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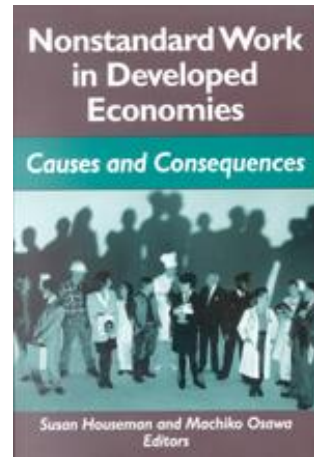
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# In Search of a New Framework for Flexibility

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# 10

## In Search of a New Framework for Flexibility

### Reregulation of Nonstandard Employment in the European Union

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#### THE ROLE OF LAW

Developing regulations for nonstandard employment remains an important feature of labor law and labor market practice at the European, national, sectoral, and firm levels in European countries. Standard employment contracts and nonstandard employment regulations are closely linked. The evolution of one form of employment contract has repercussions for the other. Regulation of nonstandard employment has combined a concern for employment flexibility for the firm and job security for the employee.

Nonstandard employment has been strictly regulated in Europe because it has been viewed as a way to circumvent employment protection legislation in standard employment relationships. Nonstandard employment is sometimes also called “atypical” or “precarious” employment, in contrast to open-ended and full-time employment contracts. The regulations are designed to protect workers in nonstandard employment against discrimination in the workplace. Without regulation, the use of atypical work could lower personnel costs of employers by lessening legal protection of workers.

Dismissal protection, which is generally greater in Europe than in the United States or Japan, is an example of the advantage to employers of easing regulations. In Europe, there are, on average, longer

notice periods in cases of dismissals, high redundancy payments in certain cases, the right to participate in training programs financed by the firm, and the right to be employed in another firm of the group if there are suitable vacancies. Similarly, standard employment contracts in Europe provide for generally higher levels of social protection (e.g., paid leave, paid overtime, paid sick leave, protection from unfair dismissal), and they are financed through higher social security contributions. The legal regulation of nonstandard employment tends to guarantee nonstandard workers the same rights *pro rata temporis* (in time equivalents) that permanent workers have; that is, rights to social protection, dismissal protection, the right to be counted as staff for the election of workers' representatives, and to participate in work councils.

However, in the 1980s, nonstandard employment was seen as a possible tool to better tackle the unemployment crisis in Europe and, therefore, the legal corset of regulations was loosened, with more flexibility given to nonstandard arrangements. This trend led to the increase of nonstandard work contracts in most European countries, but also to the development of new forms of work contracts. One of the effects of this deregulation was to increase the precariousness of certain employment situations (with, e.g., the introduction of frequent renewal of short-duration work contracts, the possible cessation of the work contract with no notice period and redundancy payments, or the nonpayment of social benefits in short-tenure jobs).

In the late 1990s, nonstandard employment became much more accepted; its necessity was acknowledged in the existing economic and political context. This new trend re-regulates nonstandard employment in a way that harmonizes employer flexibility with the job flexibility of employees (to better address professional and personal issues), while developing notions of social protection compatible with new forms of employment. The main function of labor law is no longer to simply restrict, but to facilitate, the use of nonstandard employment.

In this respect, two different legal theories (Schömann, Rogowski, and Kruppe 1998) have been advanced to explain the new role of laws, and even changes to laws. On the one hand, the legal theory of the "standard employment relationship" aims to shape an employment relationship or employment status as a right to a minimum of social protection, independent of the employment contract. The aim of this

legal doctrine is to rectify socially unequal relationships between the partners in an employment contract, in which the forms of employment express the employers' demands. Nonstandard employment is recognized as a different form of normal employment, and as an expression of a general trend of deregulation and changes in lifestyles, with social protections safeguarded.

Another legal theory, the theory of reflexive labor law (Rogowski and Wilthagen 1994), emphasizes that legal innovations are reactions to social or legal consequences of previous legal regulations (Schömann, Rogowski, and Kruppe 1998), such that internal factors related to the legal system itself influence the development of law. External changes (political, economic, or social) influence legal construction only if they are recognized as a problem within the legal discourse. When applied to nonstandard employment, this theory tends to view regulation (and deregulation) as a reaction to the difficulties created by employment protection measures themselves. Furthermore the re-regulation of nonstandard employment can be interpreted as a reaction to the abuses of nonstandard employment in circumventing standard employment relationships.

Both theories highlight the need to take into account the internal and external factors in legal regulation to better understand how the regulation of nonstandard work developed. These legal theories add complementary perspectives to the understanding of legal changes to nonstandard employment. In this respect, a particularly interesting issue is the legal modifications at both the European and national levels regarding nonstandard work. A cross-section of the various legal frameworks of nonstandard employment in selected European members states enables us to investigate in more depth the role of and changes to laws binding nonstandard work, as well as to evaluate country-specific approaches to employment protection.

The chapter is structured as follows. The next section provides a legal definition of various forms of nonstandard employment. The supranational European legal framework is outlined in the third section, followed by a country-specific review of the variety within the European framework in the fourth section. The fifth section compares regulation and practice across European Union (EU) countries. The final section reviews the legal changes and provides some conclusions

on the role of trade unions and employers' organizations in the process of regulation.

## **LEGAL DEFINITION OF NONSTANDARD EMPLOYMENT**

The definition of legal nonstandard employment focuses on part-time work, fixed-term employment, employment in temporary agencies, and self-employment. A major element of the classification of the individual labor contract is the term of the contract, that is, the duration. Nonstandard employment is usually defined with reference to standard employment, which is a legal, permanent, full-time work contract under the subordination of an employer. A standard employment contract secures a range of social protections (e.g., social benefits, measures against unfair dismissal) based on seniority in a firm. In contrast, nonstandard employment embraces a vast range of employment contracts that do not fit the former definition of standard employment because of the duration of work (not permanent work or full-time) or because of lack of subordination.

Generally, there are four categories of nonstandard employment: fixed-term employment, part-time work, temporary agency work, and self-employment. Each of these categories provides very specific legal and contractual conditions. Subcategories, such as independent contractors or workers provided by contract firms as well as on-call workers, enhance the diversity and complexity of nonstandard employment, with a range of regulation details and evolution in each national legal system.

### **Fixed-Term Contracts**

A comparison of fixed-term contracts across the EU member states enables some general conclusions about their regulations (Schömann, Rogowski, and Kruppe 1998). In the majority of EU countries, fixed-term contracts are regulated by law, except for the Nordic countries, where such forms of employment are governed by collective agreement. Legal provision is frequently complemented by collective agreements at national, sectoral, and company levels. Legislation rarely

contains a clear definition of fixed-term contract work, using, on the one hand, a negative definition (referring to an open-ended employment relationship), and on the other hand, stating conditions of use of fixed-term contracts. In most EU countries, fixed-term employees must be supplied with legal provisions, and obligatory provisions must be clearly specified. A common legal sanction for breaching legal requirements is to convert the fixed-term contract to a contract of unlimited duration.

There are no clear trends in the EU on duration, renewals, and “objective/serious reasons” for using fixed-term employment. Most European countries give fixed-term workers access to certain rights (e.g., claims for unfair dismissal, redundancy pay, social security rights, limited access to training opportunities, no right to information about vacant posts in the firm, no right to participate in strike actions, or to stand for or vote for employees’ representative bodies, such as works councils). The exercise of those rights is enabled through, for example, employee representative bodies (information, counseling, and in some cases, as in France, the ability to support employees in labor courts).

