



Europäischer Metallgewerkschaftsbund
European Metalworkers' Federation
Fédération Européenne des Métallurgistes

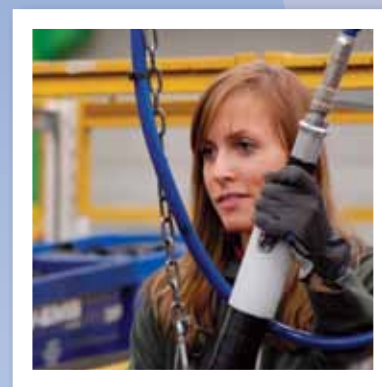


FOR MORE SECURE EMPLOYMENT
- AGAINST PRECARIOUS WORK

European Metalworkers' Federation

Second Common Demand for Collective Bargaining

For more secure employment, against precarious work



FOR MORE SECURE EMPLOYMENT, AGAINST PRECARIOUS WORK



In recent decades there has been a dramatic increase in precarious work in all countries in Europe as well as in the whole world. Not only is there a persistently high rate of unemployment in many EU Member States, but there is also an erosion of what are classified as the 'norm', 'standard' or 'typical' forms of employment. This undoubtedly endangers and reduces the opportunity for employees to obtain decent employment thus making them, in these rapidly changing circumstances, the first victims of the system and of the current economic crisis. Current unemployment statistics clearly demonstrate that the most vulnerable groups are young and migrant workers and, above all, women.

But undoubtedly, at the onset of economic recovery, precarious jobs will also be amongst the first to be offered again and, quite possibly, with even worse conditions than the ones we know today.

Much of the current problem has resulted directly from the practice of companies to create divisions of labour in a quest to create increased flexibility. Many employers have adopted aggressive strategies, which aim to outsource non-core elements of business, such as maintenance, cleaning, clerical, or computer-programming and, to an increasing degree, research and development activities, to specialised service companies. At the same time, these strategies are increasingly accompanied by massive use of diverse forms of precarious employment contracts and of temporary agency companies, which are often able to supply cheaper labour on an ad hoc basis.

Over the past few years, trade unions throughout Europe have been constantly faced with attempts from employers to erode workers' rights, in a quest to gain greater flexibility, resulting in a more de-regulated, vulnerable and unstable labour market where inequalities develop. Governments and employers argue that flexibility is an employment opportunity, but they normally overlook/forget the security and labour rights elements. This results in more precarious employment. The current economic crisis, provoked by the crisis of the financial markets, has brought this up once more: the European Central Bank, followed by many governments, saw this as the opportunity to re-launch the debate on their version of flexicurity.

Workers are continuously asked to be more flexible, to accept rapid changes in their work organization, to adapt increasingly to longer working hours, to accept less secure contracts, to accept temporary contracts, to accept contracts with less labour rights, with no equal treatment and to work as cheaply as possible ... thus negating the vital balance inherent in the original concept of flexicurity, by requiring only flexibility and at the same time reducing the security of the workers. And not only is this increasing the insecurity of the workers, it is equally increasing work-related stress and endangering health and safety requirements.



Furthermore, it makes it increasingly difficult to strike a right and healthy balance between work and private life. It has been noted that there is a link between the deterioration of the working conditions of women and the increasing precariousness of society itself (the organisation of family life, child care, etc). In fact an important aspect of precarious work is its gendered nature. An essential element of precarious work is that women, young people, migrant workers, groups of workers that are especially vulnerable, are generally over-represented.

Besides a direct impact on the life and welfare of the workers involved this has also an extra unfortunate consequence in that precarious forms of employment and the allocation of tasks to sub-contractors frequently undermine collective bargaining and the European Social Model.

The EMF clearly favours open-ended contracts with one employer as the most secure form of contract regulation, as is for instance also foreseen in the ILO conventions. We nevertheless also recognise that precarious work can be found in a wide diversity of cases.

