



Council of the
European Union

Brussels, 18 February 2016
(OR. en)

6151/16

SOC 66
EMPL 41
ECOFIN 105
EDUC 28

NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Implementation of the Country-Specific recommendations
- EMCO contribution on the labour market segmentation and contractual
arrangements

Delegations will find attached the contribution of the Employment Committee on the above-mentioned subject with a view to the EPSCO Council on 7 March 2016.

The country-specific section of the contributions is contained in doc. 6151/16 ADD 1.

EMCO contribution to March EPSCO discussions, based on 27 January thematic review on labour market segmentation and contractual arrangements

Labour market policies need to balance flexibility and security. In the 1990s and early 2000s, several countries implemented reforms of the labour market increasing flexibility at the margin. Extending the scope of fixed-term contracts and introducing a rich menu of contractual arrangements (some at the border between dependent and non-dependent employment) was a common response to firms' demand for flexibility, amidst a general resistance to reforms of employment protection legislation for open-ended contracts.

As a consequence, labour market risks have become increasingly concentrated on specific groups of the population, while higher contractual instability provided both workers and firms with weak incentives to invest in human capital, and lead to weak job prospects (in particular for the low-skilled), low unemployment benefit coverage and, overall, weak growth prospects (in light of their negative effects on total factor productivity growth).

Labour market segmentation has become a concern for policy makers. The Council and the Commission have recommended several Member States to tackle labour market segmentation through reforms of Employment Protection Legislation. In response to this challenge, several far reaching and comprehensive reforms have been enacted in the last years (i.e. since the crisis). Other Member States are considering important changes in the national legislation. In a number of cases, Member States have sought to learn from each other on this particular topic, not least through the Mutual Learning Programme.

Recently, increased attention has been given to the opportunities and challenges created by new forms of employment (job sharing, casual work, crowdsourcing, jobs on call, intermittent work etc.). The main concern is that unconventional work arrangements might hide traditional precarious low-paid jobs rather than being a true opportunity of taking advantage of more flexible and cheaper production technologies. Due to these new forms of employment emerging the debate has been gradually shifting from two-tier labour markets to segmented labour markets.

Along the lines of the dual labour market theory, segmented labour markets are characterised by a primary and secondary labour market. Wage setting mechanisms differ for the two parts and barriers to mobility exist. In the primary labour market, usually more strongly unionised, wages are high, career prospects stable, job protection (including offered through collective or individual contracts) generous, investment in human capital and training sizeable. The opposite is observed for secondary markets. Less stable employment makes income more volatile and consumption pro-cyclical in the latter, which does not help to stabilise income during recessions. Low mobility and transitions between the two labour markets and different (human and physical) capital/labour mixes make segmented labour markets self-perpetuating.

To identify the nature of segmentation and policy responses to it, it is useful to distinguish between barriers that derive from differences in human capital endowment and those generated by regulatory gaps leading to contractual fragmentation. In the first case, policies improving human capital are necessary to tackle the social and economic implications of segmented labour markets. In the second, closing the gap may be the most appropriate policy response.

Regulatory gaps derive from: institutional restraints keeping workers away from primary jobs, including laws or regulations which are not neutral for hiring/firing; gaps in social security contributions and design of benefit systems; length of labour dispute settlements increasing uncertainty of long-tenured employment relationships; loose controls and enforcement of non-standard contracts. Moreover, internal rigidity within firms, for example, in adjusting wages, hours and tasks, and low relative wage flexibility in general, may influence firms' decisions to hire with non-standard forms of employment. It is also worth noting that these decisions are also greatly influenced by cyclical factors, of course.

EMCO's conclusions from multilateral surveillance on the implementation by Member States of CSRs (and relevant Key Employment Challenges) related to labour market segmentation and contractual arrangements

As a general point, it is important to note that Member States face a diversity of situations. In some the share of temporary contracts is decreasing, whilst in others the share remains the same.

Different sectors also have rather different attributes – so Member States with a lot of seasonal tourism, for example, could be seen as affecting their figures. The business cycle, business cultures and entrenched attitudes in Member States vary as well.

The EMCO review has revealed significant progress in addressing the challenges identified by CSRs. In a number of cases the political and legislative process (often very sensitive and requiring buy-in from many interested parties, not least social partners) is either finished or nearly finished. The question now is about the successful implementation of those measures, followed by sufficiently robust monitoring and evaluation to allow for their fine-tuning. Given this, the three "live" CSRs for France, Poland, and Italy should not now be repeated (unless, of course, these Member States do not implement the measures they have presented).

On the question of monitoring, it will clearly take some time for the measures under discussion to bear fruit. Measuring success solely by the share of fixed-term contracts also needs to be treated with caution: a more nuanced and detailed view would be rather more informative. More generally, the success of such measures is obviously highly contingent on the macroeconomic cycle and situation.

Regarding lessons which could be drawn for future CSRs in this domain EMCO would suggest that these should be backed up by a comprehensive analysis and should not focus so much on specific detail where the issue is rather one of the overall balance of labour law: it would be more productive to evaluate and improve that balance.

EMCO has drawn a number of specific policy orientations from the review:

- Judicial enforcement of the labour code e.g. on enforcing the rules of successive temporary contracts plays a crucial role and should be kept strong. The capacity of labour inspectorates as well as adequate sanctions are key for this.
- Increased certainty in labour disputes can help in encouraging employers to move from temporary to permanent contracts.
- A comprehensive view on the nature and effects of labour market legislation in different countries has to take into account the functioning of the judicial system (e.g. labour courts) and the regulations that result from collective bargaining at central and industry level.
- Economic and social security incentives for hiring on permanent contracts can be supportive but need to be effectively targeted and can be costly – hence in the longer term a more self-sustaining solution will need to be found.
- The concept of the single open-ended contract is no panacea, but can be relevant on Member State level for inspiring discussions and reforms
- New forms of self-employment (including involuntary self-employment) and their impact including on coverage by social protection systems require further consideration
- Bogus self-employment is a real problem which must be tackled, while an adequate framework for new types of contractual arrangements could be considered
- Evaluation of measures using microdata and surveys of employers can be particularly valuable and informative