1. Introduction

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The increasing use of contingent employment has caused extensive writing and debate among academics and practitioners in recent years. The concept 'contingent employment' stems from the US term, 'contingent work'. We have chosen to use this term not only because of the lack of agreement in the European literature, but also because it gives an opportunity to take a broader perspective of the phenomenon. 'Contingent employment' is here used as a unifying concept for all types of employment contracts or work arrangements *that, from the point of view of the user, could be terminated with minimal costs within a predetermined period of time*. This includes employees working on limited duration contracts (LDCs) or working through temporary work agencies (TWAs).¹

Commentators have argued that these work arrangements should increase the flexibility of labour markets and enable firms to adjust to changes in the business environment (de Roos *et al.*, 1998; Philpott, 1999). As a result, they predict that organizations will adopt new work practices or organizational forms, such as core-periphery structures (Atkinson, 1984). Commentators also claim that temporary work agencies will facilitate entry in the labour market for the unemployed and create better opportunities for job growth and employment (de Roos *et al.*, 1998; Levine, 1999). Temporary work agencies are also said to favour job matching for both employers and job seekers (de Roos *et al.*, 1998). Likewise, many claim that these employment relationships have several inherent problems. Most contingent workers have lower wages compared to permanent workers, they experience income insecurity, worse working conditions and get fewer training opportunities. Above all, contingent workers tend to have more difficulties in influencing their working conditions and it is difficult for them to get support from trade unions.

Of course, the use of contingent labour is not a new phenomenon, but the way in which these people are being used, and the magnitude of their use, are new (Gannon, 1996). It is only within the last decade that the incidence and growth of contingent employment has spread to new sectors and occupations in most advanced economies. Governments are adjusting their legal frameworks in order to respond to this development (Purcell and

Purcell, 1998). In Europe the interest in contingent employment is further intensified by the European Commission's initiation of negotiations between social partners for EU-level agreements on fixed-term contracts (Vigneau, 1999) and temporary work agencies (EIRO, 2000).² Moreover, although the interest in temporary work agencies is growing in the media, popular press and academic literature and the temporary work industry is expanding, temporary work agencies were not legally accepted prior to 1992 in several European countries (Storrie, 2002). In short, because researchers have had little time to study the implications of contingent employment, most discussions of how the use of contingent labour affects the function of labour markets are, at best, still speculative. Therefore it is not easy to come to any clear conclusions about whether these employment relationships should be facilitated or inhibited.

PREVIOUS STUDIES

There is an emerging academic literature on the implications of labour market regulations on the use of contingent employment. Most of the discussions, in both the academic and the popular literature, however, suffer from three main problems that make it difficult to reach easy conclusions. First, authors refer to similar phenomena with a wide range of terms. For example, terms for contingent employment relations include temporary work, temp work (Klein, 1999), flexible work, fixed-term contracts (Clauwaert, 1998), non-standard work (Blanpain and Biagi, 1999), alternative work arrangements (Barker and Christensen, 1998), atypical forms of work (Bielenski and Köhler, 1999), precarious work (Benavides and Benach, 1999), insecure work (Heery and Salmon, 2000) or market-based employment relationships (Cappelli, 1999).

Second, independent of scope or approach many studies suffer from what may be referred to as a 'national myopia'. The explanations provided are dependent on the specific national labour market policies and their regulatory frameworks.³ Furthermore, as comparative studies of contingent labour have shown, there are considerable differences between countries in terms of regulation on the use of contingent employment (OECD, 1993; 1996; 1999). The national differences mean that the results of national studies are difficult to translate into policy recommendations in other countries. Comparative studies offer a valuable opportunity to discover the role played by laws, collective bargaining structures and labour market institutions that differ across countries in affecting contingent employment. Moreover, as Leonard (1996) points out, the apparent national differences are sometimes artefacts of differences in measurement across nations.

The legal differences make statistical comparisons difficult. National statistics mirror categories given by national laws. This means that single country studies use different types of data, time periods and definitions. It is not uncommon for comparability to be lost because of the limited availability of statistics in certain areas or time periods. Given the important differences in definitions and regulations of contingent employment across OECD countries, cross-country comparisons of the incidence of contingent employment are hazardous (OECD, 1996). Thus the lack of commonly agreed definitions is an important problem. Another problem with comparative studies is that they are often shallow. They entail the difficulty that the depth of analysis of country studies must be maintained, while at the same time the multiple dimensions of the varying country of employment systems should be made more explicit (Rogowski and Schömann, 1996). Owing to the historical evolution of systems of employment, some functional equivalents in one country may not be considered valid equivalents in another country, and hence detailed country studies will have little to offer for comparative evaluations.

The problem of shallowness of comparative studies often leads to studies that are limited in terms of the number of countries studied. A problem with these limited studies is that they may give a somewhat biased comparison, favouring one system, social context or regulatory framework rather than the other. This type of *home-blindness* tendency to evaluate others on the basis of one's own system may only be corrected by more general theoretical reasoning. As Gannon and Nollen (1997) point out, developing a theoretical framework would give opportunity to compare national differences not favouring one or the other national policy or approach.

