

Working conditions  
**Work on demand:  
Recurrence, effects and challenges**





# Work on demand: Recurrence, effects and challenges



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# Contents

	<b>Introduction</b>	<b>1</b>
<b>1.</b>	<b>Defining the issue</b>	<b>3</b>
	Paradoxical concept	3
	Variation across Member States	5
<b>2.</b>	<b>Profile of the workers</b>	<b>11</b>
	Challenges in data collection	11
	Work situations of on-demand workers	13
	Reasons for workers to engage in work on demand	14
	Reasons why businesses use work on demand	14
<b>3.</b>	<b>Impact on working conditions</b>	<b>17</b>
	Working time	17
	Working conditions	17
	Pay	18
	Representation	18
	Insecurity and lack of career path	18
	Impact on colleagues	19
<b>4.</b>	<b>Stakeholders' views and actions</b>	<b>21</b>
	Employers	21
	Trade unions	25
	Joint actions	28
<b>5.</b>	<b>Policy developments</b>	<b>31</b>
	Making work on demand less attractive and reducing abuses	31
	Ongoing discussions	33
	Current concerns over future developments	35
<b>6.</b>	<b>Future steps</b>	<b>37</b>
	Measures to tackle precarious employment	37
	Ensuring visibility and predictability of work activity	38
	Increasing awareness of workers' demands and business models	38
	Supporting companies' policies on working conditions	39
	<b>Bibliography</b>	<b>41</b>
	<b>Annex: Contributors from the Network of Eurofound Correspondents</b>	<b>45</b>



# Introduction

Recent public debates across Europe have seen an increasing number of references to ‘on-demand’ work and the ‘on-demand’ economy, mainly presented as an outcome of digitalisation. However, ‘work on demand’ has been used in various industries since long before the rapid development of technologies and of platforms as business models.

Work on demand is categorised as a ‘non-standard form of work’. In contrast to the permanent full-time employment relationships between one worker and an employer, several non-standard forms of work have developed in recent decades; these forms include some traditional models (temporary work) as well as others viewed as more contemporary (job-sharing, for instance). The common characteristic of all these non-standard forms of work is that they do not systematically display all features of the standard form, especially regarding labour and social rights. Flexibility of the work relationship is a key reason for their development. Work on demand, similar to other forms of work in the same category, ‘contributes to the adaptability of labour markets, but also raises concerns about job quality’ (OECD, 2018).

An adaptable labour market is seen as a positive for both workers and employers. The term ‘work on demand’ points towards the main features this form of work displays: flexibility and adaptability to labour market needs. Theoretically, work on demand provides a ‘win-win situation’ for both parties: workers get to tailor their work to private life obligations while businesses can design their workforce according to their needs. In recent years, contractual arrangements aiming to respond to these needs seem to have multiplied, with many used across Europe.

For instance, zero-hours contracts (ZHCs), short fixed-term or temporary contracts and commercial contractual relations through contracting and self-employment.

Nevertheless, despite offering opportunities, especially to ‘individuals who have been persistently shut out of the formal labour market’ (European Commission, 2016), work on demand, like several other non-standard forms of work, is often associated with less favourable conditions than the standard forms. One issue of concern for society in general and businesses in particular, is the ‘extreme commodification of the human being’ that it can trigger, either voluntarily or involuntarily (De Stefano, 2016). Furthermore, it could also lead to the development of unfair business competition, social dumping practices and negative consequences on working conditions (Eurofound, 2016a). And, similarly, an ‘increase in non-standard forms of employment would also present a major challenge for collective bargaining systems’ (OECD, 2018).

With a view to analysing the importance and consideration given to this phenomenon across Europe, this report explores the situation in 11 Member States plus Norway, where some form of work on demand is observed. In Chapter 1, a short mapping exercise looks into the existence and regulation of work on demand across the countries studied. Chapter 2 analyses the type of people engaging in work on demand and the businesses using it, while Chapter 3 considers the impacts of this form of work on working conditions. The views of stakeholders and policy developments regarding work on demand are presented in Chapters 4 and 5. Finally, in Chapter 6, some areas for improvement are identified in order to address potential future developments of work on demand.





# 1 Defining the issue

## Paradoxical concept

A basic and quite generic definition of ‘work on demand’ could be ‘a request put to an individual for delivering work at a specific time’ (Lambert, 2008). However, there appears to be a lack of common understanding of on-demand work across Europe. Despite this limitation, the characteristics of this type of work have been explored from various angles.

## Working when needed

Theoretically, work on demand benefits both workers (giving them the option to take up jobs when suitable according to career path and personal commitment plans) and businesses (who can call workers in just when the activity requires). In reality, the benefits are less balanced between the two parties. While on-demand work offers increased flexibility to businesses to contract work when needed, it is often the workers who pay the price for these supposedly ‘tailored’ jobs.

As Eurofound research shows, casual work is mainly an employer-driven request. Indeed ‘the activation of casual workers depends on fluctuations in the employers’ workload; the employer is not obliged to regularly provide workers with work, but has the flexibility of calling them in on demand’ (Eurofound, 2015). Therefore, managers use casual work as a flexible form of employment to quickly assign workers to a task that arises at short notice. In these situations, workers have no guarantee of getting work or income on a daily basis; moreover, they have no way to plan their day-to-day or future life.

On the other hand, work on demand can, at times, respond to workers’ needs to combine work and personal commitments (for instance, studies, creative work or care tasks). The workers concerned (such as students, single parents and carers) find themselves in specific situations with personal obligations that make standard forms of work difficult.

It is paramount to underline from the start that work on demand does not only present an employment issue. Indeed, at first view, work on demand is part of the development of flexible forms of work used as one way to adapt to globalisation, market competition and client requests, achieving a better match between production cycles and demand. For instance, for seasonal activities such as those in the agriculture sector, workers are often only required during very specific time periods (for example, when crops, vegetables or fruits are ready to harvest); given the nature of the activity (seasonal) these needs are frequently catered for through non-standard forms of work.

Work on demand is also, and in a way almost essentially, a work organisation affair, demonstrating how businesses organise work across the activities and among the workforce. For instance, the development of online offers of goods and services is a good illustration of recent changes in work organisation, leading to more fragmented work relationships.

Clearly, work on demand has developed in the context of increased competition, especially in labour intensive and low wage industries. In these industries, where labour represents the principal cost, work schedules have become the main lever for cost control. Indeed, among the non-standard forms of work, several ‘play’ around working time. For instance, part-time work, considered as ‘an employment status as well as a schedule’ (Carré and Tilly, 2008), aims to respond to the needs of workers to fit work and other commitments into a 24-hour period. This type of employment includes ‘manager-controlled flexible scheduling’, which enables workplace managers to vary ‘the number and timing of employees’ work hours’ (Lambert, 2008).

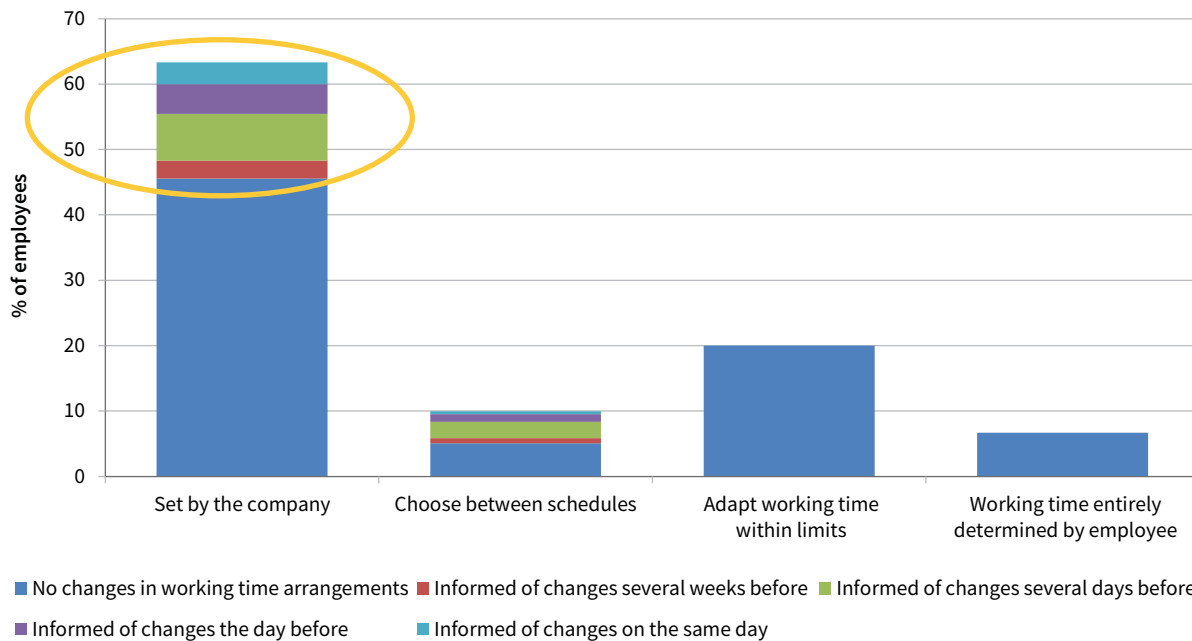
The flexibility of work on demand is primarily linked with how work is organised, independently of the employment status held by the worker. On top of this aspect, a more flexible employment relationship can also be sought through specific employment contracts. Both aspects raise challenges and concerns vis-à-vis workers’ rights and job quality.

## Not always by choice

Indeed, more notably than the opportunity to choose when to work, the main feature of forms of work assimilated to work on demand remains the unpredictability of working times.

Firstly, as the analysis of the European Working Conditions Surveys (EWCS) data shows (Eurofound, 2016b), unpredictability clearly impacts how workers experience their work quality. Working time is one indicator of job quality, as its characteristics have implications for workers’ health and well-being. While the EWCS does not examine ‘on-call demand’ working situations as such, analysing working time regularity and flexibility helps to identify these situations. From the workers’ point of view, flexibility can be seen as a tool to ‘adjust schedules’, whereas irregularity is an outcome which, most of the time, is not chosen voluntarily (Eurofound, forthcoming).

Figure 1: Working time arrangements, employees in EU28, 2015



Source: EWCS 2015

Data from the EWCS 2015 highlight the absence of choice in working hours experienced by a part of the workforce. Indeed, a large proportion of employees (63%) have no flexibility whatsoever in the determination of working time, their working hours being determined by management. Moreover, some 18% of employees in the EU experience ‘regular changes in their fixed working time arrangements’.

More significantly, almost half (46%) of the workers experiencing ‘regular changes’ are notified of the changes ‘at very short notice’: either one day in advance (for a quarter of this group) or on the same day the change takes place (for 19%). This latter population includes workers in ‘work on demand’ situations, with no visibility regarding working arrangements.

Indeed, not knowing when or for how long work will be available has significant consequences for the working conditions, health and well-being of workers.

Absence or low control of working time has been analysed as one major risk for workers’ health. Flexibility in working time has become more common as working time becomes increasingly diversified and tailored to individual needs. Some flexibility has led to unpredictability of working time, affecting workers’ health and well-being. As epidemiological research shows, there is an association ‘between job control and various aspects of health, for example, cardiovascular morbidity and mortality, sickness absence and subjective health’ (Ala-Mursula et al, 2002, p. 272).

According to research, notably a 2004 Finnish study on the impact of employees’ working time control on health, there are various benefits linked to a high level

of control by employees over working times. Workers may experience a positive outcome as this ‘high level of work time control may (...) help in integrating working life with private life’. Businesses can also benefit from it, as this ‘provides opportunities to adjust job demands with the prevailing state of resources’. Moreover, the study reports that ‘flexitime scheduling, providing employees with control over the starting and ending times of a work day, is associated with lower absenteeism’ (Ala-Mursula et al, 2004).

The study underlines the importance of control levels, particularly for female workers: persistent gender differences in roles at home can explain how ‘a high level of control over working times’ buffers against health problems in women but not necessarily in men. This finding is particularly pertinent in the context of the ‘casualisation’ of work. It goes against considering work on demand as an adequate response, allowing individuals who are not available all the time – such as workers with care responsibilities, who are also predominantly women – to enter and remain in the labour market; the unpredictability of the working hours in work on demand runs counter to the need for control over workers’ working time.

Finally, the platform economy is a clear illustration of work on demand. The definition used by Eurofound (2018) specifies, among the main features of online platform work, ‘the provision of “on demand services”’.

Providing services on demand has always been, and still is, the definition of commercial relations, such as the ones self-employed workers, entrepreneurs, professionals and companies enter into with clients.

What online platforms bring to it is the ability to match, almost instantaneously, supply and demand for paid labour, covering a great number of individuals who can be highly spatially disseminated. One key element of platforms is the degree of competition workers or service providers face and, therefore, the level of work intensity involved.

Moreover, online platforms facilitate and accelerate the process of requesting/buying services and goods for clients; this can often be done by simply clicking on a few icons. This increases pressure on service providers, misleading customers into thinking that the ease of operation is reciprocal. Work on demand runs the risk of being misinterpreted as a type of ‘work in no time’; putting overall pressure on individuals to find enough time to get work done, often with consequences on workers’ health and on the quality of services or goods delivered. Subsequently, ‘on demand services’ might be less of a choice for service providers than for clients.

## Variation across Member States

As mentioned above, work on demand represents more than a mere contractual employment relationship; it is a way to organise production and delivery of work, services or goods. Nevertheless, the first approach of the issue is often provided through the employment link and the contractual arrangement requested.

### Multiple definitions

The information gathered from the national contributions of 11 EU Member States plus Norway indicates that a range of variants match the features of this type of work relationship.

Overall, a great variety of proxies are used when considering the work on demand situations (Table 1).

The great variety of denominations reflects, on the one hand, the nature of the activity to be performed – intermittent, seasonal, occasional, not continuous – and, on the other hand, the need for an almost perfect fit between the work relationship and the activity to be performed.