A “precarious job” or precarious employment in effect means a job with not enough security to secure or maintain an acceptable living standard in society as a whole - hereby creating a sense of instability, a sense of insecurity as regards what the future may hold for you. Precarious employment is a very wide issue. The way you perceive it, the way you feel it, the way you experience it is very personal. It relates to the direct job situation in the plant, in the company (the kind of contract you received, the way you are paid, the information you obtain, ...) but also to your position in the wider society (how is your job looked upon, how well is it respected, how is it considered, etc.).



Photography by Andy Michaelis

In any case, jobs can always be considered as precarious if they are jobs:

- with little or no job security
- with low and unsecured wages
- without or with insufficient access to social security (concerning pension, health insurance, unemployment payment)
- without control over the labour process, which is linked to the presence or absence of trade unions and relates to control over working conditions, wages and the pace of work
- without any protection against dismissals
- without access to vocational training
- without career opportunities
- with little or no health and safety at work
- without legal or contractual protection
- with no trade union representation.

It is virtually impossible to cite all of the new kind of contract relationships that have been created in these last years, simply because there are too many of them. Employers, as well as governments, seem to be very creative in developing new forms of labour contracts for which the determining factor is that the protection systems existing for the normal open-ended contracts are partially or completely removed.

All of these forms of employment are related in that they depart from the standard employment relationship (full-time, open-ended contract with one employer), but they are not to be considered precarious in all cases since good legislation and/or good collective agreements can give more security than these contract forms.

In this connection, the EMF, in close cooperation with the IMF, already organised a successful world action day against precarious work on 7th October 2008 and fully plans to continue its activities in this domain.



Photography by Andy Michaelis

The EMF and its affiliates therefore decide, in accordance with the Lisbon Congress decision of June 2007, to initiate the second EMF common demand in the coming collective bargaining rounds, on the topic of “for more secure employment - against precarious work”.

Nevertheless, in the case of precarious employment, we cannot neglect the legal aspects closely related to this topic. Not everything can be solved by collective agreements in all cases. Therefore our second common demand is an extension of the broader EMF/IMF campaign against precarious work.

This second common demand has to be implemented inside our different countries in accordance with national priority of topics, national traditions and methods of collective bargaining, and hence can also include different elements as per the current state of the art in the different countries. We provide nevertheless a non-limitative list of possible action points:

TEMPORARY AGENCY WORK

Temporary agency work has increasingly become an important part of the work force in the industry and there is no doubt that the metal industry is by far the largest user-industry in Europe. The use of temporary agency workers within the user company should be a temporary solution for specific employment situations and should not become the normal employment relationship. Extra attention should also be paid to the fact that employers are increasingly using temporary agency work as a replacement for and/or extension of the normal probation period in an open-ended contract.

As such, a first important element for trade unions should be to implement the Directive on Temporary Agency Work in such a way that it guarantees full, equal treatment of temporary agency workers and the comparable workers in the user companies, with no exceptions and no waiting periods for this equal treatment. Specific other elements could include:

- guaranteeing full access to all existing benefits of the user companies, and this through provisions inside the user companies and/or the agencies;

- guaranteeing access to and information about all health and safety regulations inside the user company, including access to the same health and safety equipment and training as provided by the user company;
- guaranteeing the access and the right to individual training;
- negotiating collective agreements on sector or agency level where other rules and regulations do not provide equal treatment in wages or other provisions;
- limiting the use of temporary agency work, e.g. providing upper limits on use, providing specific reasons for use (seasonal peaks, peaks of activity, ...), excluding certain sectors;
- excluding the possibility for employers to use temporary agency work in a user-company on strike.

FIXED-TERM CONTRACTS

Fixed-term contracts were originally used in much the same way as temporary agency work, as replacement contracts or temporary solutions for increased production demands, with the added difference that the contract was directly with the user-company. Lately they are more and more used in a role for which they were not intended, giving workers fixed-term instead of open-ended contracts. And in fact fixed-term contracts are also more and more used to replace or increase the normal probation period of a worker. The basic element here should also be to provide full equal treatment with the other workers in the company. Further elements could include:

- limiting the number of consecutive fixed-term contracts in one company;
- putting an upper limit on the number of fixed-term contracts in a company;
- providing full access to all benefits of the company;
- limiting the reasons for the use of these kind of contracts, e.g. for seasonal work or temporary peaks;
- guaranteeing a possible transition to an open-ended contract.

