Edoardo Ales, Olaf Deinert and Jeff Kenner (eds.), *Core and Contingent Work in the European Union. A Comparative Analysis*, Oxford: Hart Publishing, 2017, 315 pages, ISBN 978-1-78225-868-1

This book, *Core and Contingent Work in the European Union. A Comparative Analysis,* assembles the papers given at the 31st meeting of the Pontignano International Labour Law Seminar, held in 2014 in Gaeta. The editors, Edoardo Ales, Olaf Deinert and Jeff Kenner, address the topic of core and contingent work from a labour law as well as a social security law perspective.

Core and contingent work are not categories of traditional labour law, which differentiates subordinate employment from self-employment. The former categories, along with the dichotomies standard versus non-standard work and typical versus non-typical work, have only recently entered debates in labour law and social security law. The goal of the book is to pinpoint the legal issues at stake when it comes to contingent work and to discuss what could be done to safeguard social cohesion in the new economic context.

Preliminary chapters

The book commences with a chapter on the Spirit of Pontignano, by Lorenzo Gaeta, who describes the 'winning formula' of the Pontignano International Labour Law Seminar, where 'intellectual reflection benefitted from both the productivity isolation permits, and the unhurried yet fertile nature of informal debate between friends'.

In the second chapter on methodological issues, Ales notes that, in a context where companies tend to place a large part of the workforce at the margin or even outside the core company in response to highly competitive global trade, the dichotomy core *versus* contingent work 'describes well the relation between the worker and the company at present'.

Due to the absence of a common understanding of the very notion of contingent work, Ales stresses the importance of adopting a theoretical perspective, to answer three major questions:

1. What are the legal issues at stake when it comes to contingent work?
2. What are the instruments that are likely to make workers contingent to the company?
3. Do national systems provide legal measures to countervail the drift towards contingent work and/or to cope with its effects?

Coping with the theoretical gap highlighted by Ales, in the third chapter, Antonio Lo Faro outlines a 'Conceptual Framework' for contingent work (a 'cognitive prototype'). Although immediately evoking the 'more acquainted notions of flexible, atypical or precarious work' which necessarily admit the presence of an employment relationship governed by labour and social security law, contingent work designates a different kind of non-standard work. It embraces a variety of contractual arrangements affecting the workers who, in the wake of the process of firms' vertical disintegration, 'are not part of the organisational and productive "core" of the disintegrated firm'.

The author recalls that the term 'contingent work' was originally used by the US Bureau of Statistics in the 1990s to refer to 'individuals who do not perceive themselves as having an explicit or implicit contract for continuing employment'. Yet, according to Lo Faro, the notion does not refer to the structure of the employment contract, but rather to the peripheral nature of the workers' services in relation the company's productive organisation.

The author then distinguishes between contingency in bilateral relations, such as in the case of economically dependent self-employed workers, and contingency in triangular relations, whereby workers deployed on supply chains might not know 'who their employer is'. Lo Faro clarifies that 'a contingent worker can be identified as such to the extent that he is not bound by an employment contract with the firm actually benefitting from his work'. Accordingly, the category should embrace, on the one hand, flexible arrangements such as zero-hour contracts, on-call and casual work, and on the other, agency work. Lo Faro notes how these forms of work share similar issues, related in particular to the exclusion from the scope of both individual and collective labour law.

Country chapters

The second part of the book casts light on certain legal institutions that might concretise the contingent work discourse at single country level.

Examining the implementation of Directive 2008/104/EC on equal treatment of agency workers in Germany, Deinert contends that it was rather problematic, due to a rooted practice of sub-contracting with self-employed workers and foreign companies supplying their own workforce,

and, mostly, to the extensive use of the exception allowing collective agreements to derogate from the equal treatment principle. Accordingly, 'agency workers became second-class workers because they did not enjoy equal treatment in reality and remained a foreign workforce'. However, this changed following the Federal Labour Court's case law and subsequent development of a new collective bargaining policy.

In the following chapter, Dorssemont analyses the issue of conditionality under both EU secondary law and Belgian law in matters of fixed-term and temporary agency contracts. He highlights the relationship between conditionality and the prevention of abuse, assessing the role of the restrictions in securing workers' interest in the permanent employment contract as an effective barrier to contingent work. By placing a wide range of conditions on the recourse to fixed-term and agency work, Belgian legislation seems to honour the Oxford English Dictionary which defines contingent work as 'conditional' (i.e., restricted).