‘On-call’ contracts exemplify the fit, as workers are contacted only when the need to perform an activity arises. In these situations, employers do not have to engage with workers in the long term nor do they have any obligation to provide work assignments to them on a regular basis. The other types of work on demand also aim to flexibilise, to a certain degree, the employment regulation applicable to the Standard Employment Relation.

Only one country, Germany, uses the term work on demand without ambiguity, while in the other 10 countries the understanding of the term can vary. This does not mean that work on demand does not exist in these countries, but rather that it is multi-faceted.

Since 2003, the German Act on part-time and temporary work has considered work on demand (*Arbeit auf Abruf*) as ‘a standard form of employment, allowing employer and employee to “agree that the employee works depending on the workload”’ (Section 12, Teilzeit- und Befristungsgesetz, TzBfG). The regulation stipulates that minimum daily and weekly hours should be fixed between the parties; if this is not defined, a regulatory minimum threshold of daily hours and weekly working hours applies. The TzBfG also sets a notification period to be respected. However, under an opening clause, the

**Table 1: Work on demand: Proxies**

Denominations	Countries
Temporary work	Belgium/Estonia/Poland/Spain (substitute in Public administration)/Sweden (SMS contract)/Norway (No pay between assignments)/Germany (work on demand regulated under law on temporary work)
Casual work	Czech Republic/Estonia
Flexi-jobs	Belgium/Czech Republic
Zero-hour contracts (ZHCs)	Ireland (ZHC and ‘if and when’ contract)/United Kingdom
On-call contracts	Belgium/Norway
Gig economy	Estonia (platform based services)/Spain (3.0 Jobs)/Norway (Work through platform)
Service contract/contract for work/agreement on work performance	Czech Republic/Poland (civil contracts) Slovakia
Self-employment contract	Poland/Czech Republic (bogus self-employment)/Estonia (freelance work)
Occasional work	Czech Republic
Seasonal work	Spain (indefinite-term seasonal contracts)
Others	Belgium (leisure time work) Slovakia (student brigade activity) Germany (KAPOVAZ , capacity-oriented flexible working time)

daily and weekly working time, as well as the notification period, can be changed to the detriment of the worker via collective agreement.

The situation in other Member States illustrates the variety, and hence the complexity, of setting limits for work on demand and the associated terms.

Each country displays some general attributes for the various types of work on demand studied (see Table 2).

Across 10 of the countries studied in this report, the employment relationships and forms of work organisation considered as work on demand can be clustered in two main categories. One category aims at including work on demand in standard employment relationships, either by adapting the work on demand arrangement to standard employment or limiting the use of non-standard flexible forms. The second category uses other contractual arrangements than the

**Table 2: Work on demand: general attributes**

Country	Term used	General attributes
<b>I - Favouring the use of more standard employment relations</b>		
<b>Adapting to standard employment</b>		
Norway	'No pay between assignments' contracts	Used by temporary agencies, offering the status of permanent employee; until June 2018, the employees were paid only when jobs were assigned.
Spain	Indefinite-term contracts for seasonal work ( <i>contrato fijo-discontinuo</i> )	Regulated work linked to tourism or seasonal or in education for specific periods of the year. They are stable jobs under legal indefinite contracts with the same conditions as for permanent contracts.
<b>Limiting the use of non-standard employment</b>		
Belgium	Temporary agency work; flexi-jobs; leisure time work; freelancers; on-call contracts	Restrictions preventing the very flexible practices of work on demand: part-time job means at least one third of a full-time job in a sector; working day is at least 3 working hours long and for variable working time; schedule needs to be communicated at least 5 working days beforehand.
Poland	Activity of temporary employment agencies	Maximum length of temporary employment via agency work is 18 months within 36 consecutive months.
Spain	Temporary substitutes in public administration posts ( <i>personal funcionario interino</i> )	Used to fill permanent posts of career civil servants for specific reasons (vacancies not covered by civil servants; temporary projects less than three years; excess of work for maximum 6 months).
<b>II - Not using an employment relationship</b>		
<b>No obligation</b>		
Ireland	Zero-hours contract (ZHC); 'if and when' contract	No guaranteed working hours to employee but employee needs to be available to work hours designated by employer. Mutual non-obligation between parties for 'if and when' contract.
Norway	'On call contracts'; 'work through platforms'	No agreement on working time and no legal obligation to accept offer for on-call work.
Sweden	Intermittent employment; 'text message' employment (SMS)	Usually verbal agreement between employer and employee on each request for work either for a few days or during specific periods.
United Kingdom	Zero-hours contract (ZHC)	Contracts that do not guarantee a minimum number of hours.
<b>Self-employment</b>		
Czech Republic	Casual work; flexible work; occasional work; contracts for work	Flexible work arrangement of an intermittent nature performed outside an employment relationship, usually between two entrepreneurs or for the provision of specific work or services.
Poland	Civil contracts; self-employment contracts	Civil law contracts (treated as 'non-standard' forms of employment) include civil contracts ( <i>umowa zlecenie</i> ), contracts for a specified task ( <i>umowa o dzieło</i> ) and contracts of management ( <i>kontrakt menadżerski</i> ); all are regulated by the Civil Code. <sup>1</sup>
Slovakia	Agreement on brigade activity of students; service contract agreement; Agreement on work performance	General measures apply on working time, social protection and collective bargaining.

<sup>1</sup> Polish civil law contracts: 'A contract to perform a specific task should be concluded in a situation where the principal expects the agent to deliver a specific result, whereas a contract of mandate should be used when the performance, the action itself, is important and not so much the final result. Civil law contracts differ from employment contracts in that the work is not performed under the supervision of the employer, in a place and during the time set by the employer'.

employment ones, such as self-employment and ‘no obligation’ arrangements.

A first option is for some countries to maintain at least part of a safety net for workers while acknowledging the need for businesses to get workers almost on a ‘just in time’ basis.

This can be done through adapting non-standard contracts, to emulate permanent employment contracts, with labour and social rights attached. This is the case in Spain, where the ‘indefinite-term contract for seasonal work’ (*contrato fijo-discontinuo*) provides for stable jobs under legal indefinite contracts which have the same conditions as permanent contracts. This exists also in Norway where originally the ‘no pay between assignment contracts’, used by temporary agencies mainly in the construction sector, offer workers the status of ‘permanent employees of a temporary agency’, while paying only for the activity performed. Other countries aim to limit the use of non-standard employment, with regulations set to provide criteria to avoid the abuse of already flexible working arrangements. The Belgian regulation provides for some minima on working time (part-time work comprises at least one-third of full-time working hours in a sector), working day duration (at least 3 working hours per day) and a notification period (the work schedule is to be communicated at least 5 working days in advance). In Spain, the regulation limits the use of ‘temporary substitutes in public administration posts’ (*personal funcionario interino*) to specific cases: vacancies not covered by civil servants; temporary projects with a duration of less than 3 years; and excess of work for a maximum six months. In Poland, temporary employment via agency work is limited to a maximum of 18 months within 36 consecutive months. These arrangements try to establish a balance whereby businesses are able to contract work for the duration of the activity, while workers benefit from better working conditions and workers’ rights.

A second option regroups countries adopting almost the opposite stance, where the contractual arrangements of work on demand seem to fully depart from an employment relationship.

The ‘no-obligation’ category features types of employment relations and forms of work that indicate some reduction in employers’ obligations vis-à-vis the workers. Indeed, the Irish and UK ‘zero-hours contracts’ clearly underline that the employer is under no obligation to provide work and, therefore, to guarantee an amount – fixed or provisional – of working hours. Similarly, the Swedish ‘text message’ employment (SMS) is an ad hoc deal, usually a verbal agreement between employer and employee made on each request for work. On the other hand, workers are expected to answer the call for work; in some countries (Italy for

instance) ‘compensation’ for ‘availability time’ is granted; but it remains exceptional and in practice workers would not reject calls to work out of fear of not getting called in the future.

Moreover, it is worth noting that the Irish ‘if and when’ contracts create a ‘mutual no obligation’ arrangement. In this case, none of the parties has obligations. This type of ‘contract’ is similar to ZHCs as regards employers having no obligation to provide work; it differs from the former in that workers have the possibility to say no to a request for work. The absence of mutual obligations in this type of relationship questions the closeness to a genuine employment relationship, as it lacks one key feature linking employer and employee.

Finally, in the Czech Republic, Poland and Slovakia, contracting work through self-employment and civil arrangements is a means to get the service or product required without having to fulfil several employers’ obligations, for instance providing tools, working hours, ensuring payment of wages, regulation of work pace and work organisation.

More recently, the platform economy has embraced some specific forms of work which at this stage have not been translated into specific employment relations. In Estonia, for instance, platform-based services and freelancers are considered in practice as work on demand. Spain developed specific employment relations in response to platform work, the so-called ‘3.0 jobs’ (*trabajos 3.0*), offering some form of flexibility for both parties: they have the appearance of self-employment, but the services provided are dependent on online connections between professionals and clients.

### Variety of regulations

Great variation in regulation exists across and within countries depending on the forms of work considered as work on demand. The main division is between countries with no regulation at all and countries where regulation exists, either generic or specific.

Some of the above-mentioned work on demand arrangements are not (yet) regulated. These are: ‘platform-based services’ in Estonia, ‘on-call contracts’ in Norway; and ‘if and when’ contracts in Ireland. The last two types could almost be denied the qualification of contractual arrangements as such, given the total lack of any commitment from either employer or worker. The only agreement as such is to have no expectations of the other party, as nobody is obliged to do anything in this type of relationship: there is no employer obligation to provide work, nor is there an obligation for workers to take up the work when provided.



Table 3: Regulatory framework in EU Member States and Norway

Country	References	Content
Belgium	<p>Law of 3 July 1978 regarding employment contracts</p> <p>Law of 16 November 2015 (defines the conditions for flexi-jobs)</p> <p>Royal Decree of 13 December 2016 (additional changes to the flexi-job system)</p>	<p>There is a range of statutory regulations preventing non-standard forms of employment in Belgium.</p> <p>The number of consecutive fixed contracts permitted is restricted to four, although exceptions are in place in some sectors. Use of consecutive daily contracts needs to be justified.</p> <p>Part-time work must consist of at least one-third of the amount of hours of a full-time job. A working day has to be at least three working hours long. For variable working time, the working schedule has to be communicated at least five working days in advance. In sectors with wage scales in place, wages within employment contracts cannot be defined lower than the minimum wage established for the specific function.</p> <p>Flexi-jobs are a relatively recent form of work on which the employee is exempt from paying income taxes and social contributions; the employer also receives a tax benefit. It is currently limited to a small number of sectors (for instance HORECA, retail and trade). Additionally, the employee has to be in employment with another employer for at least four-fifths of the hours of a full-time job. The duration of the employment contract cannot be indefinite; remuneration has to be higher than the legally defined minimum. There is no limitation on the amount of working hours that a 'flexi-jobber' can perform.</p>
Estonia	<p>Employment Contracts Act (RT I 2009, 5, 35, entered into force 1 July 2009) (Töölepingu seadus)</p> <p>Law of Obligations Act (Võlaõigusseadus)</p>	<p>This allows contracts with a specific term of up to five years when justified (increased volume of work, seasonal work). When used more than two consecutive times or renewed, they become temporary work or casual work contracts with unspecified terms.</p> <p>Parties are not required to conclude working time or to define workload.</p>
Germany	<p>Act on part-time and fixed-term employment (TzBfG), 2003</p>	<p>The employment contract defines a minimum daily and weekly working time. If not defined, the employer has to provide the worker with a minimum of three subsequent hours per shift and ten hours of work per week. Derogations from the minimum threshold are possible via collective agreements.</p>
Ireland	<p>Section 18, Organisation of Working Time Act, 1997</p> <p>Employment (Miscellaneous Provisions) Bill 2017</p>	<p>Currently, under zero-hours contracts employees are not contractually guaranteed working hours. However, when the employee is required to make himself or herself available but is then not required by the employer, they are compensated for 25% of the hours they were required to work or 15 hours' pay, whichever is the lesser.</p> <p>Following the 2017 Bill, the proposed changes to ZHCs will:</p> <ul style="list-style-type: none"> <li>• improve the predictability and security of working hours for employees on insecure contracts</li> <li>• prohibit zero-hours contracts in most circumstances</li> <li>• strengthen anti-penalisation provisions for employees</li> </ul>
Norway	<p>Working Environment Act</p>	<p>Permanent employment is the statutory employment relationship; No statutory definition of work on demand (yet there are variations of work on demand in use in the labour market).</p>
Poland	<p>Act on employment of temporary workers (2003)</p>	<p>Work is conducted via temporary work agencies on a fixed-term employment contract for a specific task or a civil contract. The maximum duration for temporary work is 18 months within 36 consecutive months.</p>
Slovakia	<p>Act SR No. 311/2001 Coll. The Labour Code, paragraphs 223–228a</p>	<p>Work on demand is considered as a flexible element of the labour legislation, allowing employees to perform gainful activity as a supplementary form of income.</p>
Spain	<p>Spanish Law Regulation (BOE-A-2015-11430, 13/11/2015)</p>	<p>Indefinite-term contracts for seasonal work for jobs that are permanent and stable but discontinuous, full time or part time.</p>
Sweden	<p>The Employment Protection Act (1982:80) (Allmän visstidsanställning)</p>	<p>Regulated broad fixed-term employment; this means that employers no longer have to give a reason for not offering permanent employment.</p>
United Kingdom	<p>Part 2A of Employment Act 1996 (amended 2015)</p>	<p>Zero-hours contracts are defined by legislation which specifies that there is still no minimum number of guaranteed working hours.</p> <p>Contracts that either forbid the worker from working for another employer, or only allow such work if the first employer gives permission, are now illegal.</p>

In terms of existing regulations (see Table 3), two main strands exist: while some of these regulations put the accent on developing flexible arrangements, others aim to avoid abuses of flexibility.

First of all, there are rules allowing for developing flexible working arrangements. In Sweden for instance, since 2007 it is easier for employers to resort to fixed-term employment, as justification is no longer sought from the employer for 'not offering permanent employment'. In Slovakia, work on demand arrangements favour employees' needs for flexibility, giving them the opportunity to use this form of work to increase their earnings.