BOGUS SELF-EMPLOYED

The use of workers under a bogus self-employed contract has been steadily growing. Employers sometimes argue – wrongly – that this is similar to outsourcing and/or sub-contracting. The EMF totally rejects bogus self-employed contracts - the main difference being of course that these so-called self-employed workers actually work under the supervision and direct control of the company.

- Where law, rules and/or agreements do not already provide this, we should negotiate a clear definition of self-employed versus bogus self-employed: “working under supervision” should in all cases be considered as a normal labour contract and not as a self-employed contract;
- To exclude, or limit, the use of bogus self-employed contracts;
- To limit the reason for use of these kind of contracts.

PROJECT-BASED CONTRACTS

Project-based contracts provide a task the worker has to undertake in return for a certain remuneration. Often there are no provisions for working time or working conditions ... and no social security. Trade union demands could include:

- Provisions to clarify which kinds of projects could be covered in such contracts;
- Provision of clear descriptions of the projects, including not only the technical aspects, but the social and working conditions as well;
- If these are really independent activities, the contract should provide a clear description of the responsibilities as well as the duties, versus the agreed wages;
- If the project work is not really done on an independent, self-employed basis: provide a possible transfer to open ended-contracts, with an agreed time-limit;
- Stipulation of a normal working time clause, with a clear notion of a good work/life balance;
- Provision of access to social security.

ZERO HOUR CONTRACTS

This is not to be confused with the traditional On-call work existing in the metal industry in repair and maintenance facilities where workers with open-ended contracts are asked to be available, against compensation, outside of the normal working hours (evenings, nights, weekends) in case of urgent interventions. The zero hour contracts are a new development, outside the scope of the traditional on-call work, where the worker is on-call if and when the company need him/her and where the worker is only paid for the hours where he/she is called. In some countries this is referred to as casual work or casual contracts. Trade union demands could include:

- Rejection of all “zero-hour” contracts;
- Provision of clear agreements for the traditional on-call work, defining clearly the way it is paid, the way it is recuperated, the working time aspects,

PART-TIME WORK

Part-time work in itself is certainly not to be considered as precarious work, but there are cases where we have to take care to provide sufficient security and guarantee economic independence. This is because part-time work can cause precariousness when it is forced on a worker, when the salary is obviously not sufficient to guarantee a decent life or when it creates difficulties with social security. For instance there are countries where part-time workers only have access to social security if their contract has a minimum number of hours. Also part-time work should always be of a voluntary nature and the equal treatment of part-time workers is extremely important since they are often overlooked for training or career opportunities.

- As trade unions we should promote the voluntary aspect of part-time work; in many cases our members are interested in doing part-time work;
- Agreements could provide access to part-time work at the demand of the employee: an individual right;
- Part-time jobs should always have full access to social security;

- Guarantee equal access to training facilities and training possibilities;
- Guarantee equal career opportunities for part-time workers;
- Include a possibility to return to a full-time contract.

OUTSOURCING / SUBCONTRACTING

In most major companies in Europe the practice of outsourcing part of the production, or to sub-contract this, has become general practice. The economic relationship between the mother or principal company and the daughter companies or sub-contracting firms creates the risk of precarity for the down chain firms. This is an umbrella tactic to refer part of the economic - and social - responsibility down the chain between mother companies and sub-contractors. The workers usually end up with the negative consequences since this often creates specific problems for both the workers of the mother company as well as the workers in the outsourced or subcontracted jobs, including precarisation of the jobs involved. Trade union demands to regulate this area could include:

- Joint and several responsibility of the co-owners of companies;
- Agreements on equal treatment for wages, working conditions, training and career opportunities for workers in outsourced activities or daughter companies;
- Social standard clauses in the collective agreements of the mother company, providing clear rules for the outsourced companies or subcontractors;
- To include a certain number of minimum regulations and minimum norms for the outsourced or subcontracted activities;
- The need to have a prior agreement of trade unions / work council on possible outsourcing or subcontracting activities;
- To foresee trade union / work council control over the activities of the outsourced or subcontracted activities;
- To foresee the possibility for joint collective agreements for the complete chain of activities;
- To provide a basic code of conduct for subcontractors.