The contractual job security implied in a fixed-term contract, in which the worker cannot be dismissed before the end of the term, provides less security than the statutory regulations of permanent contracts, which offer comprehensive legal protection against unfair dismissals. This regulation does not, in general, apply to fixed-term contracts.

### **Part-Time Work**

Part-time work can be defined as an employment relationship characterized by daily, weekly, or monthly working hours that are appreciably fewer than the standard working hours laid down by law or collective bargaining.<sup>1</sup> In many countries, laws allow employees to choose part-time work to better balance a private life and professional career (such as in northern European countries). A well-established legal provision in labor law guarantees equal treatment for part-time employees in most EU member states. This provision, however, does not eliminate the practical problems associated with part-time work (such as the right to overtime, or [gender] discrimination concerning

lower pay or other social benefits). The International Labor Organization (ILO) definition of part-time work specifies that working hours be distributed throughout the week (horizontal) or concentrated only in certain days (vertical) or periods of the month or the year. The latter part of the definition reflects the close connection to fixed-term employment even in attempts to arrive at a general definition. The combination of fixed-term and part-time employment is, in fact, commonly combined within nonstandard employment. For statistical purposes and country comparisons, the Organization for Economic Cooperation and Development (OECD) defines part-time work as usual working hours that are fewer than 30 hours per week.

### **Temporary Agency Work**

Temporary agency work is a “triangular” employment relationship that involves a worker, a company acting as temporary work agency, and a user company. The agency employs the worker and places him or her at the disposition of the user company. Beyond this basic definition, the reality of temporary agency work differs widely across EU member states (Michon 1999a). For example, in Denmark and in the United Kingdom, temporary agency work is not regulated as a separate type of employment. Moreover, some countries focus on the relationship between the agency, the user, and the worker, such as in Germany, Spain, and Sweden, and in other countries, namely France and Italy, a specific status for temporary agency workers is legally defined.

The majority of countries have at least a relatively comprehensive set of legislation governing temporary agency work. In terms of regulation, two distinct groups of countries emerge: those with extensive regulation (such as France, Germany, Italy, and Spain), and those with minimal or nonexistent regulation (such as Denmark, Sweden, and the United Kingdom).

### **Self-Employment**

Self-employment can be defined as a form of employment in which a person assumes responsibility as a business owner, with no superiors, to develop and operate a business (Pfeiffer 1994). Different categories of self-employment exist, including operating as dependent

employees, family workers, and the self-employed in the original sense of the term (Kruppe, Oschmiansky, and Schömann 1999). Differences stemming from the nature of the employment relationship (compared with dependent work) determine the social and fiscal treatment of the person affected. Social, individual, and collective rights of a dependent employment relationship do not exist. Moreover, social and fiscal obligations that offer social protection depend on the willingness of the owner and the health of the business.

Two trends can be distinguished in the European community regarding self-employment regulations. One is the move to view this form of employment as a bridge from unemployment to employment. Self-employment is understood as a labor market policy (like start-up grants and start-up support programs) whereby private initiatives can create employment opportunities. The second trend is the legal attitude that views self-employment as more restrictive, aiming to reduce its use to avoid abuses of social protection rights and evasion of social security contributions.

### **Intermittent Work**

A long legal tradition exists in most countries surrounding the treatment of intermittent work, especially in the agricultural or construction sectors. Intermittent work, sometimes also called seasonal work, is defined as work in which periods of activity alternate with periods of inactivity. It gives rise either to a succession of fixed-term contracts, whose lawfulness is sometimes contested, or to a single contract, of fixed-term or indefinite duration, in which provision is made for the intermittent nature of work. This latter form has led to special regulations that treat intermittent work as a form of part-time work organized on an annual basis. The laws allow for alternating periods of work and nonwork within a single contract of indefinite duration. The laws, however, make this arrangement subject to certain conditions, including a collective agreement.

This broad overview of the major forms of nonstandard employment across Europe reflects the large scope, and country-specific treatment, of these issues. The agricultural, industrial, or service-sector employment structure in a country determines, to a large extent, the regulatory climate. National legislation in Europe demonstrates the



broad range of legal possibilities in tackling nonstandard employment. The analytical framework we present facilitates an understanding of the recent legal evolution of nonstandard employment in selected European countries. Because European directives on employment-related issues have had a direct impact on national law and, above all, on recent national regulations, we first present the European legal framework of nonstandard employment before turning to country-specific regulations.

## **THE EUROPEAN LEGAL FRAMEWORK FOR NONSTANDARD EMPLOYMENT**

As nonstandard forms of employment became more common in the 1980s and the 1990s, both the European Commission and the European labor movement (ETUC, European Trade Union Confederation) pushed to create a European legal framework to protect the rights of workers in nonstandard employment contracts. Successive draft directives proposed by the commission failed to gain approval of the Council of Ministers,<sup>2</sup> leading the European Commission in September 1995 to initiate consultations with social partners (e.g., workers' representatives, mainly trade unions and elected workers' representatives) at the European level to implement the "Community Charter of Fundamental Social Rights of Workers," signed in Strasbourg in December 1989 (Blanpain 1998).

On December 15, 1997, the draft directive on part-time work was issued to implement the framework agreement reached in June 1997 by the European social partners of the Union of Industrial and Employers' Confederation of Europe (UNICE), the European Center of Enterprises with Public Participation and of the Enterprises of General Economic Interest (CEEP), and the ETUC. This agreement and directive aim to institute the principle of nondiscrimination for part-time workers and to facilitate the development of part-time work on a voluntary basis, contributing to the flexible organization of work while accounting for the needs of employers and workers.

Faced with the reluctance of the UNICE to enter the deal on fixed-term contracts, the social partners led negotiations in 1996 under the

procedure set out in protocol 14 on social policy annexed to the Maastricht Treaty on the European Union (signed February 7, 1992). This mechanism (art. 4 §§ 1 and 2) allows management and labor to negotiate and eventually conclude agreements at the community level on employment issues, leading to implementation, either directly through practices specific to the member states or at the joint request of the signatory parties, by a European Council decision on a proposal from the European Commission.

This mechanism led to a framework agreement on fixed-term contract work signed in June 1997, and following further negotiations, agreement with UNICE was reached March 18, 1999 (at a major conference on social dialogue and enlargement in Warsaw). On the basis of article 4 § 2 of the social policy agreement, the commission adopted on May 1, 1999, the proposal for a council directive concerning the framework agreement on fixed-term contracts concluded by UNICE, CEEP, and ETUC. At the same time, the Amsterdam Treaty was instituted May 1, 1999, and protocol 14 on social policy was incorporated into the body of the European Commission Treaty as Articles 136–139, which then gave the draft directive the legal basis of Article 139 § 2.

The same procedure was followed with the draft directive on temporary agency work, beginning with negotiations between UNICE and ETUC on May 3, 2000. An accord among the social partners and a subsequent directive completed the legislation on atypical work, which was initiated in 1996 by the European Commission. The commission supports the consultation procedure of the social partners at the European level.