It is worth noting here that, while there are still regulations stating no obligations for both parties in the field of work on demand (for instance, in Estonia), in some countries changes are in fact being made to address the main concerns raised vis-à-vis the workers' situation in flexible work arrangements. For instance, the 2017 Irish Employment (Miscellaneous Provisions) Bill reforming ZHCs strictly limits their use and addresses the issue of visibility and predictability of working time.

Countries seek the application of rules devised to allow for flexible contractual arrangements while avoiding abuses of flexibility; therefore, several conditions are placed on these types of arrangement, mainly delimiting their duration and working time. Some refer to regulation on temporary agency work (for instance in Poland); others on fixed-term employment (for instance in Belgium, Estonia and Germany). These can also be linked with EU regulations regarding non-standard forms of employment.

However, overall there is an absence of specific regulation addressing workers on demand. The employment status of these workers is a controversial and topical issue which has been frequently covered in the media; however, it is not yet specifically addressed through regulations. This is consistent with work on demand being less an issue of specific status and more an issue of work organisation.

Nevertheless, the absence of specific regulation means the determination of the employment status (i.e. employee or self-employed/business) depends on the type of regulation applicable; this could be labour code, civil or commercial rules (see Table 4).

**Table 4: Work on demand: Nature of regulation and status**

Country	Work on demand and proxy	Regulations applicable	Status
<b>Czech Republic</b>	Contract for work Business contract	Civil law Trade law	Not employee status
<b>Germany</b>	Agreement on work depending on workload	<ul style="list-style-type: none"> <li>• Minimum of 10 hours per week</li> <li>• At least 3 consecutive working hours</li> <li>• 4 days in advance</li> </ul>	Standard form of employment
<b>Slovakia</b>	Service contracts agreement Agreements on work performance	<ul style="list-style-type: none"> <li>• 10 hours per week</li> <li>• Termination without severance pay</li> <li>• 15 day notice period</li> </ul>	Labour code employee





## 2 Profile of the workers

### Challenges in data collection

Quantifying and identifying the workers in work on demand situations is not a straightforward exercise for various reasons. The absence of clear and complete data is the main issue, making it difficult to map the recurrence of work on demand situations and their share of overall employment across EU Member States and Norway.

#### Lack of quantified data

First, there seems to be a consensus on the marginal scope of work on demand; however, the broader and clearer consensus is about the absence of quantified data. Each country uses several methods in an attempt to approximate the number of workers in on-demand situations; however, the full picture remains unclear.

For instance, in the Czech Republic, according to the 2016 Czech labour force survey (Výběrové šetření pracovních sil – VŠPS) (ČSÚ, 2016) data, 1.8% of employees worked under ‘an agreement to complete a job’ or ‘an agreement to perform work’.<sup>2</sup> However, this figure does not take into account the share of self-employed workers, for which data are more difficult to pinpoint. In the UK, while data are now routinely collected by the Office for National Statistics (ONS) and estimates are available from 2000 onwards, data from several sources need to be combined to get an encompassing figure. ONS figures from the May 2017 survey of businesses indicated that 1.4 million contracts do not guarantee a minimum number of hours; this makes up 5% of all employment contracts (ONS, 2018). On the other hand, according to the Labour Force Survey estimates, the number of people employed on ZHCs for their main job during April to June 2017 was 883,000, representing 2.8% of all people in employment.

Accordingly, in order to estimate the scope of on-call work and to explore working conditions in this form of work, Norwegian research (Nergaard et al, 2015) uses a range of methods. These include: data from an ad hoc

module to the Norwegian Labour Force Survey from 2013; surveys on the retail, hotel and restaurant sectors (2013); a company survey; qualitative interviews with workers and a desk study of collective agreements. In the ad hoc module in the Labour Force Survey, 3% of the workers stated that they ‘did not have set working hours’, which might indicate the amount of on-call contracts in Norway (Nergaard et al, 2015). On the other hand, the scope of ‘no pay between assignments’ contracts has proved difficult to measure (Ellingsen et al, 2016; Nergaard, 2016), but there are available data on the number of temporary agency workers. Based on figures from Statistics Norway (Statistisk sentralbyrå – SSB) and from the employer organisation NHO Service, which coordinates temporary agencies, an estimation by the Fafo Research Foundation suggests that temporary agency work represents between 1.5% and 2% of all full-time jobs. The exact share of these that have ‘no pay between assignments’ contracts is unknown, but qualitative data indicate that this is the most prevalent type of contract among the temporary work agencies contracting out to the construction sector (Nergaard, 2016; Alsos and Evans, 2018). Finally, to complete the picture, the scope of platform work should be taken into account; however, this remains difficult to measure as the numbers of platform workers are relatively small.

Similarly, in Ireland, only estimated figures are available, as there are no precise data for the number of ZHCs from either the Central Statistics Office (CSO) or state- or privately commissioned surveys. Nevertheless, work on demand was found to be ‘not prevalent’ by the University of Limerick’s 2015 survey. The same survey indicated 5.3% of employees in Ireland were on ‘variable hours’ in 2015, based on CSO statistics. In their 2017 report, the Irish Congress of Trade Unions (ICTU) reported that the working hours of 158,190 workers varied from week to week or month to month – just under 8% of the workforce (ICTU, 2017). These figures are based on the CSO’s Quarterly National Household Survey.

### Poland: Data on temporary agency workers

In the second quarter of 2017, the number of temporary employment agencies was over 8,000. In 2016, the total number of temporary workers amounted to 826,000, and the total number of people using services provided by the agencies was over 1.2 million (Polskie Forum HR, 2017). According to the Ministry of Family, Labour and Social Policy, 57% of employees hired by temporary employment agencies were working under civil law contracts, while the other 43% had standard employment contracts.

2 Authors’ own calculation from annual average data.

While some figures are available in Poland, there has been discussion around the scale of flexible employment, as it has one of the highest numbers of employees with short-term contracts in Europe. Again, various figures have to be aggregated to get an overall picture of the number of on-demand workers.

Overall, it has been foreseen that the temporary employment market will continue to grow. The National Labour Inspectorate (Państwowa Inspekcja Pracy) reported that almost 13% of employees were hired on civil law contracts in 2013. The Central Statistical Office (Główny Urząd Statystyczny, GUS) estimates that, in 2014, around 7% of employees in Poland performed their work under 'non-standard' contracts, including the self-employed.

### Difficulty of assessing trends

While universally considered a 'marginal phenomenon', work on demand is reported by public debate in Europe to be on the increase, but, again, the lack of specific data, changes in regulation, economic developments and increased public interest make interpreting any variation particularly challenging.

In the UK for instance, ONS data note a large increase in the estimated figures of ZHCs between 2012 (252,000) and 2013 (585,000), though part of this increase may be due to the surge in attention which this type of employment contract received during this time. On the other hand, the data show that, between 2016 and 2017, there was no change in the number of contracts with no minimum number of hours (ONS, 2018).

Accordingly in Slovakia, following the 2013 Amendment to the Labour Code which made it mandatory for employers to register agreements in the Social Insurance Agency, there was a significant decrease of worker agreements registered: in 2012, almost 642,295 workers were registered, while in 2013 this figure decreased to 440,300. Nevertheless, these figures increased from 2014 onwards, albeit gradually and only slightly. In 2014, 451,200 workers were registered, 451,196 were registered in 2015 and 441,479 in 2016.

However, a clear increase in the use of temporary contractual arrangements has been noted in some countries. In Poland for instance, the number of temporary employment agencies rose from 56 entities in 2003 to over 8,000 in the second quarter of 2017. The rise could be seen in the public sector too, as the Supreme Chamber of Control (Najwyższa Izba Kontroli) reported an increase in the number of civil law contracts in public sector entities, for instance in the courts and in public higher education (Muszyński, 2016).

An increasing trend can also be seen for at least one type of temporary contract in Spain. According to the Spanish labour force survey (Encuesta de Población Activa, EPA), the number of employees with a seasonal indefinite-term contract has increased by 54% between the second quarter of 2008 and the second quarter of 2017, from 237,700 to 365,300 contracts. The 'indefinite-term contract for seasonal work' is the only type of indefinite contract for which the number increased during the years of crisis, a period during which temporary work became considerably more widespread in Spain.

In Ireland, beyond the absence of data on work on demand, increasing trends in overall precarious employment have been reported since the crisis. First of all, the number of involuntary temporary employed workers (workers who cannot obtain permanent work), was over 70,000 workers in 2016. While this is down from the figure of around 80,000 in 2013, it is nearly three times what the level was in 2008, before the economic crisis. A similar pattern is seen in involuntary part-time employment, albeit at a higher level of 129,200 workers in 2016, compared to 48,385 in 2008 (ICTU, 2017).

### Platform economy

Finally, the platform economy creates another challenge for the overall picture of work on demand.

Indeed, in some countries the activity made possible through online platforms is perceived as contributing to

## Norway: Survey measuring the scope of on-demand work

Jesnes et al (2016) conducted a survey in late 2016 of 1,525 adults aged 18 to 65 years old. While the results indicated that 10% sometimes work on demand for platform companies, the researchers warned against taking these figures too literally as they also interviewed the major platform companies in Norway, which reported much lower numbers. The reasons for the overestimated results might be explained by the way the questions were formulated, or by the fact that the survey was conducted online, which might have resulted in a skewed population sample.

A year later, the researchers conducted a new survey, this time by phone. Combined with other methods of data gathering, the researchers estimate that there are between 10,000 and 30,000 people (approximately 0.5% of the population between 18 and 65 years old) that worked through a labour platform, such as Uber or FINN *småjobber* ('small jobs'), during the past year (Alsos et al, 2017).

Source: Fafo (Jesnes et al, 2016; Alsos et al, 2017).

the development of work on demand, but the scope is difficult to specify.

Norwegian research stresses that '(...) on-demand work is embedded in the work organization of the platform companies' (Alsos et al, 2017). Recent attempts to measure the scope of platform work have proved difficult, as platform workers represent a small proportion of the population and the workers can be hard to reach. Data fluctuate significantly, for example with figures of between 1% and 10%, depending on the methodology used and type of population reached.

However, the general consensus is that the scope of such work remains marginal; it can essentially be found in sectors where freelancing and self-employment is common, such as transport and cleaning, but also in more creative types of industries and occupations such as graphic design. Although several research reports have argued that the platform economy will grow in Norway (Pedersen et al, 2016; Berg and Kjørstad, 2017), the Fafo study finds that there is no growth in the number of labour platforms in Norway (Alsos et al, 2017).

On the other hand, researchers argue that there is a tendency for traditional companies to take over the concepts promulgated by the platforms, such as on-demand work and new technology. This increases the complexity of the identification of these workers and work situations further.

Similar difficulties have been reported in Spain, where statistical information or research studies on this issue have not been found. It can be said that 3.0 work includes a wide array of jobs, covering jobs of low added value (such as cleaning and transport) as well as medium and high added value jobs (such as programming, graphic design and business strategy). Variety makes it more difficult to control these jobs and develop ad hoc legislation.

Some particular types of 3.0 jobs are, for example:

- *e-nomads*: presenting a combination of activity on online platforms with continuous trips or home changes;
- *uberised workers*: hired via platforms of low-qualified services, with dubious working conditions and low salaries;
- *supertemps*: highly qualified workers, highly valued in the labour market, who can afford to work freely;
- *occasional workers*: whose availability is irregular, according to their preferences or economic needs;
- *3.0 workers with more than one job*: people who combine different 3.0 jobs, or 3.0 jobs with traditional jobs.

(Rodríguez-Piñero Royo, 2016)

## Work situations of on-demand workers

Situations of work on demand do not seem to depart from the broader non-standard forms of work, as mainly younger workers and labour intensive sectors are involved. However, there are features pointing to polarisation, for instance in terms of the education levels of workers.

The Norwegian research on 'on-call' work points out that on-demand workers are young and female – and often are combining work and education. They typically work in healthcare, retail or the Horeca sectors (Nergaard et al, 2015; Trygstad et al, 2014). Similarly, the Estonian Work Life Survey 2015 (Sotsiaalministeerium, 2017) reports that 'temporary contracts are more used by younger people (7% of 15–24 year olds had a temporary contract in 2015) and by employees with higher education (10% of people with higher education compared to 3% of those with a general or basic education had temporary contracts in 2015). Among sectors, temporary contracts are mostly used in education (15%) and healthcare and social welfare (10%) sectors'. The same type of profile is described by the ONS in the UK, as estimates 'indicate that compared with others in employment, people on ZHCs are more likely to be young, part-time, women or in full-time education' (ONS, 2018).

In Poland, a polarisation effect can be seen as 'civil law contracts dominated among young people (aged 15–24 years) and older people (over 60 years of age)' (GUS, 2016). The research conducted in 2013 shows that, in particular, young people entering the labour market are exposed to non-standard forms of employment. In 2008, about one-third of people aged 21–25 had a standard employment contract, while in 2013 it was only one-quarter. No correlation between gender and a type of contract is observed, but there is found to be a link between education and type of contract. The lower the degree of education, the more likely it is that someone will perform work on the basis of a civil law contract (Kiersztyn, 2014). Most people working under civil law contracts were men (55.4%) and people living in urban areas (79.4%). Among those employed under civil law contracts, 65.7% had a civil contract (*umowa zlecenie*), 16.1% were self-employed and 9.9% had a contract for a specified task (*umowa o dzieło*).

Among the various forms of work approximated to work on demand in Spain, similar profiles can be observed. The typical profile of workers signing an 'indefinite-term contract for seasonal work' includes young people with low-level degrees and limited work experience (Expansión, 2014). Other sources highlight that this type of contract is particularly common among women

(El Confidencial, 2017). On the other hand, concerning sectors, ‘indefinite-term contracts for seasonal work’ are usually signed in the tourism sector and the education sector (mostly in private centres). When considering ‘temporary substitutes in public administration posts’, the main sectors affected by the problem of work on demand are health and education. The situation particularly affects workers with limited experience, who get the lowest scoring after public examinations for these posts.

