the EWERC website at,

<http://www.research.mbs.ac.uk/ewerc/Our-research/Current-projects/Reducing-Precarious-Work-in-Europe-through-Social>