Third, the impact of labour market regulation on contingent employment is not clear. On the surface there seems to be a relationship between the use of contingent employment and the strength of regulation of contingent employment (OECD, 1999). But the particular dynamics and interrelationships between different types of regulation are not well known. For example, what is the impact of employment protection regulation and the various forms of regulations of different forms of contingent employment (TWAs and LDCs)? Is there a causal relationship between legislation and the use of contingent employment or are there intermediate factors affecting how labour law is used and interpreted? Furthermore, some forms of deregulation may, because of the surrounding institutional environment, have effects that run counter to the aim of flexibilization and job stimulation. What is the impact of the institutional framework, the enforcement of the laws and the risks associated with violating the law? Moreover, regulations may reinforce rather than solve problems that they aim to prevent.

It may be argued that policy makers are mistaken if they assume that an

extra dose of deregulation will automatically translate into an extra dose of flexibility. They are equally mistaken if they assume that a given deregulatory practice that works in one country can be made to work similarly in another. As Esping-Andersen (2000) notes, deregulatory policies may, paradoxically, have the perverse effect of strengthening other rigidities. It is difficult to know with certainty what needs to be reformed or deregulated.

In order to answer these questions a comparison of the use of contingent employment and the legal framework in several countries is needed. The comparison of national legal frameworks needs to be complemented by qualitative analyses of the institutional framework of each particular country. This means considering other forms of regulatory institutions affecting the employment relationship, such as codetermination, collective bargaining and social security systems guaranteeing a steady income stream against risks (Schmid, 1994). Moreover, a myriad of individual habits, values and preferences, group routines and norms have to be taken into account. Habitual, routine and imitative behaviour is, according to Schmid (1994), the reason why even identical formal rules of the game might be played quite differently and different formal rules might end with the same results. To the extent that these norms and values affect individual expectations of the continuation of the employment relationship they may also have an impact on the way regulatory regimes are played out in practice. Thus the use of contingent employment may be influenced by other institutional arrangements than statutory law.

In order to address these issues, this volume will focus on the following questions:

- *What are the driving forces for the use of contingent employment?*
- *How are contingent employment relationships regulated?*
- *How are institutional frameworks affecting the use of contingent employment?*

A COMPARATIVE APPROACH

We have chosen to compare the development of contingent employment in five European countries (Sweden, the Netherlands, the UK, Spain and Germany). The European countries are also compared with the development in the USA. The selection of countries for investigation is based on the fact that there are important differences in labour market traditions, legislation, industry structure and trade union membership, possibly affecting the use of contingent labour. We aimed at covering the different regulatory regimes of labour market regulation: the Continental countries,

the Anglophone countries, the Scandinavian countries and the Netherlands (Storrie, 2002). We also wanted to compare developments and consequences of contingent employment in Europe to those in the USA, where contingent employment has been least regulated. Furthermore, the countries studied cover what Ronen and Shenkar (1985) refer to as the various cultural clusters in the European continent: the Germanic cluster, the Anglo cluster, the Latin European cluster and the Nordic cluster. This does not mean that the results may be generalized to other countries in these respective cultural clusters or regulatory regimes, rather that the results represent some of the divergence and variation that exist within the European Union. This study could thus function as a background and inspiration for both broader comparative studies and also more detailed analyses.

This study relies on an interdisciplinary and international group of researchers from six countries: Spain, Sweden, Germany, the UK, the Netherlands and the USA. The researchers cooperate in a project, 'New Understanding of European Work Organization' (NUEWO), financed within the EU: Key Action Improving the Socio-economic Knowledge Base. Each participant is expert in his or her respective fields of study, varying from sociology, law and economics to human resource management and business administration. Thus the study is an example of both cross-disciplinary and cross-country research. The analysis was conducted in meetings where comparisons of the national data took place.

NATURE OF THE EVIDENCE

Although it is possible to draw conclusions about the impact of labour market regulation on the use of contingent employment, it is difficult to interpret the data with clarity. Several researchers have in recent years collected indications of the changing nature of employment relations. There are a great number of statistical sources but their use in providing good estimates for the development of contingent employment is limited (McLean Parks *et al.*, 1998). This is partly due to the difficulty of creating satisfactory definitions of contingent work (see, for example, Polivka, 1996a). There are no official definitions of contingent and non-standard employment (Rosenberg and Lapidus, 1999). An additional problem is created in attempting to draw comparisons between the labour market characteristics of different countries owing to the variation in employment definitions, terminology and varied regulations that exist (International Labour Office, 1989; Schömann *et al.*, 1998). There are many employment arrangements that might be considered temporary and their relative importance can differ across institutional and policy settings (OECD, 1996). The nature of the

alternative work arrangements (temp, independent contractor and so on) and differences related to labour market traditions and industry variation may cause difficulties in drawing generalizations across types of contingent work (McLean Parks *et al.*, 1998).