## Reasons for workers to engage in work on demand

One key issue is determining to what extent work on demand is a choice for workers in this situation. Indeed, considering the various challenges workers on demand face regarding working conditions and well-being, the question remains: why would individuals embark on this type of work?

The short answer is lack of alternative. In the 2013 Norwegian Labour Force Survey, on-call workers were asked about the most important reason for having such a work arrangement, and 35% answered that they could not get another job. When asked if they preferred a permanent position instead, 25% of respondents answered yes to this question (Nergaard et al, 2015).

Indeed various features indicate that the majority of workers in on-demand work do not choose it voluntarily. Polish figures show that for ‘about 700,000 employees (4.4% of the total number of employees in Poland), it was their main occupation, and for over 80% of employees with civil law contracts, it was not their choice (they had no other alternatives for work). About half of the self-employed declared that their employer forced them to establish their own business (bogus self-employment). Accordingly, in Estonia in 2015, only a very small proportion (2%) of employees affirmed that they prefer to work under a temporary employment contract (Sotsiaalministeerium, 2017).

Several working conditions features reflect the non-chosen characteristic of the situation. On demand workers express willingness to work more, getting some more earnings opportunities, as the data for the UK show. On average, working time for a ZHC worker is 26 hours per week. More than one quarter (26.6%) of ZHC workers would like to work more hours while only 7.2% of non-ZHC workers would do so.

## Reasons why businesses use work on demand

The main reasons for businesses to resort to work on demand are to address some workforce shortages and activity peaks and to lower labour costs. Several research outcomes illustrate these points. Moreover, there are additional challenges due to the increase in on-demand work given online platforms work organisation and public sector use of these forms of work.

### Traditional challenges

According to Polish research, the factors explaining the popularity of these forms of work are mainly cost-effectiveness and the need for flexibility in running a business. Some companies, especially those operating in manufacturing, construction or retail, need to increase their employment during peak production periods. Peaks are very often recurrent in production cycles within a year; and companies adjust employment to their needs periodically. The other main reason for using this model of work organisation and employment management is to reduce fixed costs such as employment costs. When a shortage of staff occurs because of a temporary increase in labour demand, temporary work is a relatively cost-effective solution.

In Norway, the advantages and disadvantages of using on-call work have also been discussed extensively. On the employer side, work on demand may appear to be ‘a way to cover unpredictable peaks of activity or when there is a need of extra workforce, when employees are absent due to sickness, vacation etc.’ (Nergaard et al, 2015). Research also stresses that employers’ decisions to hire fixed-term employees or use other atypical forms of employment are dependent upon their alternatives when facing labour needs. The alternatives seem to be sector-specific. For instance, on-call work seems to be most common in the healthcare sector while ‘no-pay between assignments’ contracts have been most prevalent in the construction sector in both Sweden and Norway (Svalund et al, 2018).

Work on demand use varies by company size and sector. A great deal of the UK debate on on-demand work has looked specifically at the practice of ZHCs. As estimates indicate that around 900,000 workers currently work on ZHCs, it is clear that the practice is embedded in work organisations. Although some arguments have been made about high-flyers and professionals, on-demand work is a feature of work organisation in particular low paid, insecure sectors of the UK economy. The reasons for employers choosing to use on-demand work models include the ability to reduce costs and, in particular, not having to pay for labour when demand is lower.



## United Kingdom: ONS survey of businesses charts zero-hours contracts

The ONS survey of businesses for May 2017 indicates that the use of non-guaranteed hours work is more common in larger establishments. 24% of businesses of over 250 employees use ZHCs, compared with 4% of businesses of fewer than 10 employees. The use of non-guaranteed hours also varies by sector; in administrative and support services, 24% of employees are on a ZHC; in accommodation and food the figure is 10%; and in wholesale and retail 7%. In other sectors, use of ZHCs is lower.

(ONS, 2018)

In 2011, Slovakian research confirmed the significant use of employment via agreements on work during the period 2008–2010. The Institute for Labour and Family Research (IVPR) conducted a survey across 337 businesses on their views and attitudes towards ‘work outside normal employment’ (Kostolná and Olšovská, 2011). The survey documents employers’ awareness of the benefits of the established legal framework for agreements on work outside normal employment. According to employers, the existence of this work form is justified as it addresses their main challenge – the need for flexibility.

In Poland, similar arguments are also given by businesses for using flexible employment relations (especially temporary employment agencies and civil law contracts). Growing demand for temporary workers has led to a proliferation of temporary work agencies (Grześ, 2014; Maciejewska, 2012; Sieradzki, 2015). This form of employment is relatively popular in companies with foreign capital, where the mother company does not allow an increase in employment as such, despite increasing needs for staff during certain periods; temporary workers are not included in the company’s personnel statistics. Temporary employment is also used by companies operating in so-called ‘special economic zones’; although they receive preferential conditions for business activity in the zones, it helps them optimise labour costs (Grześ, 2014; Maciejewska, 2012).

### Challenges of the platform economy

The Spanish 3.0 jobs illustrate the challenges this type of work poses to companies. Labour relations for these jobs are similar to that of self-employed workers. 3.0 jobs are generally based on private, civil or commercial

contracts (that is, they do not belong to the traditional labour framework). There is no legal reference framework, so 3.0 jobs are difficult to control, as they are often provided outside the official channels and can therefore pose a challenge to traditional labour laws. Companies benefit from these contractual forms. With 3.0 jobs, companies (that is, clients) have the possibility to choose among different workers, continuous availability of varied services, projects on demand and more flexibility, among others. However, companies also face critical challenges. By using these employment forms, the company (client) loses the capacity to control the worker, finds it more difficult to integrate external services within the production system and has the risk of losing information or intellectual property (Rodríguez-Piñero Royo, 2016).

Even in Estonia, a country that still has an important share of standard employment, work on demand (temporary work, casual work or work in the sharing economy) is becoming more visible and important in society, as illustrated by the popularity of casual work mediation and recruitment platforms like GoWorkaBit, launched in 2013, as well as the use of sharing economy services, like Uber, which only recently came to Estonia.

### Use of work on demand in the public sector

Another significant feature of work on demand is its increasing use in the public sector.

In this regard, the Spanish case is topical. In theory, ‘temporary substitutes in public administration posts’ are employed due to ‘need and urgency reasons’, and therefore this type of contract is to be used sporadically, only when there is a specific workload increase or

## Slovakia: Survey on ‘work outside normal employment’

Almost three-quarters of employers (73.9%) have used some of the forms of agreement on work in the last three years. More than half of the employers (55.8%) justify the use of the agreements by the need to ensure greater flexibility in the performance of the enterprise’s economic activity. The economic advantage (that it is a cheaper way to secure work activities), is considered by one in six employers (16.5%). Another reason is that using agreements is a simpler way of concluding a business relationship; this is the key factor for one in eight employers (11.6%).

(Kostolná and Olšovská, 2011)

unexpected need. However, according to the newspaper *El País*, based on data provided by the Trade Union Confederation of Workers' Commissions (CCOO), there were 130,030 teachers working as 'temporary substitutes in public administration posts' in the Spanish non-university education sector in 2017. This means that, in the public sector, 26% of non-university teachers in Spain were temporary workers (in contrast with 76% who were career civil servants). This is the highest level of temporary workers since 2009, when 19% of all teachers in the Spanish non-university education sector were temporary workers. It should be noted that, in Spain, autonomous communities have authority over education, and there are important differences in the percentages across autonomous communities (*El País*, 2017). The CCOO severely denounces these numbers, which they consider to be a direct consequence of public budget cuts in education. Moreover, trade unions criticise the fact that many of

these 'temporary' posts are, in reality, fixed posts, but public administrations prefer to keep them temporary in order to save on costs (*El País*, 2017).

On the other hand, in 2014 a survey on the labour situation of Spanish doctors (*Organización Médica Colegial*, 2014) showed that 47% of doctors did not have a fixed post in the national health system (*Sistema Nacional de Salud*, SNS); among them, 41% had a contract of less than six months (*Cadena SER*, 2014).

External constraints, such as market competition, explain the most traditional requests on the part of businesses for flexible work and therefore use of work on demand. On the other hand, when the public sector experiences drastic budgetary cuts they also turn to easier-to-end employment relationships; moreover, the platform economy illustrates how much work on demand could be embedded in work organisations and business models.

# 3 | Impact on working conditions

Assessing the impact that on-demand work has on workers remains particularly difficult, not least because it is almost impossible to disentangle these types of work from other non-standard forms of work. Still, the main issues for workers in these situations are the absence of visibility and guarantee on getting work, working hours and therefore uncertainty on the amount of earnings to expect.

Some research attempts to highlight the impact of the unpredictable and insecure situation faced by individuals working on demand. While some findings are linked to work on demand as such, the outcomes mainly cover broader categories of non-standard work. The consequences of the main feature of work on demand – unpredictability – go beyond the legal definition of an employment relationship; this also clearly structures the way work is – in practice – organised and goods and services are produced and delivered.

## Working time

The idealised view of work on demand contracts allowing individuals the freedom of choosing when to work, and (almost) fitting work into a personal agenda, is not always the reality; most of the time, it is even the exact opposite.

A German report on working time finds that 55% of all those working on demand say they feel strained because they 'have to organise their life according to business demands'. Single mothers are the most affected (69% of all single mothers say they feel strained because of the unpredictability of working time). In contrast, most workers up to the age of 30 are satisfied with the situation (although 41% still say they are strained by on-demand work). Overall, more women (63%) than men (48%) report being strained by on-demand work (BAuA, 2016, p. 68).

These outcomes challenge the representation of the individual 'choosing to work on demand leaving room for other (family) commitments'. Indeed, regular working hours and income are basic criteria for individuals with family responsibilities (again, mainly women) when choosing jobs. For a long time, this has led to segregated labour markets and occupations where women mainly take a 'conservative' stance, selecting from the beginning jobs that will allow them to

fulfil caring and housekeeping responsibilities. Therefore, work on demand is not the ideal response to workers' needs, as its main features (such as unpredictable working hours and earnings) clash with these needs and put pressure on individuals with family responsibilities.

Furthermore, in the Norwegian Labour Force Survey's study of on-call workers (2013), 25% of respondents reported they experience pressure to say yes when asked to work, 'even if the time is unsuitable' (Nergaard et al, 2015, pp. 43–44). These results might indicate that, even though the on-call work arrangement is supposed to facilitate flexibility, this flexibility is also somewhat limited.

On the other hand, it is also clear that in some cases, the use of work on demand can increase control over the workforce, once again putting a strain on workers.

Two consecutive studies in the UK shed some light on this issue. Aiming at assessing flexible scheduling in practice, through a case study of a large UK-based retail firm, Wood (2016)<sup>3</sup> observed that 'temporal flexibility cuts across different employment statuses'. This confirms that flexibility is not confined to specific contract types, such as ZHCs for example. Moreover, union agreements on temporal flexibility are found to be 'weak and often disregarded'; a finding that the author argues results from the employer-dominated industrial relations environment in the UK. The paper argues that this manager-controlled flexibility is damaging to perceptions of job quality because of its impact on work-life balance. Wood's second study (2017), using data collected in the 2016 study, shows how scheduling flexibility provides managers with a means of securing control over the workforce in a way that is detrimental to workers. In this environment, workers constantly have to strive to gain management favour.

## Working conditions

Several studies point to the importance of a good work environment for workers' well-being and for delivering quality.

As Eurofound research (EWCS) shows, the organisation of work affects the health and safety and well-being of workers. Norwegian research underlines the recurrence of workers on demand working alone, pointing to the

3 Wood (2016) analysed 39 semi-structured interviews, participant observation of shop floor work and non-participant observation of union organisation and key documents.

health and safety risks they face, especially in the services industry. Risks of accidents, violence and harassment are higher because the person working alone is isolated from colleagues (Bråten, 2016). In 2010, a new provision was introduced in the Norwegian Working Environment Act (Arbeidsmiljøloven), requesting the employer to assess and reduce the risks associated with working alone. Employers are also responsible for facilitating contact between employees so that they can alert each other in case of accidents or hazards.

Poor working conditions also impinge on temporary employees in specific geographical areas, as Polish research shows (Maciejewska, 2012). The findings show how negative aspects were adding up: the occupational safety and health training provided was very brief and superficial, social facilities in the factory were poor and insufficient, and pace of work was very high. Income was low, and as a result of this some employees had to take out loans to provide for their family or work overtime. Employees complained about a lack of work–life balance, which weakened relationships with family members, especially children.

Similarly, uncertainty negatively affects workers' professional development and quality of life. Temporary substitutes in Spanish public administration posts face poor work–life balance as well as financial insecurity. Uncertainty can also be harmful for workers' motivation, which in return affects the quality of services provided.

## Pay

Another important issue for workers on demand is earnings. Studies have already shown that individuals in non-standard forms of work lose out when it comes to pay and other work related benefits; this also applies to workers on demand.

Gardiner (2016) uses Labour Force Survey data from 2011 to 2016 to model the 'pay penalty' experienced by ZHC workers in the UK. This study challenges the assumption that workers on ZHCs suffer because they are concentrated in lower paid sectors. It shows that there is an overall pay gap of 38% between ZHC workers and non-ZHC workers. However, when taking into account other factors such as sectors, a 7% gap (around GBP 1,000 per year) remains.

In the platform economy, work on demand activity is also not consistently paid. A Norwegian study (Alsos et al, 2017) finds that there are significant variations in the types of work intermediated through platforms, and that pay varies accordingly. Some platform companies have a payment system where they set the price and take a cut out of each transaction. This leaves little room for individual workers to negotiate on prices and salary.

Moreover, casual working arrangements take their toll on workers beyond the issue of pay. Analysing precarious work in Ireland and its outcomes for workers, Bobek et al (2017) stressed the precarious situation of young workers, who are a vulnerable group when it comes to accessing housing, for instance. The lack of predictable income prevents workers from obtaining mortgage loans from banks. Multiple moves between jobs can also jeopardise workers' portfolios.

