The "place" of atypical work in the European social security regulations: a first conclusion

The "place" of atypical work within the European co-ordination system for national social security regimes has undoubtedly grown over the course of the long evolution of transnational regulations. This is because of the gradual universalisation of the scope of the legislation – which was finalised with the reforms introduced by the 2004 and 2009 regulations – and the expansion of the range of application '*ratione materiae*'. However, there are significant restrictions in the latter area, especially in terms of atypical work. As has been made clear by the analysis in previous sections of the report, atypical workers are more subject to the (partial or total) restrictions on the exportability of rights to unemployment benefits and special non-contributory benefits.

It is also necessary to bear in mind that the increase in temporary mobility in the form of workers moving abroad to provide a service often has a negative impact on the level of social protection of the persons concerned, especially when it is based on exploiting the different social protection conditions between the country of origin (to which the worker will continue to belong for social security purposes) and the place where the service is to be performed.

As was clarified in the analysis in the second and third parts of the report, the difficulties experienced by non-standard workers in gaining access to effective transnational social security protection are largely due to structural gaps in protection that would not even be counter-balanced by the further refinement of the rules imposed by EU regulations. By definition, the co-ordination system does no more than introduce inter-communication and synchronicity between the social security systems, which essentially continue to be determined and defined on a national basis. Consequently, it cannot, of itself, make up for the gaps in protection that originate in the systems of the Member States. The co-ordination legislation is inherently incapable of compensating if an employment relationship fully or partially lacks social security coverage by the standards of the regulations in force in the worker's Member State of origin or if the fragmented, irregular working lives of atypical workers mean that they are unable to meet the minimum insurance requirements to access the national social security benefits of a certain country.

Even if the time requirements for access to EU aggregation were to be fully neutralised, in situations like this it is clear that the co-ordination technique by itself would be unable to guarantee adequate levels of protection in the spirit of art. 34 of the Charter of Fundamental Rights of the European Union[46]. The only way to achieve a result of this kind would be to introduce a small amount of uniform protection around a core of fundamental social security rights for the entire European Union, in a process of regulatory harmonisation or standardisation.

[46] Regarding this matter, there is plenty of material in S. Rodotà, *Il diritto di avere diritti*, Laterza, Rome-Bari, 2012, p. 38 ff.