

EU Directives Regulating Atypical Work and the Change of Labour Law in Member Countries

- A Review of Recent Legislation in Germany, France and United Kingdom -

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After IMF bailout, so-called atypical or non-standard workers such as temporary, part-time, temporary help agency and dependent contract workers have been sharply increased and now up to more than half of total employee in Korea. Atypical or non-standard workers are treated with lower wage and benefits, continuous insecurity of employment and exclusion from social security system. They become working-poor status because of inequality and lack of social protection.

Atypical workers are even excluded from collective labour right such as the right to organize and bargaining, because enterprise-based union system, permanent full-time membership principle and prohibition on multiple unionism at the enterprise level until 2007. Thus, they cannot defend their working condition by themselves.

It is widely agreed that social protection through legislative method to guarantee atypical workers' right, but there are different views and positions in regard to specific alternatives among labour, employer and government sides. Especially in foreign experience, there is a big debate between 'social re-regulation' vs. 'deregulation' or 'European Model' vs. 'American Model'.

Therefore it is needed to research the content and the process of EU Directives on part-time and fixed-term employment in 1995 and 1997. In addition, it is needed to study specific legislative process in each EU membership countries such as Germany, France and United Kingdom. As a result of this study, we would like to present alternative approach to balance between the protection of workers' right and flexibility of labour market. It could be a useful reference to the social dialogue in Korea.

It is widely recognized that European labour markets have changed dramatically in recent years and that there have been significant upheavals in the structure of employment, demonstrated by a decrease in permanent, full-time 'typical' employment and an upsurge in the level of part-time work, fixed-term contracts, temporary agency work, ostensible self-employment, in other words, in all forms of work frequently described as 'atypical', 'contingent' or 'non-standard' employment.

Although the full-time job with a permanent contract is still the norm in most countries, accounting for the majority of jobs, in recent years there has been a rapid growth in other forms of employment. Closely linked to employment protection measures, regulations of nonstandard employment tend to take a different approach to this

phenomenon through the attempt of coupling the concern for employment flexibility and the security of a job.

With non-standard forms of work having become more common since the 1980s, the European-level social partners were consulted by the European Commission in 1995 on the creation of a European framework of legislation to protect the rights of workers on atypical contracts. This process resulted in agreements between the central European-level social partners - the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the European Trade Union Confederation (ETUC) - on part-time work in 1997 and on fixed-term work in 1999. Both agreements were subsequently implemented via EU Directives.

EU Directives regulating Working-Time and Non-Standard Employment

1997 Equal Treatment for Part-time Workers

- Equal hourly pay to comparable full-timers, including overtime pay for hours in excess of normal full-time hours
- Pro rata entitlements to sick pay and maternity pay
- Equal treatment for holidays, maternity leave, parental leave, career breaks, redundancy provisions, pension schemes and training
- Encourages the social partners to remove obstacles that limit opportunities for the expansion of part-time work

1999 Fixed-Contract Work

- Equal treatment: fixed-term contract workers should be treated no less favourably than equivalent permanent colleagues within the same undertaking, or similar jobs elsewhere
- Prevention of abuse: employers should be prohibited from abusing this form of employment by concluding a series of contracts without justification, thereby denying workers their rights

Although the Directives may well have appeared minimalist from the point of view of other member States such as Germany and France, some countries including Britain required a significant change in the nature of labour law and specific statutory employment protection had to be enacted for atypical workers.

In the UK, Regulations which came into force in July 2000 introduced new statutory rights for part-time workers. The EU Directive on part-time work has two objectives: the removal of discrimination against part-time workers; and the development of part-time work on a voluntary basis. The UK Regulations addressed the first objective by giving part-time workers the right in principle not to be treated less favourably than full-time workers of the same employer who work under the same type of employment contract. The best-practice guidance issued with the Regulations was intended to address the second objective.