## Representation

One key difficulty faced by workers on demand is that they are not systematically represented in and/or covered by collective negotiations.

For instance, the 2015 Norwegian study (Nergaard et al, 2015) that explored the extent to which collective agreements cover on-call workers shows that most agreements cover these workers, as they are considered to be temporary employees; nevertheless some collective agreements exclude on-call workers from parts of the agreement (such as sickness benefits, which depend on the amount of work carried out by on-call workers). On the other hand, contingent employment does not favour union association. In Poland, there are no legal barriers to constituting a trade union organisation in any temporary employment agency; however, the law is not clear about a temporary employee joining a union organisation operating in a client company (where employees are hired through a temporary agency). At the same time, people hired on the basis of civil law contracts and the self-employed do not have the right to start or be a member of a trade union. Currently, plans for legislation on participation in trade unions are being discussed by the government to give workers the right to form and join trade unions. (Reda-Ciszewska, 2013).

## Insecurity and lack of career path

In the short term, workers on demand do not have visibility over their working hours and earnings. The longer-term perspective is no brighter, as employment security and a career path are far from guaranteed.

Several studies show that employment security is at risk for workers on demand. In a 2015 Estonian study, fewer temporary workers reported being 'very or rather happy' with their employment security than workers on permanent contracts: 72% of temporary workers compared with 85% of permanent workers (Sotsiaalministeerium, 2017). Moreover, as illustrated by the Spanish case, the level of insecurity and instability faced by some workers in these situations can be dramatically high. The CCOO stressed the case of the Autonomous Community of Madrid, where by mid-September 2017 there were still 2,100 vacancies for temporary posts that remained unassigned, although



the deadline was 1 September 2017. The CCOO denounced this situation, arguing that temporary substitutes in public administration posts have no visibility; they have to wait to be called by the competent public administration, often at very short notice, to know if they will have a job or not (El País, 2017).

Finally, considering whether, despite being a forced choice at the beginning, work on demand could be a first step towards other jobs (meaning less flexible jobs) in the end, is not straightforward. According to research by the Polish Panel Survey (POLPAN), the analysis of employment paths of people with civil law contracts in Poland reiterates that non-standard employment may be a dead end rather than a transitional stage leading to a permanent job. Overall, the majority (60%) of respondents did not experience any change in employment status between 2008 and 2015, while a minority did: 37% of respondents had obtained a contract for an indefinite period by 2015, while 5% went into self-employment during this period. Non-standard employment is also linked with an increased risk of unemployment (Kiersztyn, 2014). Similarly, the Norwegian survey (Nergaard et al, 2015) indicates that the majority of on-demand workers do not believe that their employment relationship will lead to a permanent position.

## Impact on colleagues

When studying working conditions, the impact of temporary work on colleagues should not be forgotten. Several research works have underlined the impact of temporary work on the other staff members in an organisation, especially when the proportion of casual workers becomes significant.

For instance, the Swedish Commercial Employees' Union conducted a survey in 2012 on the effects of fixed-term employment in retail. One key outcome of this study was that the prevalence of fixed-term employment at a workplace also affects the working conditions of permanent employees. Stress, exhaustion and poor relations with management were all more common among permanent employees in workplaces with a high share of fixed-term employment. Nearly six out of ten permanent employees feel exhausted after the end of a workday in workplaces with many fixed term employees, compared to four out of ten in workplaces with few fixed term employees, and more than half described their relation with management as 'not particularly good' or 'not at all good' (compared to 22% in workplaces with few fixed term employees) (Boman et al, 2012).



## 4 Stakeholders' views and actions

Stakeholders' actions and reactions with regard to work on demand tend to correspond to their traditional views on employment. Employer organisations plead for more flexibility, trade unions raise concerns about workers' rights and working conditions, and public authorities try to keep up with changes in the world of work and labour markets.

### Employers

Employer organisations clearly campaign for the advancement of flexible work opportunities and therefore oppose any regulations which impose criteria and conditions for using work on demand for instance, or which aim to harmonise standard and non-standard forms of work.

#### No big issue

First, several employer organisations infer from the marginal recurrence of these types of arrangements the absence of major issues. This position has been clearly stated by representatives from the Confederation of Swedish Enterprise, who consider that 'on-demand work rarely exists, at least not to the extent described by the unions'. In the UK, the Confederation of British Industry (CBI) also makes the point that 'the use of ZHCs constitutes a relatively small portion of the entire labour market', of around 2% (CBI, 2015). According to this position, there is no need for regulation.

#### Need for full flexibility

Secondly, for most employer organisations there is a clear need for extremely flexible contractual arrangements; they argue that this allows them to respond to demand from businesses, but also from workers.

For instance, the Swedish Trade Federation (Svensk Handel) and the Confederation of Swedish Enterprise (Svenskt Näringsliv) both state that a flexible workforce is a necessity due to fluctuations in demand for goods and services. In addition, they consider that many young people do not want permanent employment, but wish to remain flexible. Also, fixed-term employment is often a step towards a permanent position, which makes temporary employment merely a temporary problem.

The request for flexibility is also clearly stated in the UK, where employer organisations such as the CBI have routinely published press releases emphasising the positive aspects of flexibility. The CBI has consistently argued for both flexibility and fairness within the labour market and views the recent draft bill on bogus self-employment as impeding flexibility. Should such changes be brought into UK law, then the lack of flexibility will mean that businesses are unable to create jobs (CBI, 2017).

A similar clear position is expressed in Ireland, where the business side maintains that contracts, such as 'if and when' contracts, provide for 'a flexibility that is sought on a mutual basis and beneficial to both employers and employees, particularly students, older workers and women who are carers (as they don't require long working hours and seek flexibility)'. Another benefit to employers is it entails reduced costs, as organisations only pay workers on 'if and when' contracts for time they actually worked, and these individuals may not build up enough service to attain benefits such as sick pay (O'Sullivan et al, 2015).

### Ireland: Benefits of flexible work arrangements in sectors

A report by the University of Limerick (O'Sullivan et al, 2015) found that 'if and when' contracts are used in the education sector to allow organisations access to 'flexible' staff to match the flexibility of service delivery. Demand in this sector fluctuates significantly. Such contracts 'are advantageous for schools that require cover for unexpected absences by teachers and have to find substitutes, often on the day'.

In the hospitality sector, there is a level of flexibility required 'due to the peaks and troughs in demand during the week and year, especially with business peaking in the summer.'

The Irish Hotels Federation (IHF) has stated that flexible and part-time work 'also allows employers access to quality staff that they might not have access to otherwise', yet there is a 'significant administrative burden for employers in trying to manage additional staff'. The IHF maintains that its members have a preference for full-time staff.

For the retail sector, employer body Ibec has said that the main advantages of low hours, 'if and when' contracts and hybrid contracts for employers are flexibility and the need to match staffing requirements to customer demands and shopping patterns.

## Estonia: Employer organisations propose changes

The 2016 proposal to amend the Employment Contracts Act proposes several changes concerning work on demand, including:

- abolishing the obligation to define exact workload in employment contracts
- abolishing the minimum social tax obligation to promote part-time working
- amending the period of uninterrupted rest time to increase flexibility
- ending the restriction on consecutive entry into and extension of the employment contract for a specified term (currently, if a temporary contract is, for example, extended more than once in five years, it will automatically turn into a contract with an unspecified term).

They have made also additional proposals regarding social tax, including establishing a social tax ceiling and dividing the social tax payments between employer and employee (currently it is paid solely by employers). Furthermore, employers consider that the social tax minimum obligation is ‘one major obstacle for providing flexible work forms’.

The Estonian Human Resource Management Association (PARE) has also promoted the use of flexible work forms, stating the need to analyse different possibilities and proposing that the social tax minimum obligation be abolished as a first step.

## No need to regulate

Thirdly, in several countries, employer organisations also oppose reforms and regulations aiming at giving more visibility and certainty to workers about working hours, workload and therefore earnings.

Employer bodies such as Ibec in Ireland have strong views against the introduction of regulatory measures that interfere with the flexibility sought by employers in how they divide working hours amongst employees. Employers prefer the voluntary approach of a local/company level mechanism for enhancing hours for workers, which invariably come through collective bargaining.

In Estonia, the main discussion currently revolves around the possibilities of ‘new, flexible work forms’, acknowledging their existence and the need to analyse the possibilities and different aspects. Employer organisations underline the need for favouring flexible opportunities and not limiting its usage. In 2016, for instance, the Estonian Employers’ Confederation proposed changes to the Employment Contracts Act to address work on demand. They asked for employers’ obligations to be abolished, aiming at clarifying the workers’ job outline, such as for instance defining the exact workload and period of uninterrupted rest time.

Another example is the 2012 Polish employer organisation proposal for a new category of flexible contract, very similar to the UK’s zero-hours contracts. In 2012, PKPP Lewiatan presented a regulatory project

on casual work (*praca dorywcza*), defined as a very short-term contract. According to the project, employees with such contracts could work for up to five days a month, depending on the employer’s need for labour. However, the project was rejected by both the public authorities and trade unions.

Following a similar path, the German Federation of Employer Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände – BDA), finds that the use of work on demand should be facilitated and that the legislator should ease the way to raise the working hours of on-demand workers on an ad hoc basis. Currently, Article 12 of the TzBfG stipulates an announcement period of four days. BDA finds the four-day announcement period too long for management to react efficiently to operational needs, and suggests that the announcement period should be shortened, at least for those working from home (BDA, 2016).

Similarly, several Czech employer organisations argued against the proposed legislative change of the Labour Code in 2016, aiming at ‘harmonising the agreements to perform work outside an employment relationship with regular employment relationships’. Among other arguments for amending the regulation, the Ministry of Labour and Social Affairs (Ministerstvo práce a sociálních věcí, MPSV) invoked the ‘need of extending to these arrangements the application of European rules on working time and to avoid abuses’. Employer organisations put forward several arguments against the change, some specific and others more generic.

## Czech Republic: Employer organisations argue against proposed legislative changes

Employer organisations argued that the amendment would not achieve the intended objective, especially harmonising working time and offering to workers the same opportunities independently of their employment status. According to the Confederation of Industry of the Czech Republic (Svaz průmyslu a dopravy České republiky, SPCR), 'in practice, the amendment would lead to the restriction of the use of agreements to perform work as a flexible instrument for the reconciliation of personal and work life for certain categories of employees (particularly persons on parental leave, retired persons and students). In other words, the proposed changes would have the opposite effect to the declared objectives of the amendment'<sup>4</sup>. Furthermore, according to the Chamber of Commerce of the Czech Republic (Hospodářská komora ČR, HK ČR), the proposed amendment significantly exceeds the duty of EU Member States to transpose EU legislation into national legal systems.

The HK ČR has particular reservations over the proposed shortening of the validity period for agreements to perform work from the current 52 weeks to 26 weeks. In view of the HK ČR, this amendment renders it impossible for a worker to work full-time for a part of the period and still meet the legal requirement concerning half the average weekly working time during the validity period. The Confederation of Employers and Entrepreneurs' Associations of the Czech Republic (Konfederace zaměstnavatelských a podnikatelských svazů, KZPS) also disagreed with the planned change to the validity period of agreements to perform work. Such a change runs contrary to the declared aims of the proposed amendment to the Labour Code, i.e. the enhancement of the flexibility of basic labour relations. Furthermore, it states that the changes proposed concerning agreements to complete a job would have a negative impact on the use of this instrument.

Concerning the right to holiday leave with respect to such agreements, the KZPS believes that it should continue to be the domain of arrangements agreed between individual employees and employers. Both the SPCR and the HK ČR point to the disproportionate administrative burden associated with the taking of holiday leave (the calculation of holiday pay, the determination of holiday entitlement and the company holiday plan) and the increase in wage costs due to the payment of holiday pay.

More broadly, according to employer organisations, the amendment put the overall flexibility of the Czech labour market at stake. The KZPS criticised efforts to further regulate what it considers to be 'one of only a small number of flexible forms of labour relationships currently available'.

### Concern about rising labour costs

Employers and employer organisations have highlighted the negative impacts of some changes in regulations, especially linked to labour costs. With strict regulations, work on demand can become as expensive as other forms of work, giving employers little incentive to use this form of employment.

In Slovakia, since the reform of contributions to the Social Insurance Agency and the Health Insurance Agency, in many cases the employees working on agreements gradually become as costly for the employer as other employees. They are therefore less appealing and used less commonly.

Several surveys eliciting the views and actions of companies since the reform confirm that the move has been mainly perceived as negative as a result of increasing labour costs due to the introduction of the full amount of employer's contributions (except for agreements carried out by the students or pensioners).

## Slovakia: Survey of the Entrepreneurs Alliance of Slovakia (PAS)

**Participants:** 131 entrepreneurs

**Outcomes:**

- Since the beginning of 2013, the changes have had a significant negative effect on one in three businesses.
- Approximately the same share of respondents (34.4%) assessed the impact of the new agreements as slightly negative.
- Almost no entrepreneurs (less than 1%) saw the changes as positive.

Podnikateľská aliancia Slovenska (PAS, 2013)

<sup>4</sup> Opinion of the Confederation of Industry and Transport of the Czech Republic on the 'Amendment to Act No. 262/2006 Coll., the Labour Code, as amended, and other related acts', 30 March 2016.

## Slovakia: Survey on the impact of agreements on work on businesses (Adecco)

**Participants:** 26 companies employing approximately 15,000 employees.

Up to two-thirds of the respondents confirmed that the increase of contributions for workers working on agreements affected their business.

Most often, the employers resolved it with a change in work organisation (22%), and the same proportion moved to dismiss workers. Somewhat less, about 16% of companies, had a reduction in profit. Another 16% was forced to raise the prices of their products or services.

KariéraInfo.sk, 2013

Accordingly, in the 2013 Adecco survey, almost all the interviewed companies employing workers on agreement agreed that the changes in the Labour Code led to changes in their employment process. After a period, up to 65% of employers viewed the legal changes as negative. Approximately three-quarters of them would prefer the legislation to be liberalised. Only 15% of the respondents were (more or less) happy with the current situation.

