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Responding to petitions on tackling precariousness and the abusive use of fixed-term contracts

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► European Parliament resolution of 31 May 2018 on Responding to petitions on tackling precariousness and the abusive use of fixed-term contracts ([2018/2600\(RSP\)](#))

The European Parliament,

- having regard to Articles 153(1) (a) and (b), 155(1) and 352 of the Treaty on the Functioning of the European Union,
- having regard to Articles 4 and 30 of the European Social Charter and to Articles 31 and 32 of the Charter of Fundamental Rights of the European Union,
- having regard to the anti-discrimination and anti-abuse measures of Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work<sup>(1)</sup> (Part-time Work Directive),
- having regard to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP<sup>(2)</sup> (Fixed-Term Work Directive),
- having regard to Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time<sup>(3)</sup> (Working Time Directive),
- having regard to Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work<sup>(4)</sup>,
- having regard to Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees<sup>(5)</sup> (European Works Council Directive),
- having regard to International Labour Organisation (ILO) Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, and Convention 175 concerning Part-Time Work,
- having regard to its resolution of 4 July 2017 on working conditions and precarious employment<sup>(6)</sup>,
- having regard to the study entitled ‘Temporary contracts, precarious employment, employees’ fundamental rights and EU employment law’ published by its Directorate-General for Internal Policies in November 2017<sup>(7)</sup>,

- having regard to the numerous petitions on violations of the Fixed-Term Work Directive in the public sector(8) , on the precarious working conditions of workers employed on zero-hours contracts in the private sector(9) , on trade union representation and on discrepancies in social security systems(10) and opposing the increasing use of temporary contracts(11) ,
- having regard to the new proposals by the Commission for a Regulation of the European Parliament and of the Council establishing a European Labour Authority (COM(2018)0131) and for a Council recommendation on access to social protection for workers and the self-employed (COM(2018)0132),
- having regard to the outcome of the hearing organised by the Committee on Petitions on 22 November 2017 on ‘Protection of the rights of workers in temporary or precarious employment, based on petitions received’,
- having regard to Council Directive 91/533/EEC of 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship(12) ,
- having regard to the Commission proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union, repealing Council Directive 91/533/EEC (COM(2017)0797),
- having regard to the question to the Commission on ‘Responding to petitions on tackling precariousness and the abusive use of fixed-term contracts’ (O-000054/2018 – B8-0022/2018),
- having regard to the motion for a resolution of the Committee on Petitions,
- having regard to Rules 128(5) and 123(2) of its Rules of Procedure,

A. whereas the number of workers with fixed-term and part-time contracts has increased in the EU over the past 15 years, as a result of the austerity policies and curtailments of labour rights that were implemented, which have led to increasing precariousness and labour instability; whereas efficient policies are needed to encompass the various forms of employment and adequately protect workers;

B. whereas precarious working conditions arise from the existence of major gaps in the effective protection of workers’ rights at different levels of regulation, including EU primary and secondary law and Member States’ law; whereas petitions concerning different types of employment should be considered in full accordance with the national legislation of the respective Member State from which they originate and with relevant EU law; whereas the EU’s social and labour policy is based on the subsidiarity principle;

C. whereas there is a need to adapt policy responses to reflect the fact that precariousness is a dynamic aspect affecting all personal work relations; whereas the fight against precarious work needs to be pursued through an integrated multi-level policy package that promotes inclusive and effective labour standards alongside effective measures to ensure respect for the principle of equality;

D. whereas the goal of effectively tackling unfair employment practices leading to precariousness should be also pursued on the basis of the ILO's Decent Work Agenda, which looks at job creation, rights at work, social protection and social dialogue, with gender equality as a cross-cutting objective;

E. whereas Eurostat and Eurofound data on involuntary temporary employment, on gender and age discrepancies in temporary employment, and on the underemployment of a notable proportion of part-time workers, show a growing emergence of non-standard, atypical forms of employment; whereas the data on unemployment by gender and age shows that their rates are at their lowest since 2009;

F. whereas several Member States have, over the years, experienced a significant increase in atypical and temporary employment contracts in both public and private sectors, in a legal framework where the abusive use of fixed-term contracts could neither be adequately prevented nor sanctioned owing to the absence of effective and proportionate remedies; whereas this has undermined the integrity of European employment legislation and the jurisprudence of the Court of Justice of the European Union;

G. whereas there is a comprehensive framework of EU legislation in place that should curb the risk of precariousness of certain types of employment relationships, such as the Fixed-Term Contracts Directive, the Part-time Work Directive, the Temporary Work Directive, the Working Time Directive, the Equal Treatment in Employment and Occupation Directive, the Equal Treatment between Persons Directive and the Equal Opportunities and Equal Treatment Directive;

