Introduction

Despite the fact that it is a clearly significant matter, the issues raised by the difficulties classifying "atypical" or "non-standard" work in the European co-ordination legislation for national social security systems remain largely neglected by the copious amounts of specialist literature in the field. The number of jobs of this kind has increased rapidly in all of the Member States of the European Union in the last 20 years[1]. There is a widespread perception that atypical workers may be disadvantaged in a number of specific ways, including when accessing the transnational social security protection currently offered by regulations 883/2004 and 987/2009. Furthermore, the most commonly found application problems in the area of atypical work frequently appear in the judgements of the European Court of Justice, especially when it comes to unemployment and non-contributory benefits[2]. However, there seems to be the lack of a systematic investigation that starts with a comparative analysis of the social security legislation for the main types of atypical work covered by the national systems and seeks to give an initial critical evaluation of the most significant (and peculiar) issues emerging from application of the European social security regulations to non-standard workers.

This report aims to offer some initial reflection on methods and merits in this respect. Its objective is to carry out a comparative analysis of a substantial sample group of EU Member States and identify the main obstacles encountered by employed (or self-employed) non-standard workers, especially with regard to the limits of social security protection in the individual national systems, while making full use of the guarantees provided by the European co-ordination legislation for national social security systems.

The analysis was divided into three parts.

The comparative analysis in the first section of the report shows that there are clear signs of serious difficulties in the standard employment relationship model in all of the countries taken into consideration in the research, even though different political and legislative choices are made in the various national contexts examined. Full-time, open-ended employment based on a bilateral contractual relationship between an employer and an employee still accounts for by far the largest proportion of jobs in all of the countries examined, albeit with significantly different percentages. However, there is no denying that the main types of atypical work have spread significantly in all of the areas covered by the research, especially in recent years. Furthermore, in many of the countries, fixed-term jobs (either as an employee or in a self-employed role) are now by far the most common way to enter the employment market, especially – and disproportionately – when it comes to young people, women and immigrants.

[1] Cf. mainly F. Pennings, European Social Security Law, Intersentia, Antwerp-Oxford-New York, 2010; M. Fuchs (Ed.), Europäisches Sozialrecht, Nomos, Baden-Baden, 2013.

[2] For example, take the cases of De Cuyper (case C-406/04) and Hendrix (case C-287/05). For a systematic overview of the most recent judgements of the court on the matter, see W. Chiaromonte, S. Giubboni, *I regolamenti europei di sicurezza sociale nella recente giurisprudenza della Corte di giustizia*, soon to be published in *Rivista giuridica del lavoro*.

The first section of the report highlights the widespread failings of the social security protection for atypical work in the national systems that were examined. There is a specific weakness in social security protection which has an inevitable negative impact in many areas, including the effective functioning of the European co-ordination system. In many cases, it prevents access to the virtual protection provided by the regulations due to the huge gaps in social insurance coverage which are more likely to affect these categories of employment relationships because of the way they are governed on a national basis.

In the second part of the report, there is a proposal for a systematic attempt at a critical evaluation of the main obstacles which prevent the European social security regulations from being applied for atypical work. These obstacles are analytically grouped around five example hypotheses – of lack of insurance coverage, inoperativeness of the aggregation rules, benefits that cannot be exported (particularly unemployment and non-contributory benefits), lack of minimum insurance requirements and unfavourable benefit calculations – which clearly highlight that the main faults in the application of EU social security regulations (which are more likely to affect atypical workers than people with standard employment relationships) are largely caused by inadequacies in the protection provided by the national systems. The co-ordination technique is unable to deal with them due to what can be deemed its intrinsic limits. A reform of the co-ordination regulations (such as one that aimed to broaden the possibilities of exporting unemployment benefits or limiting the transnational impact of contributory fragmentation that disproportionately affects the insurance and professional paths of atypical workers) would not be enough by itself to plug the main gaps in social coverage for these figures.

In the third section, there is an overview of the developments in European co-ordination of national social security systems. It looks at how this scheme was originally conceived in the mid-1950s around the typical type of EU migrant at the time and has gradually spread its field of application in a way that has undeniably opened it up to the inclusion of other figures than the already dominant model of a full-time employee with an open-ended contract who will become a permanent part of the job market in their host EU Member State. It also reveals that the most significant developments when it comes to the inclusion of types of employment relationships that were originally excluded have basically concerned the personal scope of the regulations, which has shifted from a restrictive notion of employment to a universal definition of the categories protected by the co-ordination system. The historical developments that can be noted in the material scope of the regulations are not as significant. In this respect, they still seem to be based, albeit implicitly, the standard employment relationship model as the basic. The same applies for the central operational rules for co-ordination, such as the one for aggregation.

The report ends with a brief conclusion section and some initial suggestions and recommendations, that link with the policy lines emerging from the Accessor project. In the annexe, there is a brief summary that includes the atypical work situation, the measures of social protection and the mains obstacles to the freedom of movement in relation to the eight countries of the project, as they result from our comparative analysis.