Furthermore, the reform has led employers to adapt their hiring practices; according to the various surveys the first step has been limiting or even suppressing work on agreement.

In the Czech Republic, according to the HK ČR, civil agreements 'represent one of the most flexible and increasingly utilised forms of employment which, moreover, forms a counterbalance to what it sees as the "rigid" provisions of the Labour Code'. It argues that, through the use of such agreements, employers are able to respond to the dynamically changing economic situation. The HK ČR criticised the gradual tightening of employment regulation, which in their opinion only led to the 'unnecessary increase in the administrative burden and overall company costs'.<sup>5</sup>

## Slovakia: Companies' reactions to the cost increase

### 2013 Adecco survey

- The most common reaction was for companies to limit work on agreement (three-quarters of companies did so).
- Nearly 15% of employers substituted workers on agreement or started to remunerate them in another way.
- Less than one-tenth of the employers re-leased them. The tasks of workers on agreement were most often distributed among staff members.
- Only 4% of the respondents were able to offer the workers permanent employment.

### 2013 PAS Survey

- A large proportion of workers on agreement were dismissed. While in previous years workers on agreement reached an average of 14.6% of the total workforce, since 2013, they represent only 5.8%, showing a decrease of 60.2%.
- In half of the cases, companies reduced the number of workers on agreement and redistributed their work to other employees. In a quarter of companies, some of the workers on agreement were dismissed and their work activities ceased.
- Every fifth company partially accepted the increased costs, with the simultaneous partial reduction of the net salaries of workers on agreement.
- Approximately 17% of companies retained the net wages of the workers on agreements and took full responsibility for the increased costs.

About 6% of companies addressed the new situation in other ways, for example, by employing workers on agreements as standard workers or by intensifying cooperation with students.

<sup>5</sup> Comments from the Chamber of Commerce of the Czech Republic on Ministry of Labour and Social Affairs materials concerning the 'Amendment to Act No. 262/2006 Coll., the Labour Code, as amended, and other related acts', 30 March 2016.

## Sweden: Study on employees in the retail sector

According to another report by Handels, 27% of all employees in retail are fixed-term employees (Handels, 2016b). Many of them, around 80%, are employed by the hour or are called in or texted when employers have a need for more staff. Of those with permanent employment contracts, many do not work full-time and therefore also take on extra shifts when there is a need. Consequently, many employees in retail have to remain available at all times and answer calls or texts with short notice. A very similar trend is reported by Kommunal, the Swedish Municipal Workers' Union (Kommunal, 2016). In 2015, 61% of healthcare assistants were fixed-term employed in Sweden.

## Trade unions

On the other hand, trade unions underline the need to address what they see as negative impacts of the flexible working arrangements and especially work on demand, for instance on the working conditions, well-being and health of workers.

### Contribution to the overall discussion

The general observation of trade unions across EU Member States and Norway is that situations are becoming increasingly precarious for on-demand workers. For instance, the Swedish Trade Union Confederation LO argues that on-demand work is a major issue and that the share of people on fixed-term contracts in precarious forms of employment is increasing, especially among female blue-collar workers. The President of LO has referred to 'on-demand' work as a 'system of peonag (*daglönearbete*).<sup>6</sup>

To get a full picture of the situation of workers, several trade union organisations embarked on studies and

surveys, either across industries or in specific sectors.

In Sweden, the retail, HORECA and care services sectors have been highlighted as the sectors where SMS employment is most prevalent. In retail, the Swedish Union of Commercial Employees (Handels) reports that while the extent of fixed-term employment has remained fairly stable since the introduction of the general fixed-term employment regulations (*allmän visstid*), the more precarious forms of fixed-term contracts (by the hour and on demand) have increased, and the more long-term and stable temporary contracts have decreased (Handels, 2016a).

The German Confederation of Trade Unions (DGB) released a publication on work on demand in 2016, showing that 13% of all establishments apply these work arrangements (IAB), although the number of on-demand workers is unevenly displayed across company sizes and sectors.

Trade union organisations also contribute to the general discussion and regulation, critically analysing the use of flexible work or work on demand.

## Germany: Trade union report on work on demand

In 2016, the German Confederation of Trade Unions, DGB, released a publication on work on demand (DGB, 2016) which provides findings from two different sources. First, from a representative IAB establishment survey covering establishments with more than 10 workers run by the Institute for Employment Research (Institut für Arbeitsmarkt- und Berufsforschung, IAB) from 2013–2014. Second, a study on the prevalence of work on demand based on Socio-Economic Panel data conducted by the DGB Good Work Index. According to the IAB findings, 13% of all establishments apply work on demand. The data reveal that the proportion of on-demand workers is highest in small establishments (9.4%) and decreases as the size of the establishment increases (4% in establishments with more than 2,000 workers). The restaurant sector (31%), construction (26%), social services (22%) and the manufacturing industries (15%) are the main employers. Whereas most part-time workers are women, most on-demand workers are men (56.8%). The authors assume that the lower share of women (43.2%) is due to the unpredictability of working time and difficulties of balancing work and family commitments. Low skilled workers and migrant workers bear an above average risk to work on demand.

<sup>6</sup> 'A condition of enforced servitude by which a person is restrained of his or her liberty and compelled to labour in payment of some debt or obligation'. (<https://legal-dictionary.thefreedictionary.com>)



For instance, Irish trade unions and NGOs highlight the negative consequences ‘if and when’ contracts present for workers, such as:

- unpredictable working hours (the number and scheduling of hours);
- unstable income and difficulties in accessing financial credit;
- a lack of employee input into scheduling of work hours;
- difficulties in managing work and family life;
- employment contracts which do not reflect the reality of the number of hours worked;
- insufficient notice when called to work;
- being sent home during a shift;
- a belief amongst individuals that they will be penalised by their employer for not accepting work;
- difficulties in accessing a range of social welfare benefits;
- poorer terms and conditions in some cases.

(O’Sullivan et al, 2015)

In Poland, criticisms are also raised vis-à-vis the use of these types of employment relations. Labour market experts and trade unions claim that some employers abuse civil law contracts and bogus self-employment, applying them even where an employment contract should be offered. According to the law, an illegal instance of using a civil law contract is a situation where the work is in fact performed under the supervision of the employer and in the place and during the time set by them. Temporary employment agencies are met with criticism, mainly from trade unions and some experts. They are criticised for abusing civil law contracts and intensifying flexible, uncertain employment.

Norwegian Trade Union organisations have pushed for changes in legislation to prevent further development of ‘no pay between assignments’ contracts. In June 2018, the Parliament voted to bring in a law banning these contracts. Temporary work agencies are hereafter obliged to pay the employees in the periods between assignments.

Trade union organisations also perform a balancing act when assessing some government initiatives in the field. While approving of some of the actions, they often point out the existence of loopholes, leaving room for abuses.

This has been the case in Norway. The Norwegian trade unions organisations on the one hand welcomed the government’s initiatives to prevent further development of ‘no pay between assignments’ contracts by defining what it means to be ‘permanently employed’; however, on the other hand, they expressed disapproval, with the LO arguing that the proposed amendments would not be able to stop the use of ‘no pay between assignments’ contracts. For the Spanish

trade unions also, the assessment of the ‘indefinite-term contract for seasonal work’ is ambivalent. On the one hand, and given the still negative context of the Spanish labour market, it is valued as a ‘good option’, as it provides a ‘legal and stable’ contract. At the same time, the use of this contract is associated with the economic structure of the country, where tourism and HORECA, considered to be sources of precarious and unstable employment, are key components of the Spanish GDP. On the other hand, in some cases the use of this type of contract can reinforce temporality and precariousness for workers, particularly if compared with ‘normal’ indefinite-term contracts.

Furthermore, trade unions clearly criticise the fraudulent use of ‘temporary substitutes in public administration posts’. Public administrations have long been criticised for using temporary contracts to cover indefinite posts, with too high a ratio of substitutes versus fixed civil servants. The reasons behind this trend are budget cuts and the need to save on costs as a consequence.

Moreover, trade unions try to address the impact of the ‘platform economy’. In Norway, soon after the report of the Committee on the sharing economy was published (Ministry of Finance, 2017), the main trade union confederations (LO, Unio, YS and Akademikerne) issued a statement asking for a tripartite cooperation on the sharing economy. At the time of writing, the government has not yet taken action on this. They also sent a letter to the government asking for a committee to be established to evaluate and define the notion of an employer in the Working Environment Act, in order to prevent the development of such forms of work.

In Spain, the analysis is that 3.0 jobs could create unfair competition for traditional jobs, particularly if they do not keep to the established legal requirements and obligations. They could even potentially become illegal or part of the black economy. Moreover, the challenge arising from 3.0 jobs is the potential impact they may have on the ‘traditional’ labour market, with the risk that they will force down salaries and working conditions. Concerning the particular example of Uber, trade unions stress the overall risks the services offered by the company present. UGT considered that Uber promotes an underground economy, and that the company’s responsibilities towards workers and users are not clear and could promote precariousness, insecurity and a poor quality of jobs (SMC-UGT, 2014).

Overall, the development of 3.0 jobs poses serious legal challenges. They sit uneasily with the traditional models developed by labour legislation; therefore, a ‘creative approach’ in the treatment of the issue is needed at all stages: defining the phenomenon, distinguishing the various possible situations, identifying the main problems, and seeking legislative interventions to overcome them (Rodríguez-Piñero Royo, 2016).



## Taking stances and devising actions

Trade unions have organised campaigns to denounce the consequences that contracts with no guaranteed working hours can have on workers. Concretely, trade union organisations also achieved some results targeting the practices of specific companies, combatting abuses of flexible working arrangements.

To address the main feature of work on demand (that is, lack of predictability), Mandate, the largest Irish union representing lower paid workers (particularly in the retail sector), has been the primary agent in the 'banded hours contracts' campaign. The establishment of 'banded hours' of work has gained currency over the last decade at company level. This feature permits an employee to move on to a guaranteed band of hours if, in practice, they have been working such hours over a certain reference period. This provides certainty of hours and therefore earnings. Through collective agreements, Mandate has established banded hours contracts for major employers in Ireland, including Tesco, Penneys, Marks & Spencer, and Debenhams.

The British Trades Union Congress (TUC) has made the campaign against ZHCs one of its key priorities. Press releases, research and responses to consultations have all emphasised the argument that ZHCs are exploitative and should be prohibited. The use of zero-hours contracts has received a great deal of criticism in the UK, with major employers being the focus of campaigns and media attention. In these instances, the practices have been criticised for 'the asymmetric nature of the relationship between capital and labour and the inferior working conditions associated with on-demand work'.

The retailer Sports Direct has been subject to campaigns by the trade union Unite around its use of ZHCs and other employment practices, both at its warehouse in Shirebrook and throughout its high street retail outlets. As a result of the campaign, Sports Direct engaged law firm Reynolds Porter Chamberlain to conduct an independent review of its working practices. Whilst the report, which was published in September 2016, found that the practices of Sports Direct were not illegal, it did identify 'serious short-comings'. Following the report, Sports Direct pledged to end its use of ZHCs and also said that it would put a worker representative on its board. However, subsequent media reports have suggested that the practice is continuing (BBC, 2017).

Another major retailer, ASOS, has also attracted media attention and has been the subject of campaigns regarding bad practice in its warehouses. Their policy of 'flexing' has been criticised by workers, particularly in terms of management asking workers to make changes to their working patterns on the day. Working conditions at ASOS have also come under the spotlight in the media (BBC, 2016).

Finally, given the seriousness of the consequences, several organisations proactively devise key principles for trade union action.

In November 2017, the Irish trade union Mandate launched its own charter called 'Secure Hours = Better Future', aiming at combatting unpredictability and protecting workers' rights.

### Ireland: Mandate's 'Secure Hours = Better Future' charter

The charter aims to combat unpredictability and protect workers' rights by:

- banning zero-hour practices, including exploitative 'if and when' contracts;
- providing workers with secure hour contracts that reflect the reality of the average weekly hours worked;
- ensuring a maximum 'look-back' period of 12 months or less to calculate the average weekly hours and the subsequent 'band of hours' into which a worker is placed;
- ensuring the maximum width of all 'band of hours' is no greater than 5 hours per week;
- protecting workers from victimisation for enforcing their rights under this legislation;
- ensuring legislation is implemented so that current workers can avail of its provisions for hours already completed.

## Germany: DGB refutes flexible forms of contracting work

DGB suggests that works council members should use their rights (Section 87, Article 1.2 of the Works Constitution) to oppose the introduction of KAPOVAZ systems into the work organisation.

The union also argues that work on demand employment contracts should give information on the number of working hours; if the number cannot be defined, the contract shall indicate the average number of expected working hours (rather than the minimum of 10 hours as stated in the TzBfG).

To support workers in small establishments without worker representation, DGB suggests that the federal employment agencies consult employers on how to improve work organisation in order to avoid work on demand.

Also, since the majority of workers working on demand are low skilled, the employers and the employment agencies should do more for upskilling workers.

In particular, the federal employer agency should provide opportunities for qualifications and further training to on demand workers and those who additionally rely on means-tested unemployment benefit II (Hartz IV) for income.

Furthermore, in reference to on-demand workers holding a contingent part-time job who are not fully liable to all social security services (i.e. mini jobs), DGB suggests a reform of mini jobs aimed at full social security coverage and higher wages.

Source: DGB, 2016

Similarly, the German trade union DGB stated its refusal of some of the most flexible forms of contracting work. It calls for the prohibition of ZHCs; nevertheless, considering that this demand will be hard to reach, DGB calls on the collective bargaining partners not to conclude any agreement downgrading the given legal standards.

Against the background campaign aimed at persuading businesses to avoid using ZHCs due to the impact they have on the delivery of services, the UK trade union UNISON – which specialises in the care sector – has produced an ‘ethical care charter’ which includes a commitment to abolish the use of ZHCs on the basis that they are incompatible with delivering a quality service. Various local authorities have signed up to this charter (UNISON, 2013).