In the UK, there were no legislative restrictions on the reasons for the use of fixed-term contracts, their length or whether (and the number of times) they are renewable, nor on equal treatment for fixed-term employees. Indeed, the government postponed implementation of the Directive in 2001, stating that the consultation exercise on its

draft measures 'revealed particular problems with implementation in the UK'. The Employment Act 2002 which received royal assent on 8 July 2002 gave the government the power to make regulations to implement the Directive. And the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 came into force on 1 October 2002. The Employment Act also includes primary legislation to prevent pay and pensions discrimination against fixed-term employees and measure to prevent abuse of successive fixed-term contracts.

In December 2001, France's National Assembly passed the controversial 'social modernisation' law, which includes measures restricting the use of fixed-term contracts, the current "precarious employment bonus" paid to fixed-term employees at the end of their contract is to be increased from 6% to 10% of gross salary, in line with that paid to temporary agency workers. The period which must elapse between the use of fixed-term contracts for the same position will also be made tougher. It will be calculated in terms of working instead of calendar days. Furthermore, for fixed-term contracts lasting under two weeks, the period between contracts will be set at no less than a week. This is designed to end abuse of the system. At present, some companies may employ fixed-term workers from Monday to Thursday and then rehire them the following Monday. The weekend is a sufficient gap to comply with the obligatory period between contracts, currently set at one-third of the duration of the fixed-term contract. This will no longer be possible.

On 16 November 2000, the German parliament(Bundestag) passed a new Act on part-time work and fixed-term employment relationships(Gesetz uber Teilzeitarbeit und befristete Arbeitsvertrage), with the ruling Social Democrat/Green coalition government, which had presented the draft bill on 27 September 2000, achieving a majority in favour. This Act, which came into force on 1 January 2001, succeeded the 1985 Improvement of Employment Opportunities Act, which will expire on 31 December 2000. Through the new Act, the government sought to create a legal basis for part-time work and fixed-term employment relationships which is adequate to the needs of present-day employment. At the same time, the Act transposes two EU Directives on part-time and fixed-term work.

According to the new Act, if full-time jobs are available, part-time workers who want to return to full-time work must be given preference by the employer and employers are obliged to inform employees who want to change their working time, as well as employee representatives, about vacant full-time or part-time jobs within the company and about opportunities to participate in training measures. The new Act also contains the regulations on fixed-term contracts with the exception of cases of employers taking on new labour, the duration of the employment contract or relationship must be set according to objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event. If an employee takes on a new job, the employment contract(or the maximum period of three renewals of a shorter contract) can be limited to two years, without special reasons being given. But these restrictions do not apply to employees over the age of 58, in order to give this age group - which is most at risk of becoming unemployed - a chance to find work. Lastly employers are obliged to inform employees with fixed-term employment contracts about vacant permanent jobs, allow them to participate in training measures and inform employee representatives about the proportion of fixed-term-employment relationships within the company.

Talks on a similar agreement on the subject of temporary agency work broke down in May 2001 and in March 2002 the Commission issued a proposal for a Directive on working conditions for temporary agency workers. This proposal aims to improve the quality of temporary agency work by ensuring that the principle of non-discrimination is applied to temporary agency workers and to establish a suitable framework for the use of temporary agency work.

The proposed Directive is presently under consideration by the European Parliament and so some way off implementation into national law. However the inclusion, amongst other things, of a right for temporary agency workers to receive the same pay and benefits as the employees of the host organisation that they are assigned to work in would be a radical change to the UK temp market. At present the only possible exclusions from this right are for agency workers who have permanent contracts with the agencies supplying them, and for temporary assignments that last less than 6 weeks.

There is another point to be noted. While implementation of the Directive has been (or will be) mainly effected through legislation, the social partners have played an important role in some countries. Both the Belgian and Italian legislation is based on views jointly expressed by the social partners, while collective agreements play the main role in implementation in Denmark, though with supplementary legislation to cover those workers not subject to collective agreements. Swedish trade unions also have preferred implementation through collective agreements instead of legislation.