NON-SOLICITATION AGREEMENT / NON COMPETITION AGREEMENT

A non-solicitation agreement is an arrangement between two companies for the purpose of hindering one company from hiring employees from the other. A non-solicitation agreement is often part of a framework agreement or of a contract with a collaborating company about delivering a service. The wording of a non-solicitation clause could for instance be: *“The parties cannot employ or seek to employ the employees of the other party for a time period of up to 12 months after the termination of this agreement.”*

Sometimes this kind of contract is even made without the knowledge of the employees, which implies that no compensation is given to the employees affected by the contract.

A non-competition agreement is an agreement and/or stipulation in the individual labour contract prohibiting the employee from working for another company in the same field of activity during a certain period.

Trade union demands to regulate this area could include:

- Total prohibition of all non-solicitation agreements;
- Such agreements should at the least be co-signed by the workers in question, otherwise the effects should be invalid;
- A limitation of non-competition clauses in individual labour contracts;
- Maximum limit in time and scope of non-competition clauses.

JOB SECURITY FOR OPEN-ENDED CONTRACTS

In most cases it is the open-ended contracts in a company that come under more and more competition from these more atypical contracts. This means that open-ended contracts can also become more and more precarious if they are under pressure of being replaced by other contracts.

- To promote open ended contracts as the standard contracts in our industry;
- To provide improvements on dismissals clauses, including for instance the improvement or lengthening of notice periods;
- Provide general job security clauses in collective agreements;
- To provide training as a reinforcement of the career;
- To include internal career opportunities.

The Second Common Demand “For more secure employment, against precarious work” is a further step in relation to implementation of the EMF Resolution on Precarious Employment “The Promotion of Decent Work” adopted by the EMF Executive Committee in November 2005 (see full text overleaf) and the IMF/EMF Campaign against precarious work launched in 2008.

EMF RESOLUTION ON PRECARIOUS EMPLOYMENT THE PROMOTION OF DECENT WORK

approved by the 101st EMF Executive Committee
Luxembourg, 22nd & 23rd November 2005

The EMF is concerned about the dramatically changing composition of the labour market within the European Union. Not only is there a persistently high rate of unemployment in many EU Member States, but there is also an erosion of what are classified as the 'norm', 'standard' or 'typical' forms of employment, which undoubtedly endanger and worsen the opportunity for employees to gain decent employment.

Much of the current predicament has resulted directly from the practice of companies which is to create divisions of labour in a quest to create increased flexibility. Many employers have adopted aggressive strategies, which aim to outsource non-core elements of the business such as maintenance, cleaning, clerical, or computer-programming, and to an increasing degree research and development activities, to specialised service companies. At the same time, these strategies are increasingly accompanied by massive use of diverse forms of precarious employment contracts and of temporary agency companies, which are often able to supply cheaper labour on an ad hoc basis.

Over the past few years, trade unions throughout Europe have been constantly faced with attempts from employers to eradicate workers' rights, in a quest to gain greater flexibility, resulting in a more de-regulated, vulnerable and unstable labour market where inequalities develop. Governments and employers argue that flexibility is an employment opportunity. Too often this results in precarious employment.

FEM 37/2005



All photos by Andy Michaelis

In certain circumstances, EMF affiliates have and will negotiate flexible forms of work organisation. However the EMF rejects precarious forms of employment and any forms of working which are unilaterally imposed on workers and which do not guarantee decent pay and conditions of employment. The EMF unequivocally rejects the current trend to create jobs:

- with little or no job security
- with low and unsecured wages
- without social security (concerning pension, health insurance, unemployment payment)
- without protection against dismissals
- without vocational training
- with little or no health and safety at work
- with no trade union representation.

The unfortunate consequence for the EMF and its affiliates is that precarious forms of employment and the allocation of tasks to sub-contractors frequently undermine collective bargaining, social democracy and the European Social Model by weakening the trade unions.