We now turn to the content of the draft directive on fixed-term employees (to be implemented in each member state within two years). The aims of the social partners are to improve the quality of fixed-term work by ensuring nondiscrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts (Vigneau 1999). The directive defines minimum requirements, recognizing that their detailed application must take account of different national and specific organizational needs of industrial sectors. In this respect, members states or social partners can maintain or introduce more favorable provisions.

The main features of the directive concern:

- 1) A general principle of nondiscrimination in employment conditions of fixed-term workers (such as requiring no additional length of service for access to particular conditions and benefits than those offered in open-ended contracts, except for those that can be justified on objective grounds).
- 2) Minimal legal provisions to prevent abuses (member states shall introduce one or more of the following three measures: 1) objective reasons justifying the renewal of fixed-term contracts; 2) a maximum duration in the succession of fixed-term employment relationships; 3) the number of renewals).
- 3) The obligation of the employer to inform fixed-term workers of vacancies in the enterprise.
- 4) Guarantee of representative rights. For the purpose of employee representation, fixed-term contract workers must be considered when calculating workforce size thresholds, and they must be given appropriate information on workers' representative bodies.

For most member states, this directive creates no need for legislative action, given that it sets only minimum levels of regulation. For example, the fourth feature is currently covered in legislative provisions in at least nine of the 15 member states. The remaining six countries, however, must proceed to a more restrictive legislation within two years of implementing the directive.

In the broad field of self-employment, no action has been taken by the social partners or the European Commission to restrict the evasion of social security contributions in member states. However, since the late 1990s, the EU member states, as well as the European institutions, have taken into account the need to promote flexibility while guaranteeing security for the workforce. The European political leaders, meeting in Luxembourg on November 20–21, 1997, for a special employment summit, agreed to a package of measures and employment guidelines that aim to improve employability, support entrepreneurship, increase adaptability, and strengthen equal opportunities. To date, the focus has been on promoting self-employment with little attention paid to the potential for self-employment to be used as a way

to circumvent social security contributions for persons who are solely dependent on one enterprise as their client.

The European legislation constitutes only a framework legislation, which must be translated into the national legislative texts and legal procedures. This is far from certain, given that national majorities in favor of such legal changes must be found, which will entail broad political discussions. Although a comparison of this implementation procedure for each of the above-mentioned topics is beyond the scope of this chapter, we review country-specific regulations, which will reveal to some extent the discrepancy between member states in implementing the European directives.

## **COUNTRY-SPECIFIC REGULATIONS OF NONSTANDARD EMPLOYMENT**

The most comprehensive legislation is found in France, Germany, Spain, and Italy. In these countries, nonstandard arrangements are strictly regulated, and special attention is given to ensuring nondiscrimination for nonstandard workers. Less restrictive regulation is found in Denmark, Sweden, and the Netherlands. In these countries, nonstandard employment has a long history. Finally, in the United Kingdom, steps have been recently taken to regulate abuse in nonstandard employment arrangements, and initiated mainly by the European directives. A common feature throughout Europe is the important role that the national social partners play in lawmaking—its formulation as well as its implementation—and as initiator of collective bargaining at different levels. We use the general term of social partners to include the various forms of workers' representatives, mainly trade unions and elected workers' representatives.

### **The French Legal Framework of Nonstandard Employment**

In France, regulations on nonstandard employment date back to 1972 (quite early compared with other European countries). Several changes in regulations were made at the end of the 1970s, followed by deregulation in the mid 1980s and reregulation in the mid 1990s. Nev-

ertheless, France remains one of the strictest regulators in Europe. Regulations focus on 1) promoting alternative ways to organize work schedules to provide more flexibility to firms, and 2) ensuring greater security for nonstandard workers by reinforcing equality in the workplace, especially through more stringent regulation of part-time work.

### **Fixed-term contracts**

A main feature of the French legislation is the close link between the regulation of fixed-term contracts and temporary agency work, both regulated similarly until late 1990. Comprehensive provisions contained in the labor code still defined fixed-term contracts as an exception. The use and renewal of fixed-term contracts remained strictly delimited, and the uses of such a contract were clearly defined. Abuses led to the automatic transformation into an open-ended contract, whereby ordinary dismissals during the fixed term were prohibited, except in case of gross misconduct. Some specific fixed-term contracts coupled with training periods, called *contrats aides*, were introduced into law in 1993, 1995, and 1998 to create incentives to look for employment, gain experience, and return to the labor market.

### **Temporary agency work**

A specific legal definition and regulation of temporary agency work (*contrat d'intérim*) has existed since 1972, creating a special status for temporary agency workers (as in Italy). It is defined as work performed by employees hired by an employer (employment contract) and placed temporarily at the disposal of another user enterprise (*contrat de mission*). The employer's sole occupation must be the hiring-out of labor, and he or she must hire employees under fixed-term contracts covering the period during which they will be assigned to work in the user enterprise. Hence, only temporary employment agencies are authorized to hire out workers on a for-profit basis.

This approach is complemented to a large extent by collective agreements at the national and intersectoral levels and by specific collective agreements at the sectoral level. Other sectoral agreements also cover the field of temporary agency work (as in Italy and Spain). The social partners have played prominent roles in improving regulation in this sector, as the intersectoral agreement of 1990 reveals. Provisions are very detailed in three key aspects of the regulation, such as the

maximum length of a contract or the restrictions on the use of the temporary agency employment. An important provision regulates the parity between permanent workers and temporary agency workers and the representation rights they may exercise in the temporary agency. Employees' representatives have information and consultation rights in temporary agency work.

### **Part-time work**

Part-time employment legislation has undergone recent changes with the regulation of a 35-hour work week (Bilous 2000) adopted in June 1998 and January 2000. These changes concern the definition and organization of part-time work (Defache et al. 2000). Part-time workers were formerly defined as employees whose weekly work hours were at least 20 percent lower than the statutory work week or whose hours were fixed by a sector-level agreement. This definition was changed with the EU directive on part-time work in December 1997. Henceforth, part-time workers are those who work fewer than the statutory (35) hours a week, or, if statutory hours are lower, a duration fixed by a sector-level agreement or company work schedule.

Furthermore, part-time work requires a prior collective agreement (at the sectoral or company level). As a default, the comments (consultation) of the works council or employees' representatives can be substituted; the labor inspector must be notified of such consultation or, in absence of any representative institution in the company, the employer must inform the labor inspector of his or her intention to use part-time work. The part-time work must be specified in the individual employment contract. Any modification (e.g., concerning overtime) must be approved by the part-time worker (at least three days prior to the change), and a refusal cannot lead to a dismissal or be considered misconduct.

Reaction to this legislation focuses on two elements. Boyer (1999) recommends a complete reversal of the logic behind current government financial assistance schemes to promote part-time employment. He suggests that aid be allocated not to the companies, but to workers themselves, giving them more freedom of choice. Freysinnet (1999) stresses the "legal fiction" of an individual employment contract in contrast to full-time work, which is governed by collectively agreed or statutory standards. This latter view adds weight to the argument that

collective bargaining should be promoted in part-time work to provide more leverage in individual choices (Michon 1999b).

## **The German Legal Framework of Nonstandard Employment**

German regulation of nonstandard employment dates back to the early 1970s, one of the first countries in Europe to regulate such work. German regulation has more recently moved toward deregulation and re-regulation.