H. whereas the Commission accumulated long delays in handling infringement proceedings concerning the breach of EU labour legislation by some Member States, allowing the abusive use of fixed-term contracts and violations of workers' rights to go on for years;

I. whereas recent information related to petitions concerning the abuse of fixed-term contracts in the public sector has highlighted the situation of some temporary workers who had been dismissed by the public body for whom they were working following rulings declaring that they had suffered from an abusive use of fixed-term contracts, in breach of Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;

J. whereas working conditions differ from one Member State to another, as each has its own specific legislation related to employment contracts;

K. whereas the Committee on Petitions has heard strong evidence about the growth of precarious work;

L. whereas workers on zero-hours contracts must be considered as workers under EU law, as they work under the direction of another and receive remuneration for that work, and therefore the social legislation of the EU must apply;

M. whereas precarious employment, including zero-hours contracts, results in inadequate access to social protection and undermines the right to collective bargaining, particularly in

terms of benefits and protection from unfair dismissal, while also impinging on career development and training; whereas precarious employment leads to overall life precariousness;

N. whereas women are more likely to work part-time or on time-limited or low-wage contracts and are therefore more at risk of precariousness resulting from discrimination in the labour market, and this is slowing down progress in combating and eliminating the gender pay and pension gaps;

1. Understands precarious employment to mean employment which arises from, among other things, an abusive use of temporary employment contracts in violation of international standards on working conditions, labour rights and EU law; underlines that precarious employment implies higher exposure to socio-economic vulnerability, insufficient resources for a decent life and inadequate social protection;

2. Highlights that it is important to make a distinction between atypical work and the existence of precarious employment; stresses that the terms ‘atypical’ and ‘precarious’ cannot be used synonymously;

3. Takes note of Parliament’s resolution of 4 July 2017 on working conditions and precarious employment and of the petitions received, and underlines that the risk of precariousness depends on the type of contract but also on the following factors:

- little or no job security owing to the non-permanent nature of the work, as in involuntary and often marginal part-time contracts, and, in some Member States, unclear working hours and duties that change owing to on-demand work;
- rudimentary protection from dismissal and lack of sufficient social protection in case of dismissal;
- insufficient remuneration for a decent standard of living;
- no or limited social protection rights or benefits;
- no or limited protection against any form of discrimination;
- no or limited prospects for advancement in the labour market or career development and training;
- low level of collective rights and limited rights to collective representation;
- a working environment that fails to meet minimum health and safety standards;

4. Calls on the Commission and the Member States to combat precarious employment such as zero-hours contracts by ensuring the development of new instruments and coherent respect for the jurisprudence of the Court of Justice of the European Union, as well as the concrete enforcement of EU and national legislation at national level with a view to solving the decent work deficit and implementing a rights-based approach; calls on the Commission and the Member States to cooperate with all social partners – particularly trade unions – and relevant stakeholders, promoting qualitative, secure and well-paid employment, in order to, inter alia, strengthen labour inspectorates;

5. Urges the Commission to take immediate action in its legislation to effectively address the employment practices leading to precariousness;

6. Calls on the Commission to step up its efforts to end unfair terms in employment contracts

by addressing all abuses and loopholes; acknowledges the new proposal for a directive on Transparent and Predictable Working Conditions, which aims to establish new rights for all workers, particularly in order to improve working conditions for workers in new forms of employment and non-standard employment, while limiting the burdens on employers and maintaining labour market adaptability;

7. Welcomes specifically the provisions on a right to seek additional employment, with a ban on exclusivity clauses and limits on incompatibility clauses, and a right to be informed of the commencement date of work at a reasonable time in advance of that date;

8. Stresses that the Working Time Directive can and must be applied to workers on zero-hours contracts and that they are therefore covered by the rules on minimum rest periods and maximum working times;

9. Calls on the Member States to take account of the ILO indicators in determining the existence of an employment relationship as a means of addressing the lack of protection offered by precarious employment;

10. Notes that access to social protection is crucial for the economic and social safety of the work force and for well-functioning labour markets that create jobs and sustainable growth;

11. Underlines that inspections must be ensured so that workers subject to temporary or flexible contractual arrangements benefit from at least the same protection as all other workers; notes that a targeted effort to use existing ILO instruments in a specific campaign against precarious work is necessary, and that serious consideration should be given to the need for new binding instruments and legal measures that would restrict and reduce precarious work and make precarious work contracts less attractive to employers;