The EMF believes that the European Social Model is an integral part of the European Economic Model, which promotes the creation of decent work and must therefore be protected. Furthermore, the introduction of minimum employment rules and standards, which protect all workers, must be introduced in order to stop a “race to the bottom” situation and to ensure that the goals of the Lisbon strategy are achieved: **“to become the most competitive and dynamic knowledge-based economy in the world, capable of sustaining economic growth with more and better jobs and greater social cohesion.”**

The fundamental essence of the EMF concept of decent work is the notion of basic security for all:

- in society
- in the workplace
- for the individual worker.

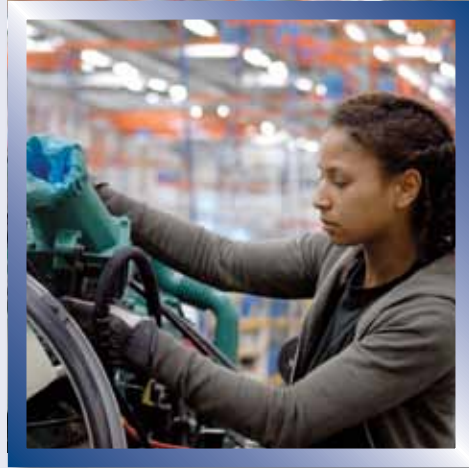
The EMF therefore pursues a proactive strategy aimed at:

- creating new employment opportunities,
- promoting work that guarantees social protection (sickness, retirement and unemployment) and a fair income in order to meet one’s needs,
- providing security in the workplace and good working conditions,
- offering opportunities for personal development and social integration, in particular via access to training and the right to reclassification,
- enforcing the individual right to training in the lifelong learning system and its recognition in EU countries,
- enabling people the freedom to express their concerns, and in particular to join and be represented by their trade unions without discrimination,
- allowing for the participation of workers in decisions that affect their lives,
- delivering equality of opportunity and treatment for all women and men,
- and the promotion of collective guarantees for all European workers.

In order to create a society, which welcomes rather than resists change, the role of employment and social protection is crucial. The EMF insists that the implementation and the maintaining of high levels of employment and social protection underpin the aims and objectives of the Lisbon Strategy.

The EMF has a responsibility to develop strategies that combat the erosion of employment and social protection. Furthermore the EMF believes that greater job insecurity is a threat to the European Social Model.

The EMF therefore calls upon:



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All affiliates:

- to use collective bargaining as an instrument by which decent work can be promoted and precariousness reduced;
- to formulate new policies aimed at creating decent work, with greater job security;
- to promote EMF policies in areas such as temporary agency work and social policy in order to improve the living and working conditions of workers;
- to monitor changes in the labour market and types of employment contracts;
- to ensure equal treatment for precarious workers through collective agreements.

The EMF also calls on all political and economic actors, at all levels, to ensure that employment and social protection is a fundamental and integral part of their policies. In particular, the EMF calls upon the:

EU Commission/EU Council:

- to give up any strategy of implementing a sector with low pay and without social guarantees;
- to stop the concept for a further de-regulation of labour markets throughout the EU;
- to adopt and implement the Temporary Agency Workers Directive, which guarantees equal rights from day one for temporary workers;
- to immediately adopt a revision of the Working Time Directive, which guarantees greater protection for workers and abolishes the opt-out clause;
- to prevent the privatisation of services, which have a negative social impact;
- to remove the principle of “country of origin” for all types of employment in the planned Services Directive and stipulate that at least the working conditions and social protection clauses of the “country of posting” shall apply;

National governments of the EU Member States:

- to include social and employment protection, including the individual right to training in the lifelong learning system, in their national action programmes and to foster an active labour market policy.

The EMF Executive Committee will regularly assess the situation of workers forced to undertake precarious employment in Europe. When necessary it will propose action to be undertaken in order to attain the objectives established by the EMF.



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Boulevard du Roi Albert II, 5 (bte 10)
B-1210 Brussels
Phone: +32 (0)2.227.10.10
www.emf-fem.org