### **Fixed-term contracts**

Legal provisions of fixed-term contracts were amended with the Employment Promotion Act (*Beschäftigungsförderungsgesetz*) of April 1985. The act introduced a degree of deregulation, viewing fixed-term contracts as a method of lowering unemployment. Justification for using fixed-term contracts is no longer required, and provisions allow such contracts to be implemented for a longer period of time, and permit more renewals than previously allowed. The act has been twice renewed and was valid until the end of 2000. Because parallel legislation, largely developed by labor courts, has coexisted, the partial abolition of the Employment Promotion Act means a return to the need to specify reasons why a job is of limited duration for most practical cases.

### **Temporary agency work**

Regulation of temporary agency work dates from the 1970s and has been amended recently to allow greater flexibility. A characteristic of the German regulation is its focus on the relationship between the agency, the user, and the worker. Moreover, legal dispositions closely regulate the status of temporary agencies, owing to the role of the federal employment office as a job placement office. The German case is interesting for its lack of sector-specific bargaining for temporary agency work. It is noteworthy that in Germany, where sectoral bargaining is the norm, the temporary agency is not yet covered by such an agreement (a former agreement covering clerical workers belonging to the DAG union was terminated in 1989). However, agreements at the company level have been reported. In this respect, a rather innovative agreement has been reached between a bargaining cartel of six trade

unions and a temporary employment agency (Adecco) to cover the agency workers who worked at the World Expo 2000 exhibition. This agreement may point the way to a multiemployer agreement for temporary agency work, as well as provide a gateway for further bargaining in this sector.

Legal provisions are less extensive concerning flexibility. For example, there are few restrictions on the use of temporary agencies, and no provisions dealing with parity in the workplace. However, legal provisions guarantee the exercise of workers' rights; temporary workers can use work council consultation hours, attend staff meetings, and exercise individual rights at the user company. Moreover, employee or union representatives have information and consultation rights relating to the use of temporary agency work.

### **Part-time work**

Part-time work in Germany is defined as an arrangement whereby the normal working week is shorter than that of full-time employees (Improvement of Employment Opportunities Act). Discriminatory treatment of part-time employment is prohibited; part-time workers enjoy the same entitlements as other workers (in proportion to the shorter working hours). Part-time work, moreover, should be voluntary. If individual employees want to change to a part-time job, the employer must inform them of any vacancies in the firm. There is no entitlement, however, to a corresponding transfer. The introduction of part-time work is subject to the co-determination right of the works councils.

### **Self-employment**

The boundaries between self-employment and employment under subordination were often unclear in practice, leading to difficulties in applying social protection provisions and fiscal regulations. Recent changes in the German legislation better clarify such differences and make it easier to apply social protection laws. The Correction Law of Social Provisions to Secure Workers' Rights was implemented in January 1999. It aims to reduce cases of "fictitious self-employment," where subordination in the employment relationship is clearly indicated. The fictitious self-employment (*Scheinselbständigkeit*) is an employment relationship that appears as an independent one ("ficti-



tious” freedom in the organization and completion of the work and with no other dependent employees present), but in practice correlates more with subordinated work. If this dependency is hidden successfully, contributions by both parties to social protection are evaded. The new legal provisions under the Correction Law of Social Provision restrict such a practice by providing a detailed definition of self-employment as well as an additional list of criteria to better define the employment relationship. Four selected criteria determine the nature of the employment relationship: 1) no employees other than family members, 2) the business serves only one customer, 3) the business operates under no special professional qualifications or tasks, and 4) there is no professional contact with the clients. The fulfillment of two criteria permits the transformation of a “fictitious” self-employment into a subordinated employment relationship.

Beginning in early 1999, the new federal coalition government initiated labor reforms in all major fields. Following the approval by the *Bundesrat* (the upper chamber of the German parliament), the Interim Law (*Vorschaltgesetz*, second law amending the third book of the Social Law Code) came into force on August 1, 1999. It aims to render labor market policy instruments more efficient in advance of the planned, more comprehensive reform of labor promotion legislation. The enacted changes are: 1) The elimination of short-term employment as an obstacle to training support; short periods of employment (up to three months) with the same employer as that providing training no longer constitute grounds for precluding support for training measures in the company; and 2) the ability to use employee assistance from the employment offices to promote fixed-term employment relationships. The experimentation clause expires at the end of 2002 (European Employment Observatory, 1999). These recent re-regulation changes reflect the impact of the EU directives on German labor law in recent years.

### **The Spanish Legal Framework of Nonstandard Employment**

Spanish legislation of nonstandard employment is of a recent vintage. As with most of the other EU member states, regulations on temporary agency work and fixed-term contracts date from 1994 and 1999. However, contrary to the deregulation trend in the EU, Spanish regula-

tions tend to tighten rules and introduce more rights for “atypical” workers. In this respect, the recent evolution of the Spanish legal framework can be considered re-regulation (Miguélez 1999).

### **Fixed-term contracts**

Legal provisions concerning fixed-term contracts are addressed in the Employees’ Statute of March 24, 1995. The statute defines objective factors or elements of fixed-term contracts. The norm in Spanish labor law remains an employment relationship of an indefinite duration, such that all contracts illegally limited are deemed to be for an indefinite period of time. Furthermore, the general legal acceptance of the indefinite duration rule has been anticipated by a long line of court decisions regarding renewals or continuation of fixed-term contracts as cause for requalifying the relationship in an employment contract of indefinite duration (Olea and Rodriguez-Sanudo 1996).

### **Temporary agency work**

A relatively recent innovation in Spanish labor law was the introduction of temporary agency work by Act no. 14, on June 1, 1994. Provisions regulate, on the one hand, the status of agencies, requiring an authorization of the Ministry of Labor or of an administrative organ of the Autonomous Region, as well as financial guarantees to ensure the payment of salaries and social security contributions. On the other hand, provisions stipulate the nature of the different contracts. The relationship between the agency and the worker is defined as an employment contract in which the agency is the only employer, whereas the contract between the agency and the user is a *sui generis* contract. In most other EU member states, the *sui generis* contract regulates the relationship between the user and the worker. Should the work be prolonged in the user firm, the temporary agency worker is considered to be an employee of the user firm for an indefinite period of time.

As in most EU countries, collective bargaining plays an important role in the overall regulation of nonstandard work. In Spain, there is specific sectoral bargaining involving trade unions and employers’ associations of temporary agency work with a bargaining mandate. This is also the case in France, Italy, and in the Netherlands. Furthermore, collective agreements in other sectors cover aspects of tempo-

rary agency work, and the role of company-level bargaining in this field is increasing. Evidence in Spain (as in the Netherlands and in the United Kingdom) suggests that unions are now paying greater attention to temporary agency work and the protection of workers against abuse of temporary recruitment (that is, hiring workers on the basis of temporary work in order to counter legal protection measures and avoid personnel costs). The latter remains the largest problem of the employment crisis in Spain. Some of the 1997 reforms to reduce temporary employment have failed, and new rounds of consultations between the government and the social partners are under way to further improve this issue.

### **Part-time work**

The Interconfederal Agreement on employment stability was reached between the leading Spanish trade union and employer organizations in April 1997, and with it the regulation of part-time work was strengthened. The aim of the changes was to balance a need for greater flexibility by employers in order to remain competitive with the need to ensure fixed-term contract workers adequate solidarity and social protection. These efforts were an attempt to address Spain's high level of insecure employment, with few open-ended employment contracts being signed and temporary employment at very high levels by EU standards (32.5 percent, on average, and 22 percentage points higher than other EU countries).