The next chapter deals with the issue of the social cost of transferring any significant segment of the firm's organisation to an external partner. The issue is tackled from the French perspective. According to Lokiec, this transfer is made either to pursue unlawful goals (e.g. to avoid the application of basic labour standards) or to improve a company's economic efficiency (by reducing labour costs). Lokiec then distinguishes between internal and external outsourcing, with different rules on health and safety liability. The former resembles a 'co-activity on site', whilst the latter consists in transferring the operations outside a company's premises. He ultimately explores the legal instruments (corporate social responsibility and joint or co-employment doctrine) to cope with the risks of social dumping stemming from the relocation of the activity to a foreign country.

Kovács discusses the approach of the Hungarian legislator vis-à-vis distance work, home-based work and crowdwork, all of which are carried out away from the company's premises or from the place determined by the employer or the client. According to the author, 'distance work is the work of the future' and must be promoted by law. Kovács further notes that, even though recognised as employees and belonging to the core workforce, teleworkers are covered by a special regulation in matters of working time, privacy and data protection, health and safety.

In the next chapter, Del Conte analyses Italy's recent reforms to increase employment levels and reduce the dualism between 'insiders (full-time, permanent employees) and 'outsiders'

(atypical, unprotected workers). Under the label 'contract with increasing protection', the reform reduces the dismissal protection and provides 'a strong stimulus to companies to adopt open-end contracts for subordinate work'. The reform 'promotes the evolution of more efficient organisational models to answer the transformation of productivity caused by technological evolution'. At the same time, Del Conte argues that to effectively and structurally reduce precarious work it is necessary 'to overcome a Byzantine fiscal system, assure a balanced system of contributions and social security, guarantee the certainty and punctuality of payment and offer adequate instruments for familiarizing with and accessing the market'.

Gómez Muñoz focuses on Spanish legal changes regarding self-employment in the aftermath of the global crisis, whereby Act 20/2007 autonomised the category of economically dependent self-employed worker ('TAED') by creating a special set of rights. Albeit admitting the lack of a 'direct correlation' between the core-contingent work discourse and the legal categories in Spanish labour law, Muñoz observes that the policy of providing TAED with a 'soft labour law' protection affects that discourse.

The next chapter by Kenner deals with the UK phenomenon of zero-hours contracts (ZHC) described as 'the ultimate form of legalised commodification of labour'. In fact, these arrangements encompass a wide spectrum of casual work contracts, under which an employer agrees to pay for work done but makes no commitment to a set number of hours of work per day, week or month. Due to the lack of 'mutuality of obligation' − one of the criteria to ascertain employment subordination in Britain − these workers cannot be easily classified as employees. Accordingly, Kenner discusses the proposal to confer some basic labour protections on ZHC workers, such as the ban on exclusivity clauses, the right to a written statement, and the right to request a minimum amount of work. He ultimately suggests a shift towards 'horizontal equity' by extending the personal scope of employment protection legislation to all those non-standard workers who find themselves in a dependent relationship (i.e. beyond the mere ZHC).

In the following contribution, Klebe and Heuschmid analyse the approach of German collective actors to several forms of contingent work (defined as 'detached employment'), among which are temporary agency work, service contracting and crowdwork. Regarding crowdwork, the authors acknowledge that developments by the social partners (via both collective agreements and works agreements) and the legislator are at a preliminary stage, and fundamental changes are expected in the near future.

The chapter by Rönnmar examines the intergenerational dimension of contingent work in Sweden, focusing on both legislation and collective bargaining. According to the author, notwithstanding the EU and domestic ban on age-related discrimination, precariousness and vulnerability (i.e., contingent work) affect younger workers more than older ones. Ultimately, she argues that competence and qualification (tightly linked to functional flexibility), which should be also regulated by collective agreements, could serve as a fundamental dividing line between core and contingent work.

The last of the country chapters by Marhold deals with the non-uniform coverage of self-employment in the Austrian social security system. Notwithstanding the inclusive approach in the current regulative framework, Marhold argues that the level of social protection for contingent workers mostly depends on their labour law status, i.e. whether they are employees (subject to personal dependency vis-à-vis their employer), employee-like workers (subject to economic dependency vis-à-vis their client) or simply self-employed workers.

Final chapters

In his final contribution, Ales provides a different – yet, complementary – point of view on the core-contingent work approach. He starts with the analysis of the inclusive rationale of the Italian legislation in matters of health and safety, which extends beyond subordinate employment to 'anyone who works within the premises of somebody who organises a productive activity even outside a traditional employment relationship'. Then he contends that a possible way to handle contingent workers is through a 'risk approach', which takes into account the specificities (or weaknesses) of the relevant workers.