## Joint actions

First, social partner organisations conduct studies collaboratively, allowing them to acknowledge the phenomenon collectively and agree on a strategy to address it.

One illustration of this in Sweden is the joint study conducted by the Confederation of Swedish Enterprise and the Swedish Trade Union Confederation, which looks into the prevalence and motivations for fixed-term employment. The organisations collected social partners’ views on fixed-term employment through focus groups with employers and union representatives from 14 companies in the private sector. Employers stated that they needed flexibility and had to be able to adjust to current staffing needs in order to pursue

competitive and profitable activities and to offer good employment conditions. Several employers reported that the profitability in their operations was low and that staff make up a large part of the company’s costs. Careful staffing was therefore deemed necessary. Business representatives also described fixed-term employees as the ‘gas and brake’ or a means to ‘shift up and down’ when conditions and the economy changed. Other reasons mentioned were seasonal variations in demand, the absence of permanent personnel and that certain regulations and collective agreements might increase the need for fixed-term employment, for example by determining when, how and by whom a certain task can be performed (Svenskt Näringsliv and LO, 2016).

Secondly, the social partners act cooperatively through collective bargaining. In Norway, according to collective agreements and the Working Environment Act, employers are expected to discuss the use of temporary employment with local trade union representatives. Indeed, Nergaard et al (2015) find that on-call contracts might be part of the discussions, as some collective agreements state that the parties should agree on limiting on-call work.

In Sweden, some collective agreements display positive outcomes of trade unions’ initiatives and negotiations, as the labour movement think tank Arena Idé (2016) reports. Through bargaining, the Swedish trade union Vision (for local government officers) introduced in its agreements updated rules on transferring from a fixed-term to a permanent contract, deemed to be more favourable than those stipulated in the Employment Protection Act. For instance, fixed-term employees are

entitled to restructuring support through the job security council Omställningsfonden. This means that workers who have been made redundant due to work shortages are entitled to support, often in the form of career counselling, job seeking support and financial support to complement the unemployment insurance. The council can also assist these workers in finding relevant courses to attend or internships. Another example is the Hotel and Restaurant Workers' Union (HRF), who managed to strengthen the workers' right to predictable scheduling through agreements stipulating that changes to a schedule must be justified and by establishing a deadline for when changes can be made.

Concerning the use of temporary substitutes in public administration posts in Spain, in particular in the education sector, in 2005 the Spanish government committed itself to keeping the proportion of temporary teachers below 8%. Unfortunately, in 2017 the ratio was three times this figure (26%). In July 2017, representative trade unions (UGT, CCOO and CSI-F) and the Ministry of Finance reached an agreement on large public employment offers in all departments of the Spanish public administration (Expansión, 2017). Implementation of this agreement was subject to approval of the 2018 General Budget. The agreement stipulated that transfer rates (coverage of vacant posts due to employees going on leave or taking retirement) would increase – by 100% for 'priority services' and 75%

for 'non-priority services' – and that public competitions would be announced, so that the temporary posts which were 'provisional' for the last three years could be offered as indefinite civil servant posts. The Budget Law for 2018, approved in April 2018, indeed contains a '100% replacement rate for priority services in the public sector'. However, collective bargaining can also deliver ambiguous results. For instance, in Slovakia in 2008–2009, some provisions in collective agreements stipulate that if the company dismisses workers, workers on agreements are the first to be dismissed.

In the UK, research indicates how (temporal) flexibility is achieved through collective negotiations, between management and staff representatives (Wood, 2016). The study describes ways in which the various agreements are ignored or not enforced; with 'the union (then) found to be largely ineffective at ameliorating manager-controlled flexible scheduling and thus improving job quality'. Although Wood provides an example of a unionised workforce in retail, which may not be typical of the sector, it shows that, even where there is dialogue, agreements and protocols are weak operationally compared with managerial prerogative. It is therefore suggested that in the current industrial relations framework, it will be very difficult for trade unions to mount effective challenge to managerial control of flexible working schedules (Wood, 2016).



## 5 Policy developments

Various regulatory changes relating to on-demand work can be observed in the EU Member States and Norway. Some governments have chosen the path of making temporary work less attractive in view of reducing abuses and increasing workers' protection. Nevertheless, in certain regulations, ambiguity subsists while future developments are still open.

### Making work on demand less attractive and reducing abuses

The Slovakian government has taken a clear stance to make 'work on agreement' (on demand) less attractive. First, since the beginning of 2013, the government increased the contributions to insurance funds for these agreements, reducing their request. Moreover, since January 2016, work on agreement has become progressively closer to full-time employment and therefore, less attractive for both employers (as workers on agreement become more expensive) and workers

themselves (as the compulsory insurance payments discourage them and the advantage of agreements decreases).

In Sweden, the government is also critical of what it considers a deterioration of working conditions for fixed-term employees. In 2016, new regulations were introduced, making it harder for employers to 'stack' fixed-term contracts on top of each other and instead to push employers to give workers more permanent contracts (Regeringen.se, 2015).

Addressing abuses is another path followed by governments to reduce the use of temporary work. In the Czech Republic, since 2011, regulatory changes have aimed to reduce abuse of agreements on work performed outside an employment relationship. First, the practice of making agreements orally has been prohibited by an amendment of the Labour Code (effective from 1 January 2011). In addition, to avoid another common practice whereby the maximum number of hours an employee can work for an employer

#### Slovakia: Government stance on work on agreements

Until the end of 2012, the employer only paid for the agreement's accident insurance at a rate of 0.8% of paid income and for guarantee insurance at a rate of 0.25% of paid income. Since 2013, complete social and health contributions at a rate of 48.6% also apply to people working under agreements with a regular income. Secondary school and university students remain exempt from paying contributions. The employer only pays contributions for guarantee and accident insurance at a rate of 1.05% of earnings according to the Agreement on the activity of students, up to a value of €200 per student.

#### Sweden: 2016 regulations on fixed-term contracts

##### Automatic transformation of fixed-term contracts into indefinite contracts

Under the previous regulation, fixed-term employment contracts are automatically transferred into indefinite contracts when the employee has been employed for two years within a five-year period.

The new regulation introduces an automatic transformation when the employee has been employed 'in a combination of different types of fixed-term employments' (e.g. temporary substitute employment or seasonal work employment) during a consecutive period of two years.

##### Consecutive employment

Employment will be deemed consecutive if a gap of no longer than 180 days has taken place between each employment. Under the new rules, the consecutive period does not have to be calculated within a five-year period.

## Slovakia: Clamp-down on illegal work

Under the new rules, it is impossible to be registered unemployed and earn money based on labour relations at the same time. It is also not possible for a registered unemployed person to work on agreement with the employer where he/she worked just before becoming unemployed, or with an employer who refused to employ him/her during the previous six months.

Various obligations are also specified. For example, when the jobseeker works on agreement, he/she is obliged to report this by submitting a copy of the agreement and proving his/her income to the employment department at the latest one day before starting work. Failure to submit the agreement can lead to the person being removed from the register of jobseekers.

under agreements is exceeded, Act No. 251/2005 on labour inspection was amended in January 2015. It states that:

*A natural or legal person not ensuring that an employee does not exceed the extent of work done under mentioned agreements as specified by the Labour Code commits a misdemeanour or administrative offence.<sup>7</sup>*

This can lead to a maximum fine of CZK 2,000,000 (€77,922 as at 11 September 2018).

Since May 2017, Slovakia limits the possibility for unemployed people to combine unemployment benefits and work: a registered unemployed person may work on agreement under the Labour Code in addition to his or her registration for a maximum of 40 days per year. The aim is to strengthen the surveillance of illegal work and discourage the misuse of unemployment benefits.

### Removing the barriers to temporary work

Several reforms aimed at facilitating the use of temporary work also improve the situation of workers.

Through the Welfare Development Plan 2016–2023, the Estonian government acknowledged the need to use a

variety of forms of employment and employment contracts due to the ageing and declining population and changes in the labour market. Some measures related to work on demand aimed at promoting temporary and casual work have been taken in order to motivate people to work in the context of labour shortages and/or motivate employers to hire temporary workers.

The overall objective is first to erase barriers preventing workers from taking up a temporary job. This is essentially done by introducing social benefit entitlements. These include: conserving unemployment insurance rights during the temporary work period and taking up payment again at the end of the temporary job; reducing the compulsory work period to be covered by health insurance when working on the basis of a contract under the Law of Obligations and strengthening social guarantees of freelance creative professionals.

On the other hand, to motivate employers to hire temporary workers, the calculation of the unemployment period requested for wage subsidy payment, previously envisaged for hiring long-term unemployed people only, has been changed.

## Estonia: Welfare Development Plan 2016–2023

- 1) If the payment of unemployment insurance benefit is terminated before the end of the period specified in the decision on the grant of unemployment insurance benefit (i.e. the person unregisters as unemployed), the person still has the right to receive the benefit if they re-register as unemployed within 12 months of the date they started receiving the benefit. Therefore, it is possible to perform temporary work and later continue to receive the benefit.
- 2) In 2014, changes to the Health Insurance Act were made regarding health insurance when working on the basis of a contract under the Law of Obligations. In the case of these contracts, health insurance cover was received only if the contract was concluded for a term exceeding three months, or for an unspecified term and after a waiting period of three months. After the amendments, the insurance cover starts when a person is working on the basis of a contract under the Law of Obligations for a term exceeding one month and the waiting period is 14 days, i.e. as in the case of employment contracts.

<sup>7</sup> In the case of an agreement to complete a job, there is no obligation to record the number of hours worked. Consequently, according to the State Labour Inspectorate, workers often exceed the maximum allowed annual limit of 300 hours worked. If there is insufficient or no evidence, it is very difficult to prove the existence of offences associated with exceeding the legal working time limit.

- 3) In 2014, social guarantees of freelance creative professionals were strengthened. To receive the insurance cover, social tax on wages and other remunerations must be paid, which is done by the employer, or in case of the self-employed, the person him/herself. The social tax must also be paid on creative professionals' support payments, which are paid from the state budget to freelance creative professionals who temporarily do not have income for creative activity. If the receiver of the support is a member of an artistic association, the social tax is paid by the association. Workers who are not members of an association have to pay the tax themselves, but the only way of doing so is if they register themselves as self-employed entrepreneurs. In order to reduce the bureaucracy involved with the support, the social tax is now paid by artistic associations for all creative professionals, whether the receiver of the support is a member of the association or not.
- 4) Employers have the possibility to apply for a wage subsidy in case of hiring a long-term unemployed person (registered as unemployed for at least 12 months). However, as of 2013, the regulation was mitigated to allow for temporary work, so that a person can be hired with wage subsidy if they have been registered as unemployed for at least 12 months during a period of 15 months.

Some countries opt to improve the rights of on demand workers. In Poland, an amendment to the law on social insurance meant that employees were only obliged to pay social insurance contributions for one contract of mandate. This was thought to frequently lead to situations where social security contributions were calculated based on wages below the statutory minimum wage.

Therefore, since January 2016, the terms of settlement for a contract of mandate depend on whether the contractor has additional income resulting from an employment contract, or it is his/her only source of income. According to regulation, if the contract of mandate is the sole source of income from work, it is mandatory to pay all social insurance contributions (which also means that for the duration of the contract the contractor is covered by health insurance). If the contract of mandate is an additional source of income and the remuneration under the contract of employment is at least minimum wage, the contributions for such contracts of mandate are voluntary. The changes will allow the future pension benefits of employees with civil law contracts to increase.

Pay is another key feature for workers in this situation. Poland has implemented a minimum hourly pay for contract of mandate and self-employed workers. As a result of the amendment, since 1 January 2017 the gross minimum hourly pay has amounted to over PLN 12 (€2.78), and, like the minimum wage, it is going to be indexed every year. The changes were implemented in order to protect civil law contractors against abnormally low wages and to curb the abuse of civil law contracts by employers.

Specific clauses have also been addressed. In the UK, legislation was introduced in 2014 to outlaw the use of exclusivity practices in the operation of ZHCs. At the time, critics of the work arrangement had been calling for an outright ban, though the coalition government stopped short of this (Eurofound, 2014b).

Temporary workers' rights are also addressed globally. For instance, in May 2017, the Swedish government appointed a special inquirer to look into how the working conditions for intermittent employees can be further strengthened (Regeringen.se, 2017).

## Ongoing discussions

Several discussions have been raised around the challenges of applying labour rights to on-demand work, potential compensation for the uncertainty of hours and clarification on the employment status of on-demand workers.

### Difficulty of applying labour rights

In June 2015, the Polish Constitutional Tribunal judged that workers on civil law contracts and the self-employed should have the right to form and join trade unions; it stated that the current law was in conflict with the Polish Constitution as well as with the convention of the International Labour Organisation (ILO). A new project in discussion aims at adjusting regulation to the tribunal's decision. Adopting a similar view, the Norwegian Committee on the sharing economy (established in February 2017) considered that those who work via platforms should have the opportunity to negotiate collective agreements with platform companies, even if they are not considered employees. However, achieving this does not seem straightforward. The Committee does not comment on how this can be done legally or practically. Firstly, it is unclear, according to EU competition law, whether the solo self-employed can fix a price on their service. Secondly, most of the platform companies do not consider themselves as employers and it might be difficult to negotiate collective agreements without a counterpart on the employer side.

### Compensation for uncertainty

In Ireland, the Employment (Miscellaneous Provisions) Bill (2017) states a number of provisions increasing transparency and minimum rights (especially regarding



## Ireland: Employment (Miscellaneous Provisions) Bill 2017

Following the 2017 Bill, the proposed changes to zero-hours contracts will:

- ensure workers are better informed about the nature of their employment arrangements and in particular their core terms at an early stage of their employment;
- strengthen provisions around minimum payments to low-paid, vulnerable workers who may be called in to work for a period but not provided with that work;
- prohibit zero-hours contracts, except in cases of genuine casual work, emergency cover or short-term relief work for that employer;
- ensure workers on low-hour contracts, who consistently work more hours each week than provided for in their contract of employment, are entitled to be placed in a band of hours that reflects the reality of the hours they have worked over an extended period;
- provide workers with a guaranteed payment worth three hours of work per week when a worker is asked to report for work but then not provided with any working hours;
- strengthen anti-penalisation provisions for employees who try to invoke a right under these proposals.

working hours and pay) for workers to reduce the uncertainty of work on demand situations.