12. Strongly believes that an overall assessment of the circumstances surrounding the renewal of fixed-term employment contracts must be carried out, as the services required of the worker were not able to meet merely temporary needs, thus revealing the existence of an abuse in violation of Clause 5 of the Framework Agreement of Directive 1999/70/EC;

13. Calls on the Commission and Member States to fully ensure equal pay for equal work at the same workplace;

14. Insists that the Commission and the Member States assess legislation concerning precarious work in relation to its gender impact; considers it necessary to focus on various existing measures concerning the needs of women in precarious work, as an already over-represented group that will continue to be overly affected;

15. Recalls that the premise on which Directive 1999/70/EC on Framework Agreement fixed-term contracts is grounded is that employment contracts of indefinite duration are the general form of employment relationship, while fixed-term employment contracts are only a feature of employment in certain sectors or of certain occupations and activities;

16. Denounces the renewal of fixed-term employment contracts with the aim of covering needs which are not temporary in nature but fixed and permanent, as this represents a violation

of Directive 1999/70/EC;

17. Notes that the Court of Justice of the European Union has established that the conversion of a fixed-term contract into a contract of indefinite duration constitutes a measure which is consistent with the requirements resulting from EU law in that it prevents the misuse of fixed-term contracts and results in definitive elimination of the consequences of misuse<sup>(13)</sup> ;

18. Highlights that the conversion of a fixed-term contract into a contract of indefinite duration must be considered as a measure to effectively prevent and sanction the abuse of fixed-term contracts in both public and private sectors, and must be clearly and consistently included by all Member States in their relevant legal frameworks on labour law;

19. Highlights that the conversion of a fixed-term contract into a contract of indefinite duration for a worker who has suffered an abuse of fixed-term contracts, in violation of Directive 1999/70/EC, does not exonerate a Member State from the obligation to punish that abuse including, in addition, the possibility for the affected worker to obtain compensation for any damages suffered in the past;

20. Underlines that if a Member State chooses to punish discrimination or abuse against a temporary worker in breach of EU law by awarding compensation to the affected worker, that compensation must in any event be adequate and effective and must fully compensate all damages suffered;

21. Stresses that the budgetary considerations underlying a Member State's choice of social policy cannot justify the lack of effective measures aimed at preventing and duly punishing the misuse of successive fixed-term employment contracts; stresses, in fact, that the adoption of such effective measures, in full compliance with EU law, is necessary to nullify the consequences of violation of workers' rights;

22. Condemns the fact that workers who had been recognised by the competent judicial authorities as victims of an abusive use of fixed-term contracts, in violation of Directive 1999/70/EC, have been made redundant; strongly believes that where abuses of successive fixed-term contracts have taken place, a measure offering effective and equivalent guarantees for the protection of workers can be applied in order to duly punish the abuse and to nullify the consequences of the breach of EU law, as well as to safeguard the employment position of the workers affected;

23. Invites the Member States to improve job standards in non-conventional jobs by providing, at the very least, a set of minimum standards for social protection, minimum wage levels and access to training and development;

24. Calls on the Member States to take measures to respect, promote and concretise the fundamental principles and workplace rights that concern those working in the informal economy, and to put in place appropriate mechanisms or review existing ones in order to ensure compliance with national laws and regulations and to recognise and enforce employment relationships in such a way as to facilitate workers' transition to the formal economy;

25. Instructs its President to forward this resolution to the Council, the Commission and the governments of the Member States.

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(1) OJ L 14, 20.1.1998, p. 9.

(2) OJ L 175, 10.7.1999, p. 43.

(3) OJ L 299, 18.11.2003, p. 9.

(4) OJ L 327, 5.12.2008, p. 9.

(5) OJ L 122, 16.5.2009, p. 28.

(6) Texts adopted, [P8\\_TA\(2017\)0290](#).

(7) [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596823/IPOL\\_STU\(2017\)596823\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596823/IPOL_STU(2017)596823_EN.pdf)

(8) 0389/2015, 1328/2015, 0044/2016, 0988/2016, 1108/2016, 1202/2016, 1310/2016, 0188/2017, 0268/2017, 0283/2017, 0640/2017, 0701/2017

(9) 0019/2016, 0020/2016, 0021/2016, 0099/2017, 1162/2017

(10) 0019/2016, 0442/2017

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(11) 1043/2017

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(12) OJ L 288, 18.10.1991, p. 32.

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(13) Judgment of the Court of Justice of 26 November 2014, Mascolo , C-22/13,

) ECLI:EU:C:2014:2401, paragraph 55.

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