In the concluding chapter of the book, Ales and Deinert argue that a drift towards contingent work is ongoing in all the countries considered in the book, although it takes various forms, and that the core workforce is shrinking everywhere. The authors evaluate the patterns selected at national level to cope with contingent work: the 'conditionality approach' (Belgium), the 'tax payer approach' (Austria), the 'equal treatment approach' (Germany), plus the 'risk approach' (Italy). Ultimately, they broadly suggest to undertake five actions in matter of contingent work: a) to fight against abuse of contingent work; b) to pursue equal treatment between core and contingent workers; c) to extend social security coverage to contingent workers; d) to recognise

Commentato [AM1]: What is the authors' proposal? The reviewer needs to make this clear.

contingent workers as a sensitive risk group; and e) to preserve the link between core and contingent workers at the workplace.

Concluding remarks

The contributions embedded in the book come from an international set of authors and offer very detailed, insightful and interesting analyses. In this regard, the book fulfils its purpose to provide a comparative overview on the role of contingent work in the current labour market. However, it is not always easy to trace a line linking the single chapters and this might be due to the difficulty of drawing the boundaries of the 'contingent work' category, certainly unknown in the origins of labour law, which was founded on the dichotomy of employment versus self-employment (Veneziani 1986: 31-72).

Even when new categories such as the 'Worker' in the UK or the 'Trade' in Spain find their way into national labour law (Davidov, Freedland and Kountouris 2015: 115-131) in the aftermath of the pivotal 'from widgets to digits' shift (Stone 2004), contingent work lacks normative recognition. In fact, one might even question the need for another 'catch-all phrase' such as 'contingent work' (Ball 2003: 902) in the already rich panoply of labels in the legal and economic labour policy debates (De Stefano 2016: 461). Similar remarks have previously been made by this reviewer regarding 'non-standard work' (Biasi 2016: 425-426), another wide 'box' embracing both forms of genuine flexibility (part-time work) and more precarious forms of employment (fixed-term work).

Notably, while Lo Faro's 'contingent work' definition carries a negative connotation (workers that 'are not part of the organizational and productive "core" of the disintegrated firm'), Klebe and Heuschmid consider the possibility of a more neutral meaning (i.e. synonymous to 'detached employment'). The second approach seems to be more persuasive, given that, in most jurisdictions, agency workers (who fall within the 'contingent work' definition as well as in the broad concept of 'detached employment') are 'regular' employees (possibly hired permanently by the agency), enjoying full employment rights and a system of joint liability of user undertaking and agency for the fulfilment of their credits (Ratti 2009: 835).

Still, the major issue for the volume lies in the selection of the different legal institutions considered as 'cognitive prototypes' of contingent work at national level, which prevents the testing of the possible effects of the unified regulatory proposal in matters of contingent work

elaborated in the final chapter of the book Arguably, it is hard to find a link between, for instance, the 'contract with increasing protection' in Italy (i.e. an overall reduction of dismissal protection) and the zero-hour contract in the UK (certainly a prototype of precarious work). In fact, the former might be considered an epitome of standard employment, whilst the latter is, on the contrary, one of the most precarious forms of contingent work. Moreover, if the conditionality approach to fixed-term work in Belgium might be a solution for coping with contingent work, it is not possible to evaluate the overall approach of any country on employment stability, without providing complementary insights on the dismissal discipline, pursuant to the seminal lesson of Kahn Freund, who urges those who apply the comparative method need always to look at the system as a whole (Kahn-Freund 1974). With regards to employment stability, there is, in fact, an essential link between dismissal regulation and a limitation in the recourse to fixed-term employment. Just to provide a further example, without taking it into account the employment-at-will doctrine, the scarcity of fixed-term contracts in the US might lead one to wrongly infer that the country of labour flexibility *par excellence* is extremely rigid in its approach to contingent work (Biasi 2017).

Ultimately, it seems more convincing to rely on traditional categories, which are not identical at the national level (see the different tests developed to ascertain employment subordination and the existence of intermediate categories), and to evaluate, through the analysis of case law, how those categories adapt to new forms of employment. One might conclude that the main issue still lies in the employment *versus* self-employment divide (integrated by the existing intermediate categories) and that new categories, such as contingent work, are obscure boxes that complicate and fail to clarify an already fiddly debate.

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