For workers, the legislation presents a safety net and should enhance earnings stability, which in turn benefits such workers, particularly if they are seeking financial loans and need to demonstrate regularity of income. In a similar way, the 'banded hours arrangements', agreed at company level, have created a good image for the employers who adopt them. Such employment conditions (a minimum number of hours and therefore pay that employees cannot fall below) are not common across all the major employers in the retail sector.

In the UK, on the use of non-guaranteed hour contracts, the Work and Pensions and Business, Energy and Industrial Strategy Committees' draft Bill proposes to instigate a mechanism whereby workers are compensated for the uncertainty of hours. The suggestion is for the Low Pay Commission (LPC) to develop pay premia for the National Living Wage and the National Minimum Wage.

### Clarifying the employment status of workers

Labour MP Frank Field, chair of the UK Work and Pensions Select Committee, suggested a 'default position', considering that 'individuals should be engaged on contracts with "worker" status<sup>8</sup>. If organisations want individuals to operate as self-employed contractors, then the burden should be on the organisation to prove that the individual is

genuinely a self-employed contractor'. In November 2017, the Work and Pensions and Business, Energy and Industrial Strategy Committees published a joint report and draft Bill aimed at ending the practice of bogus self-employment (Parliament.uk, 2017).

In June 2017, the Norwegian government issued a hearing on a new modification of the Working Environment Act with the intention of restricting companies' access to hiring on-demand labour. The reason behind the modification is primarily the use of 'no pay between assignments' contracts in the staffing industry and the hiring of such on-demand labour by construction companies. It would propose that staffing agencies can use temporary employment in situations where the temporary workers are to replace persons on sick leave, parental leave and so on. Furthermore, in situations where they are not hired to replace individuals based on an agreement with local trade union representatives, the government is asking for views on whether to introduce a quota to restrict the use of temporary agency workers in certain industries, for instance construction. The government also suggests defining what it means to be permanently employed: 'When entering into the employment contract, the employee should know how much work the agreement entails (fixed number of hours) and thus the amount of income he/she may expect' (Regjeringen.no, 2017). Since June 2018, the 'no-pay between assignments' form of employment is forbidden, with temp agencies obliged to pay the employees in the periods between missions.

<sup>8</sup> In the UK, three employment statuses are regulated: employee, worker and self-employed. Not all employee rights apply to workers.



## Norway: Proposal to deregulate the transport sector

One of the main conclusions of the Sharing Economy Committee established in 2016 – which also received a large amount of attention in the media – was in the area of transportation. The Committee suggested deregulating the transport sector, for example by repealing:

- the need for taxi drivers to obtain a licence
- maximum price regulation
- the obligation for licence holders to have taxi transportation as their primary occupation

## Current concerns over future developments

Some general commitments to review regulation with a view to better adapt it to work developments have been presented. For instance, in Estonia the future of work has only recently emerged into discussions, revolving around the new forms of work and how it could affect the employment relationships, working conditions etc. However, the issue of the changing labour market is gathering more attention due to decreasing population and ageing society, where every employee is important; thus ways to include as many people in the labour market as possible is important. The Government has also acknowledged the topic in the Coalition Agreement by promising to ‘renew the employment market and the laws regulating labour taxes on the basis of the changed nature of employment relations (remote working, workforce “renting”, having multiple jobs, the sharing economy)’, although the action plan accompanying the agreement includes only ‘analysis and suggestions’ related to the topic (Vabariigi Valitsus, 2016a and 2016b).

Some very specific issues are also on the agenda. In Ireland for example, the recent Employment (Miscellaneous Provisions) Bill (2017) has been criticised for not addressing the situation of the most vulnerable workers. According to Labour Senator Ged Nash:

*The new legislation entirely dodges the question of ‘if and when’ contracts and how such workers are to be treated. It seems that, for most workers trapped in the ‘if and when’ spiral, work of that nature will continue to be treated as a casual form of work. This would deny them access to these important reforms, because they would not be classified as ‘employees’ in the first place.*

(Irish Examiner, 2017)

The broad issues of platforms and the 4.0 economy are also part of the current debate, and here to stay for the near future.<sup>9</sup>

The Norwegian government-established Sharing Economy Committee discussed the development of on-demand work through platform companies (Ministry of Finance, 2017). The Committee’s mandate was to evaluate opportunities and challenges presented by the sharing economy. Within this broad mandate, it identified and assessed regulations challenged by the sharing economy, explored labour market consequences and considered consumer protection rules and safety. The Committee concluded that there are many positive consequences of the sharing economy, but that it also presents some challenges.

More specifically, the Committee concluded that ‘the sharing economy does not challenge the concept of being an “employee” in a manner that cannot be dealt with by the courts’. Therefore, the Committee proposed no changes to the Working Environment Act or to the national insurance and pension rights of self-employed persons.

<sup>9</sup> The digital economy is also related to the concept of ‘Industry 4.0’, widely regarded as the fourth and next phase in the digitalisation of the manufacturing sector. ‘Industry 4.0’ is the term given to production processes with fully integrated automated facilities which communicate with one another.



## 6 | Future steps

Work on demand should be carefully monitored and addressed as part of the various forms of precarious work.

Indeed, despite the lack of quantitative reliable data, work on demand is likely to keep increasing in connection with the two main developments economies face, both in Europe and around the world: globalisation and development of online providers of work activity.

Policies should primarily address the issues summarised by Hotvedt (2016) through the question, ‘when does the freedom to choose tasks and hours indicate autonomy, and when does it indicate (extreme) precarity?’ They should also consider how they would address the consequences of precarious work and contribute to raising awareness on its impacts on workers and on business models. Ensuring visibility and therefore increasing predictability for workers would be another major step forward in this regard.

### Measures to tackle precarious employment

For some years, Europe has engaged in a battle against precarious forms of work. Firstly, defining the notions of precarious employment and of ‘workers’ is fundamental in order to understand, and consequently address, gaps in workers’ rights. European institutions have dedicated several reports and texts to these notions with a view to pinpoint all the features involved.

The European Parliament definition considers that precarious employment means ‘employment which does not comply with EU, international and national standards and laws and/or does not provide sufficient resources for a decent life or adequate social protection’ (European Parliament, 2017). This definition underlines important legal aspects work should comply to; it also stresses the importance for workers to get resources from their paid activity that support their living and that ensure protection against the main risks of working life (sickness, unemployment and old age).

The European Parliament calls on the Commission and Member States to tackle precarious employment, including undeclared work and bogus self-employment, in order to ensure that all types of work contracts offer decent working conditions with proper social security coverage. This needs to be in line with the ILO Decent Work Agenda and, at European level, Article 9 of the Treaty on the Functioning of the European Union, the EU Charter of Fundamental Rights and the European Social Charter.

Various atypical forms of employment (in particular fixed-term, zero-hours contracts and flexi-jobs) and business models (such as franchising as a prevalent form of business fragmentation) are of particular concern in this field. The 2017 European Parliament study commissioned by the Committee on Petitions (PETI) on ‘temporary contracts, precarious employment, employees’ fundamental rights and EU employment law’ examined precariousness in the framework of the EU’s fundamental rights and EU employment law, focusing on atypical forms of employment and franchising.

Nevertheless, it is paramount to keep in mind that precariousness is a concern for all workers, independent of their employment status. Putting the emphasis not on a ‘peripheral segment of the labour market’, but on the wider range of workers experiencing precarious employment, the Grimshaw et al (2016) study in particular stressed the importance of recognising that all forms of employment may be at risk from poor working conditions and insecurity. This is related to four types of ‘protective gaps’ in the system of economic and social protection. Therefore, policies aiming to address precarious work should tackle existing gaps in employment rights, in social protection, in representation and in enforcement of rights.

Secondly, continuing to monitor the consequences of precarious working conditions is paramount. The assumption beyond ‘precarious employment’ is that it involves relationships that do not deliver for workers what a ‘good job’ should: skills recognition and improvement, resources (especially financial) with a view to make ends meet and developing employability. Analysing labour law aspects but also working conditions, Eurofound research has underlined several issues that workers, businesses, social partners and European countries continue to face when confronted with precarious forms of work, including in work on demand situations. For more than 20 years, through the successive waves of the European Working Conditions Survey, Eurofound has been in a position to study the trends of working conditions across Europe and the overall impacts of precarious forms of employment on ‘job quality’. In the most recent wave of the survey (2015), data show that across Europe, there were still 20% of jobs that scored poorly in all job quality indicators; these jobs were mainly occupied by workers on fixed-term contracts or those that had no contract.

## Ensuring visibility and predictability of work activity

Ensuring visibility and therefore predictability of work activity could be another way of addressing the consequences of work on demand contracts.

The European Commission's proposal for a 'European Directive on transparent and predictable working conditions' (European Commission, 2017), aims at protecting workers against an 'over used flexibility'. Although the way and extent to which this will be applied in various sectors and company sizes remains to be seen, it could be a considerable step towards better worker protection. In June 2018, the European Parliament's Committee on Employment and Social Affairs (EMPL) discussed and amended the Commission proposal.

Among other features, the following are particularly relevant for 'on-demand' workers:

- Scope of the directive including forms of employment currently not systematically covered by labour rights, such as domestic work, casual workers (for instance those carrying out on-demand or intermittent work), short-term employees, domestic workers, platform workers or voucher-based workers.
- Establishing minimum rights applicable to all workers in the Union (Articles 7–11). This includes (iii) right to predictability of work: workers with variable working schedules determined by the employer (i.e. on-demand work) should know in advance when they can be requested to work. For instance, Article 9 addresses the conditions under which unpredictability will be lessened by 'reasonable' advance notification from the employer to the worker on the assignment schedule.

## Increasing awareness of workers' demands and business models

Some evidence and research point to the need to keep an eye on workers' demands vis-à-vis working time and business models built around time arrangements.

First, evidence of the reduced appeal of work on demand is starting to emerge. In fact, after experiencing greater flexibility of working arrangements, workers themselves seem to prioritise more room for manoeuvre and stability needs.

Statements from some employee representatives suggest that a shift in attitude is underway. In 2017, in relation to the results of two major consultations of employees, undertaken in 2013 and 2017, IG Metall stated: 'We have to rethink working time and ensure that employees can also take advantage of working flexibility' (reported by the correspondent for Germany). These consultations showed to what extent working time management was found to be a critical issue by employees; above all, it highlighted that 'employees were seeking a return to autonomous working time decisions along with having reliable and predictable working time'. Trade unions and employee representatives should keep this in mind when discussing working time arrangements.

Secondly, it becomes increasingly obvious that business models should be part of the employment equation. The platform industry is topical in this regard; it illustrates how business models impact employment relationships and work organisation, and how they should be part of the response to precarious working conditions.

### Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union

#### Article 9 – Minimum predictability of work

This article provides that, if a worker has a variable work schedule where the employer, rather than the worker, determines the timing of the work assignments,

- (a) the employer must notify such workers of the periods of hours and days within which they may be required to work. That would enable workers to use the time not covered by such reference hours/days in other employment, in education or to fulfil care obligations. Workers may agree to work outside the reference hours and days, but cannot be obliged to do so, and must not be subject to detriment if they refuse (see Article 16).
- (b) workers cannot be required to work if they receive less than a reasonable advance notice from their employer, set out in advance in the written statement. They may agree to do so but must not be subject to detriment if they refuse (see Article 16). What is considered a reasonable advance notice may vary across sectors.

These provisions do not apply in cases where the employer sets a task to be achieved, but the worker is free to determine the time schedule within which he or she performs the task.

In some countries, where the employment status of individuals performing paid activities via online platforms has come under discussion, the ‘contract-of-employment test’ has been under scrutiny. For instance, Hotvedt’s research on the legal implications of work on demand and the blurring distinction between employees and self-employed has led to a proposal for renewing the ‘contract-of-employment test’ (Hotvedt, 2016). This test uses elements of labour relations such as the amount of control exerted by the potential employer over the employee. Currently, the individual perspective is the basis for such an assessment, but Hotvedt (2016) argues that, as there might be great variations in the situation of those who work via platforms and a great heterogeneity of platform companies, the ‘business model’ of the platform companies should be taken into account when assessing whether or not there is an employment relationship. This suggestion could apply beyond the platform economy, covering all forms of precarious work.

## Supporting companies’ policies on working conditions

Work on demand represents more than an employment relationship; it is part of the way work is organised. Therefore, it is crucial to get a view on how work is organised to address the consequences of work on demand on working conditions.

For instance, among others, as examples show, negotiating guaranteed hours of work (and therefore guaranteed pay) can support workers in this situation. Collective negotiations can also be a means to discuss the way people perform work (in a team, in a collective, in isolation), thereby addressing their social and physical environment. As the European Working Conditions Survey data analysis demonstrates, all these issues are critical in order to preserve workers’ health and well-being.

Work organisation is also a key feature for business competition and ensuring quality of the product or service delivered. The sustainability of business models built on work on demand can be questioned in increasingly competitive markets, as it has to contend with contradictory constraints from globalisation, demand for supporting local businesses, and requests for reliability and quality of products.

Greater understanding of how work is organised would help policymakers to devise policies and actions to support companies in this area.



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This report examines the issues in relation to ‘work on demand’, a topic that has received considerable attention in the media recently, mainly due to its links with the platform economy. Work on demand is often presented as a ‘win–win situation’: workers get to tailor their work according to their personal responsibilities outside work, while businesses can design their workforce according to their needs. However, this type of work, characterised as a non-standard form of employment, can have negative impacts on working conditions and business models. This study presents the findings on work on demand in 11 EU Member States and Norway where the prevailing situation is quite nuanced. The overarching European debate on precarious forms of work could support countries in devising measures and policies to address work on demand and its consequences for both workers and companies.

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