An agreement on stable part-time work was reached on November 13, 1998, between the Spanish government and the trade union organizations, *Union General de Trabajadores* (UGT) and the *Comisiones Obreras* (CCOO). The agreement was incorporated into Spanish law November 27, 1998, by virtue of Royal Decree-Law 15/1998, on urgent measures to improve the labor market with respect to part-time work and the promotion of its stability. This regulation signals a willingness to reorient labor market policy and marks a step toward a larger distribution of work among employees. Part-time workers enjoy the same rights as full-time workers. Pay and social security rights and obligations are calculated on a pro rata basis.

### **Self-employment**

Similar to Italy, Spanish trade unions have also tackled the issue of the unionization of the self-employed, who form a large part of the country's active work population. The Union of Professionals and Self-Employed Workers, within the general workers' union (the UGT), was formed in January 2000, and it is likely to instigate further regulation of the self-employed in the next few years.

## **The Italian Legal Framework of Nonstandard Employment**

### **Fixed-term contracts**

Beginning with Act no. 230 of 1962, a labor contract is assumed to be for an indefinite period. The parties can resort to a contract for a fixed term only in exceptional cases and under conditions strictly defined by law. More recently, high levels of unemployment for women and the young have led parties to consider easing provisions on fixed-term contracts. In fact, since 1978, there has been a gradual decline in the restrictive regulations. A first reversal, in 1978, expanded the use of fixed-term contracts in commerce and in the tourist industry, and in 1983 this relaxation was extended to all sectors of the economy.

Act no. 56 of February 28, 1987, introduced major changes to legislation on fixed-term employment. The act enables collective bargaining to expand the opportunities to use nonstandard employment to better address unemployment among targeted groups, such as youth. An intersectoral agreement was signed between *Cofindustria* and the trade union confederations in December 1988. Act no. 196 of 1997 introduced less strict sanctions in two categories. The sanction of automatically converting an open-ended contract remains for renewals of fixed-term contracts beyond 20 or 30 days from the job's end date. In other cases, the employer is only required to pay the worker an increase for each day of continuation. This trend of deregulation has, however, been countered somewhat by an increase in control by public authorities (inspector of labor) or trade unions.

### **Temporary agency work**

Italy has traditionally prohibited temporary work, which was forbidden in any form by Act no. 264 of 1949. Recent legislation in June

1994, with amendments in June 1997 (Act no. 196), introduced temporary agencies on an experimental basis for particular sectors. Furthermore, a national intersectoral agreement in 1998 regulated some aspects of temporary agency work not covered by the law (such as the duration and renewal of contracts).

The regulations stipulate a specific status for temporary agency workers, similar to that in France, in which the employment contract regulates the relationship between the employer (i.e., the agency) and the employee. Moreover, provisions specify situations in which temporary agency work is prohibited, for example, to replace workers on strike, by firms that have resorted to collective dismissals in the last 12 months, or for dangerous work. Legal provisions guarantee, in principle, the same individual and collective rights that regular employees enjoy (wages and accessories; social contributions, for which both the agency and the hirer are responsible). Furthermore, legal provisions ensure a comprehensive role of the social partners in the further regulation of temporary agency work, such that the use of temporary agencies will consequently depend significantly on collective bargaining (Treu 1998).

Temporary agency work is recognized as a sector-specific bargaining field involving trade unions and employers' associations of temporary agencies. This focus has led to sectoral agreements, such as the 1999 amendments that acknowledge the interactions between and complementary nature of the government and the social partners in regulating temporary agency work. Collective agreements in other sectors also cover aspects of temporary agency work. Moreover, Italian trade unions have created specific organizations for "atypical" workers, the only such instance in Europe.

Consequently, the Italian legal and bargaining framework of temporary agency work is one of the more comprehensive and regulated among the EU member states (similar again to that in France). Moreover, the Italian legal system guarantees comprehensive rights to trade unions to represent temporary agency workers. Workers' rights are exercised mainly in the agency, but they have some entitlements within the user company, and as such may engage in trade union activity and attend workplace meetings at the user company. They are also counted in workforce size calculations for health and safety representation.

### **Part-time work**

Part-time work in Italy is not regarded as a special labor contract, and general principles and regulations of standard employment contracts apply to part-time workers. The adaptations owing to the reduced working hours and the role of the provincial labor inspector are addressed in Act no. 863 of 1984, and amended in Act no. 196 of 1997. The most substantive regulations adapt social security contributions and benefits to the reduced number of working hours. Act no. 196 reinforces incentives built into a prior act, no. 549 of 1995, which included monetary incentives to firms adopting more flexible work schedules, especially part-time work. The later Act no. 196 added specific incentives in the form of social security reductions to promote part-time work among young, unemployed workers in economically depressed areas.

Collective agreements are a key source of regulation of part-time work. Although trade unions first rejected a shift to part-time work (because of the discriminatory use of part-time work favoring women and young workers), a recent, more flexible, attitude is emerging toward controlled use of part-time work. This new attitude is tied to the trend, supported by unions, of reducing working hours as a means of fighting unemployment. Collective agreements at national and company levels regulate common issues, such as wages, moving from part-time to full-time work, and vice versa, and in some cases, quotas of part-timers, employment conditions, and prohibition of overtime. In January 2000, new regulations on part-time work were introduced, following EU directive 97/81/EC. Among the most important innovations are a more flexible use of part-time work and the introduction of overtime for part-time workers. These legal provisions should help create approximately 100,000 new jobs, according to official estimates.

### **Self-employment**

In 1997, the Italian government emphasized the lack of legal protection in new employment relationships that fell midway between dependent work and self-employment. As a result, a new job statute was introduced based on a proposal by the Minister of Labor to guarantee protection when working without permanent contracts under dependent employers. Moreover, the Italian trade union confederations

created several organizations to provide representation for workers in these new employment relationships, such as temporary agency workers or those in consultancy and coordinated freelance work.

The above countries share a long tradition of limiting the proliferation of nonstandard employment. We now turn to countries in the EU that have engaged in less regulation of nonstandard employment.

### **The Danish Legal Framework of Nonstandard Employment**

Nonstandard employment, widespread in Denmark, even among highly qualified individuals, is not considered a separate form of employment, and, therefore, the government pays little special attention to it (Jorgensen 2000).

#### **Fixed-term contracts**

Danish law does not specify any legal definition of the labor contract nor the concept of a labor contract (Jacobsen and Hasselbalch 1998). The classification of a contract as a labor contract does not imply the use of a special set of legal provisions. Rather, how the contract is interpreted depends on the special nature of the contract and the parties involved. Consequently, there are no general Danish provisions regulating the duration of a labor contract. Only a few provisions concern fixed-term employment contracts in the public services. The parties are free to define the length of the relationship and the reason for its termination, although parties should expressly agree on these elements of a contract.

Seniority, legally guaranteed in collective agreements, determines worker rights, such as the length of notice and compensation in the case of dismissal. Consequently, should a fixed-term contract be prolonged beyond the original intent, it is assumed that the parties tacitly agreed on the indefinite duration. Should no formal agreement between the parties be reached, and in absence of general legal provisions, the Labor Court and the industrial arbitration courts intervene to counter attempts to evade or breach stipulations of collective agreements.

#### **Temporary agency work**

As in the United Kingdom, specific regulation of temporary agency work in Denmark is scarce, given that nonstandard employ-

ment is not considered to be a separate type of employment relationship. Regulations on temporary agency work were deregulated in 1990, and temporary agency work, in terms of pay and parity, is covered by the existing collective agreements within employment sectors (e.g., commercial and clerical sector, health and social services). As in the Netherlands and in Germany, company-level bargaining with unions and works councils is common.

### **Self-employment**

A study carried out in March 2000 by Technological Institute deals with self-employment among the highly qualified. Two groups can be distinguished among the nearly one-third (32 percent) of those with higher educational backgrounds who work in nonstandard employment. The first group is the more-educated individuals who choose nonpermanent jobs to gain a higher degree of control over their working life. This group (about two-thirds of all academically qualified people) is defined as a “nonexposed” group because their income is secure. On the other hand, there is a group of highly educated persons (36 percent of the academically qualified workers) who must combine atypical employment with other supplementary unemployment. This “exposed” group of workers is found among architects and those with a master’s of arts, for example. The decisive factor between the two groups, therefore, is the degree of security in their labor market attachment.

### **The Swedish Legal Framework of Nonstandard Employment**

The Swedish approach to nonstandard employment is quite different from the Danish approach, although in both countries the use of nonstandard employment is rather limited. Nonstandard employment received little attention in Sweden until recently because its numbers among overall employment levels were low, except for a short period during deregulation. The situation, however, has been reversed in recent years under the EU directives.

### **Fixed-term employment**

Closely linked to new legislation on unfair dismissal (Employment Protection Act of 1974 and 1982) are legal provisions restricting the use



of fixed-term contracts. The purpose of the restrictions is to counter unfair dismissals. In fact, the employer of fixed-term employees does not have to give notice for the termination of the contract (contrary to the employment contract of indefinite duration, whereby the employer must notify a just cause of dismissal). An agreement in the employment contract must determine the purpose for which the duration of the contract is definite and must pass one of the six cases legally named (§ 5). Since an amendment to the Employment Protection Act of 1996, fixed-term contracts can be agreed to for indefinite purposes for a period between 12 and 18 months, distributed over a period of three years, in order to give incentives to employers of small firms to increase their number of employees. Furthermore the Labor Court plays an important role in determining whether an agreement satisfies the requirement of the act (Adlercreutz 1997).

### **Temporary agency work**

A feature of the Swedish legal system of nonstandard employment is that temporary work agencies are grouped into a sector-specific bargaining unit that initializes and concludes collective agreements. Specific legislation (since 1991) laid down only a few basic conditions of temporary agency work, and they were deregulated in 1993. For example, only certain provisions require an agreement by the employee's representative for using temporary agency work. Most issues of temporary agency work apply to tertiary sectors (in services, transport, and nursing) with a mainly (90 percent) female workforce. New collective bargaining involving temporary agency work led to a collective agreement in February 2000 that enhances the working conditions of temporary workers; the conditions are already of a high level compared with the EU average. Three main improvements have been reached: 1) the guaranteed wage after 10 months of employment has been increased from 75 percent to 85 percent of the full-time monthly wage, 2) the institution of a minimum salary system ensuring temporary workers a stable income every month, and 3) the ability to participate in training during paid working hours.

### **Self-employed, start-up grants**

One of the more successful Swedish labor policies is the start-up grant, aimed at those wishing to start their own business. More than

three-fourths (78 percent) are still in business four years after entering the program. This grant was created in the early 1980s and expanded in 1992 and 1998. The grant covers living costs during a six-month start-up period and is equal to the unemployment benefit. Targeted groups are job-seekers, persons at risk of unemployment, and individuals living in regional development areas, whose application and project was selected by the employment service. An innovative feature of the program is the ability to plan the enterprise in the context of employment training and entrepreneurship training. A potential drawback, however, is the creation of a large group of casual laborers with no employment protection. Acknowledging changes in the labor market features, and especially the growth of self-employment, more trade unions in the 1990s turned their attention to the entrepreneurs to better inform and support these individuals, and, more generally, to prevent future unemployment by offering retraining measures.

### **The Dutch Legal Framework of Nonstandard Employment**

Nonstandard employment has played an important role in the “Dutch Miracle.” The main focus, however, has been on the development of part-time work, and much less attention has been paid to other forms of nonstandard employment. We shall give only a brief overview of regulations in this field. (See also Gustafsson, Kenjoh, and Wetzels this volume.)

#### **Fixed-term contract**

Until recently, provisions regulating fixed-term contracts secured workers against early dismissal, that is, before the contract expired. In January 1999, amendments introduced important modifications and flexibility to the dismissal regulations. For example, a fixed-term contract can legally be renewed for up to 36 months, or with two subsequent fixed-term contracts, without changing the contract to an indefinite one, as was previously required. The termination of a renewed fixed-term contract occurs automatically. This change in dismissal law is viewed as favorable to workers, so that only parties to a collective agreement can depart from this rule to the workers’ disadvantage (Rood 1999). A more flexible dismissal law encourages employers to give work to fixed-term workers who otherwise would be

unemployed. Furthermore, more flexibility can give employees more freedom in their private and professional lives.

### **Temporary agency work**

Temporary agency work existed prior to World War II, and increased considerably during the 1950s, especially in shipbuilding and engineering. Temporary workers were often paid higher wages than the standard workforce (owing to wage regulations). This discrepancy led to great instability and even strikes in the workforce. This phenomenon encouraged the government to regulate temporary agency work in the 1960s. Legal provisions required agencies to have a license from the Ministry of Social Affairs with conditions attached regarding the use of temporary agency work. The law was reversed in the 1990s, influenced by a general movement to make industrial and labor conditions more flexible.

In 1998, a license was no longer required, and hiring conditions were removed. Since 1999, Dutch legal provisions recognize temporary agency work as a regular employment form. In 1996, a collective agreement on flexibility and security was reached within the Dutch Foundation of Labor, and union federations recognized that temporary employment agencies have a legitimate function. Based on this agreement the Flexicurity Act came into effect on January 1, 1999. This reform of temporary agency work is twofold: first the act abolishes the permit requirement for temporary employment agencies and the maximum period for temporary worker placement. Second, it classifies the relationship between a temporary work agency and a temporary worker as a "regular" employment contract, with the specification that both parties may agree that the contract of employment will end without notice when there is no more work. This rule does not apply when the duration of the employment contract exceeds 26 weeks. Thereafter, the relationship between employer and worker remains as before, a *sui generis* contract (Rood 1999). Additional improvements in worker protection were negotiated and are to be found in collective agreements such as entitlement to pensions, training, and a permanent contract once workers have gained enough tenure. Legal provisions and collective agreements have, therefore, given to temporary agency work another dimension, combining flexibility for the agency as well as security for temporary workers. However, there is no regulation of the

duration and renewals of temporary agency work contracts, nor is there regulation covering the circumstances in which companies may use temporary agency work. The parity with permanent workers, however, is guaranteed. Further, representative rights exist for temporary workers in the agency, and those who have been employed in the same user company for two years are considered employees of the user company for representative purposes. This represents one of the most comprehensive legal provisions in the EU.

Specific sectoral agreements complement legislation and build on extensive legislative provisions. At the company level, unions play an important role in concluding agreements through works councils with individual agencies (which is the case also in Denmark and Germany). The consensus between the social partners and the bipartite Labor Foundation creates an assumption that temporary agency work plays a legitimate role and tends to become a standard form of employment.

### **Part-time work**

Social partners today pay more attention to reaching agreements on part-time employment than in the past. The Foundation of Labor (STAR, the top-level platform of the social partners) has made important recommendations to the social partners on this issue. The Labor Inspectorate Report (*Deeltijdarbeid in Collectieve Arbeidsovereenkomst's-CAO* [collective agreements]) sent to the parliament by the State Secretary of Social Affairs and Employment (SZW) spans approximately 3.8 million employees and investigates 1) whether stipulations have been added in CAOs that promote part-time employment or the extension of an individual employee's working time, and 2) whether the social partners distinguish between full-time and part-time workers. There are, however, still recognizable differences in the treatment of different forms of part-time jobs, including:

- 1) Exclusion from the CAO of those who work fewer than 13 hours per week. Often these part-time workers are excluded fully or partially from the CAO, and especially in relation to certain terms of employment (e.g., bonuses, extra legal benefits, and early retirement schemes).
- 2) Lower income supplements. Although one-fourth of the CAOs offer income (specific) supplements for part-time workers, the

supplements are lower for part-time workers than for full-time employees, again leading to discrimination. These differences are not regarded as discriminatory measures because collective bargaining parties are allowed to deviate from agreements on the terms of employment so long as these deviations can be justified on objective grounds.

### **Self-employment**

The Netherlands, like Spain and Italy, has seen a recent trend toward unionizing the self-employed. Since 1999, the number of interest groups representing the self-employed has rapidly grown, stemming from the buoyant economy and the perceived greater opportunities in self-employment. Some trade unions affiliated with the FNV confederation specifically target the self-employed for recruitment.

### **The United Kingdom Legal Framework of Nonstandard Employment**

In the United Kingdom, nonstandard employment is not subject to a special legal framework. Moreover, there is a general lack of specific definitions and regulations of temporary agency work and fixed-term contracts as a separate type of employment relationship, with the exception of laws on the activities of agencies (Employment Agency Act of 1973). Existing provisions were deregulated in the United Kingdom in 1994. However, the U.K. government intends to expand employment protections to agency workers (Grimshaw and Ward 1999). During 1997–1998, the U.K. government advocated industrial relations partnerships as a means of reconciling labor flexibility with employment security, with consultation proceeding in 1999.

### **Temporary agency work**

Temporary agency workers in the United Kingdom do not enjoy a special legal protection, and the legal nature of this relationship remains ambiguous (Hepple and Fredman 1992) because the contract between the agency and the worker is held, not as an employment contract, but as a *sui generis* contract. A temporary agency worker does not have a contract of any kind with the hirer. The agency is responsi-

ble for deducting social security contributions, and the hirer is responsible, under health and safety legislation, for work accidents.

### **Part-time work**

There is no statutory definition of part-time work in the United Kingdom, but many employment protection rights are related to the number of hours worked per week. For example, working a minimum of eight hours per week guarantees worker protection rights, such as redundancy, unfair dismissal, guarantee pay, maternity pay, and the right to return to work after confinement. There is no legal limit for working hours. In official statistics, part-time work applies to those who work fewer than 30 hours a week, and a growing number of part-timers work between 8 and 16 hours a week. For female workers, an indirect method of countering discrimination is to bring sex and race discrimination suits to the Labor Courts under existing nondiscrimination acts, in which hours of work are irrelevant to protection rights (Hepple and Fredman 1992).

The Employment Regulation Act of 1999 brought into force a new provision concerning part-time work and fixed-term contracts. The act outlawed the use of waiver clauses in fixed-term contracts, under which employees agree to forgo the right to claim unfair dismissal at the end of the term. Moreover, the act gives the trade and industry secretary power to make regulations and to issue codes of practice, and it is through this act that protection against discrimination in part-time work came into effect. The act also facilitated the development of flexible working arrangements and provided opportunities for part-time work, including provisions to implement the EU directive on part-time work.

In January 2000, the U.K. government proposed a draft of Part-Time Employees Regulations 2000 (Prevention of Less Favorable Treatment) aimed at restraining discrimination between full-time and part-time workers in matters of pay, sick pay, maternity and parental leaves, pension schemes, training, and redundancy. However, these provisions do not cover casual workers (who are not considered as employees in the legal sense). At present, unions have no bargaining role in the regulation of nonstandard employment. However, at the company level, several union recognition agreements have been concluded with temporary work agencies, typically with large agencies

that regularly supply temporary workers to organizations with high levels of union membership among their permanent staff.

### **Self-employment**

We know of no specific legislation regulating self-employment in the United Kingdom. A survey of workplaces in the major industrial regions shows that the use of nonstandard employment and outsourcing is more widespread in the West Midlands than initiatives to increase the flexibility of work organization and working time. However, it is the use of these internal forms of flexibility that seems to gain more importance. Self-employment through outsourcing is providing additional external flexibility to firms. However, transition rates (Meager and Bates 2002) and survival analyses suggest the insecurity and risks of poverty for some of the new self-employed.

## **A COMPARISON OF NONSTANDARD EMPLOYMENT IN EUROPE**

The legal framework surrounding nonstandard employment in Europe varies greatly. It has its roots in the historical, political, and economic development of a country's employment system and has changed with political majorities, with time, and with economic cycles. However, some similarities in nonstandard employment regulations are evident. Looking at two forms of nonstandard employment—temporary agency work and fixed-term employment—we compare national approaches and legal forms of incorporating these nonstandard types of employment into the general legal framework, as well as compare their status in the legal framework of the employment relationship.

The first legal regulations covering temporary work agencies date from 1970 in France and Germany, and 1990 in Sweden and Spain, and only very recently in Italy. Another way to address this form of atypical employment has been to “moralize” the activities of the temporary agency, that is, to strictly regulate the solvency, licensing, and registration of the agency as a way to reduce abuses in the merchandising of manpower. This is the case in the United Kingdom. Some countries, such as Denmark and the Netherlands, see no need for special legal

regulations, mainly because of the integration of so-called atypical forms of employment into a standard employment status. Moreover, a code of fair behavior has been established by employers' organizations, while collective bargaining guarantees nondiscrimination between temporary agency workers and full-time workers (Kessler 2000).

Collective bargaining plays an important role, and complements the law, in most of the European member states. In France and Italy, national intersectoral agreements complete the legal provisions on temporary agency work. In France, Italy, the Netherlands, and Spain, specific agreements regulate temporary agency work. On the contrary, there is no such intervention in Sweden or in the United Kingdom, which leads to less social protection of temporary workers, especially when most of the legal labor provisions depend on seniority, a criterion that temporary workers do not generally enjoy. In Germany, recent collective negotiations attempt to develop a specific collective bargaining field.

This great diversity among the European member states does not allow us to group national legal frameworks together or to discern similar tendencies in their orientations. For this reason, a European-level regulation would help member states to complete and harmonize their legal framework, and would grant temporary workers a minimum of social and employment protection rights. This possibility has been studied by the European trade unions and employers' associations.

Fixed-term employment reveals a different trend, mainly because of the recent influence of legislation at the EU level through the council directive on fixed-term contracts, which was adopted in May 1999. The European legal framework, which must be implemented at national levels within two years, guarantees the principle of nondiscrimination and aims to prevent abuse arising from the use of successive fixed-term employment contracts. Most national labor legislation already covers fixed-term employment, ensuring fixed-term workers a minimum of protection rights. For example, representative rights for fixed-term workers exist in nine of the 15 member states. The purpose of the directive is to harmonize the labor legislation of the 15 member states while simultaneously complementing any national legislative frameworks that do not provide a minimum of protection rights for workers.



There are some shared orientations among fixed-term legislation in the EU. The first is regulation on the use and renewal of fixed-term contracts, and includes the prohibition against using those contracts to avoid abuse. Fixed-term contracts remain an exception in legal terms compared with open-ended contracts (in France, Germany, Spain, and Italy). In cases of abuse, another common orientation is the automatic transformation of a fixed-term contract into an open-ended contract (in France and Italy, e.g.). Another common regulation is prohibiting the dismissal of a fixed-term worker during the duration of the contract, and the application of standard social protections of ordinary dismissal in cases of gross misconduct, or “*force majeure*,” to fixed-term contracts.

Less common is the use of fixed-term contracts coupled with training to enable workers to gain experience while studying or to undergo training without leaving the labor market. In these specific cases, fixed-term employment is seen as an instrument of labor policy to reduce unemployment (as in France and Germany). Collective bargaining, as well as labor courts (in Germany and Spain), coexist in the further, parallel regulation of fixed-term employment in most EU member states. For example, in Italy, collective bargaining uses this kind of nonstandard employment to better address unemployment among target groups, such as youth and ethnic minorities. In cases of deregulation, an increase of control by public authorities (Inspector of Labor) or trade unions is notable (as in Denmark and Sweden). The deregulation of fixed-term employment, and even more so of part-time employment, stems from the need for more flexibility by employers and for more freedom in organizing private and professional lives among employees. In this perspective, changes in part-time regulation, as in the Netherlands, are considered to favor employees because of the greater ability to better balance work and private life, such as family, training, and social activities.

Legal regulation of part-time work—the third pillar of nonstandard employment—reveals wide divergence in legislation across the EU, despite an EU directive in December 1997. Legislation ranges from considering part-time work to be just another form of employment (as in the Netherlands), although female-dominated, to considering such work as a nonstandard form of employment (as in France) with a high risk of discrimination against employees. Especially for those who

work shorter hours, there is greater risk of marginal attachment to the firm.

## CONCLUSION

Key regulation to prevent abuse in nonstandard employment in EU countries has largely been negotiated at either the European level, between the top-level associations of the social partners, or within sectoral or intersectoral collective bargaining. This was evident in the directive adopted by the European Council. The EU directive must be implemented in the national legislation within two years by way of legal provision or by collective agreement having the force of law. Recent European legislation (under the procedures set forth in protocol 14 on social policy annexed to the Maastricht Treaty) enables social partners to negotiate and eventually conclude agreements on employment issues at the community level. The implementation of such an agreement follows practices of member states or, at the joint request of the signatory parties, by a European Council decision on a proposal from the European Commission (directive).

Much of the nonstandard employment—part-time, fixed-term, and temporary agency work—was deregulated during the late 1980s and the first half of the 1990s. The expected gains in labor market flexibility or lower unemployment, however, have not been achieved through these legislative means of deregulation. However, the deregulation of nonstandard employment has led to a counter reaction, with collective bargaining addressing the issue of nonstandard contracts. Sectors in which social partners are firmly rooted and have a strong influence have rapidly incorporated these forms in their collective bargaining. In nonunionized sectors of the economy, these deregulation attempts have been more successful, but at the cost of widening the gap between different segments of the labor market.

In fact, it is difficult to derive a common trend within the legal frameworks for nonstandard employment in European countries. Each country's legal system is based on a different understanding of the role of the labor law. In northern European countries, legal regulation is not welcomed owing to the important role played by social partners. In

other European countries, nonstandard employment is a common form of work contracts (as in the Netherlands). However, in other parts of Europe, regulation of nonstandard employment is seen as necessary, as in France and Germany, owing to fears of discrimination and abuses in nonstandard forms of employment. The latter countries have regulated these contracts in more detail, thereby limiting their spread.

Collective bargaining is always largely determined by the economic well-being of the firm, the sector, and, to some extent, the country. These features have a nonnegligible impact on the agreements reached concerning wages in standard and nonstandard employment. Given that these factors can change rapidly, the factors that determine the use of nonstandard contracts have also changed, albeit less rapidly. For the moment, Europe is in a relatively stable period of economic growth, with forecasts of declining unemployment. With the coexistence of still high unemployment in some European countries with skill shortages in some sectors, deregulation versus re-regulation debates have calmed down somewhat. The major focus in the EU set now is to avoid discriminatory practices in all forms of employment contracts. It is in this feature that we likely find the most important transatlantic feature across standard and nonstandard forms of employment.

According to the theory of reflexive labor law, outlined briefly in the introduction of this chapter, there is a reflexive relationship between strict dismissal protection in standard employment relationships and the proliferation of nonstandard forms of employment. Largely unobserved is reflexivity within the shadow economy or “black market” activities. Stricter regulation of nonstandard forms of employment might lead to tacit, undeclared private contracts evading social contributions by both parties of the contract.

Another interesting legal approach to the development of atypical employment lies in the tendency to unify workers’ status (suppressing the differences between white- and blue-collar workers, e.g., or between specific categories of workers) and the parallel development of new sources of fragmentation of the labor relationship in nonstandard employment. Fragmentation across employment contracts is directly linked to the issue, on the one hand, of flexibility and, on the other hand, to the unification of workers’ status (Supiot 1994).

The response of labor law to more flexibility in the employment relationship, while guaranteeing a minimum of social rights, is likely to

be found in the advancement of well-defined and negotiated forms of nonstandard employment. However, it remains to be seen if the distinction between standard and nonstandard employment relationships remains pertinent in the coming years. Constituent notions of the standard employment contract, such as subordination to the decisions of an employer, undergo fundamental changes not only in the more advanced sectors of the economy. Trends such as the blurring of the differences between dependent employees and the self-employed will provide the next challenge to labor law, regulation, and collective negotiation of employment relationships.

### Notes

We would like to thank the editors for helpful comments on an earlier draft as well as the feedback from participants at the workshop in Kalamazoo, Michigan.

1. There are, of course, exceptions to the rule, such as when a part-time employee works overtime. Legal treatment of such exceptional cases through labor courts could constitute a paper of its own.
2. The directives included a proposal for a directive on voluntary part-time work, a proposal for a directive on the supply of workers by temporary employment businesses and fixed-duration contracts of employment. A main reason for the failure was the restriction on the use of atypical work. The later attitude of the commission toward greater flexibility resulted in the understanding that these forms of employment, on the one hand, were viewed as opportunities for creating employment. On the other hand, they responded to the will of both employers and employees for greater flexibility in the workplace (Blanpain 1998). A proposal resulted in one directive on safety and health issues for temporary workers and fixed-term workers, adopted by the council in 1991.

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## **Causes and Consequences**

Susan Houseman  
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