Maybe the most comprehensive studies of contingent employment have been conducted by the US Bureau of Labor Statistics (BLS).⁴ The result of the BLS researchers' efforts to find more 'effective measures' of contingent employment was, what could be called, a 'bottom up' definition of contingent workers: *individuals who do not perceive themselves as having an explicit or implicit contract for continuing employment*. Based on this definition, a special survey of contingent and alternative arrangements was conducted as a supplement to the 1995 Current Population Survey (CPS), a survey of households that is a primary source of information on the American workforce. Since then similar studies have been made every second year. These efforts have certainly raised the awareness and the level of discussion regarding contingent employment in the US context.

In Europe, similar efforts are non-existent. Instead most studies of contingent employment in Europe use national Labour Force Survey data, allowing measurement and analysis of the distribution of various forms of temporary work. This type of data is based on self-reports and basically asks individuals what type of contractual relationship they have (limited duration contract, self-employment and so on). There are individual surveys, for example Burchell *et al.* (1999), which use a similar approach to that of the US BLS surveys; however, they are limited in scope and not as extensive and systematic as the US studies. Lacking similar statistics in most European countries, we have tried to find an estimate of contingent employment in the European context. Alternatively, contingent employment may be defined as *an employment relationship that could be terminated with minimal costs within a predetermined time from the point of view of the employer*. This definition includes all types of contractual relationships that both parties may regard as limited in time: limited duration contracts, temporary agency work and self-employment. Compared to the BLS definition of contingent work, this definition is broader (Blank, 1998) and more relevant when comparing developments in the European labour markets, in particular in terms of evaluating the impact of labour market regulation. Thus, in order to be able to compare the development in Europe with that of the USA, we use the term 'contingent employment' for what in the US context is generally referred to as 'alternative work arrangements'.

The study started by investigating the developments and trends in the use of contingent employment in each country. Data collection was structured according to a common general framework applied in each country. Data were collected from national labour force surveys in the respective countries.

The goal was to compare developments over a 10-year period (1990–2000). Data included general employment trends, unemployment, the use of contingent employment, distribution in various industries and types of contracts, and the composition of the contingent workforce by gender, age, education and ethnicity. We also collected data from previous studies investigating employers' use of contingent employment in terms of reasons for use and consequences for individuals, such as health, security and training.

Comparing the data, we sorted out the variables that appeared to be relevant to explain the use of contingent employment. We compared data concerning unemployment and the use of contingent employment in six countries over the 10-year period, 1990–2000. This means that, when data were available, we were able to compare the development of the use of contingent employment with that of unemployment and changes in regulation and the institutional frameworks, which makes our study different from other studies in the same field. The most complete study – OECD (1999) – compares a great number of countries and it also compares the impact of regulation at two points in time, late 1980s and late 1990s. Furthermore, the evolution of the institutional framework and legislation of each country was described. The comparison of regulatory frameworks was made on three dimensions: statutory laws regulating the employment relationship, the enforcement of the laws and the consequences for the employer if the law is enforced. It should be noted that we did not conduct formal testing of the relationship between the identified variables. Given the type of data available in this context, such an analysis would probably oversimplify the highly complex relationships between regulation, institutional frameworks and the use of contingent employment. Instead our analysis should be regarded as a tentative first step in developing questions and hypotheses for further analysis to be conducted at a later stage.

A CONCEPTUAL FRAMEWORK

The study is based on a common conceptual framework for contingent employment. Three significant actors closely related to the concept of contingent employment were identified: the employee, the user and the intermediary. In this section these concepts will be defined in more detail.

The Employee

The employee is the individual who conducts work under conditions that are regulated in a way that may be defined as contingent employment. The contingent employment relationship is a work relationship in which the

employee works for a user of contingent employment for a limited time, after which the user has no responsibilities towards the employee anymore. Contingent employment relationships can take various forms. Not all those who regard themselves as temporary workers are in fact, in legal terms, occupying temporary jobs (Casey *et al.*, 1989). Similarly, not all people who hold temporary jobs regard themselves as temporary workers. In many cases there are social relations between employer and employee, implying that the individual expects another contract when the temporary contract has expired. Thus one needs to consider the individual's subjective definition of the character of the employment relationship (McLean Parks *et al.*, 1998). Furthermore, different types of contractual relationships can be distinguished. Contingent workers can be employed by the user of their labour on a temporary contract basis, they can also work through an agency or other type of intermediary, or they can be self-employed (Purcell and Purcell, 1998, p. 44). In the following we will use the abbreviation LDC for limited duration contracts, TAW for workers mediated or employed by temporary work agencies and TWA when we refer to the agencies themselves. However, when we refer to studies where other concepts are used we will use the concepts of the original studies.

The User

The term 'user' refers to the actor in the contingent employment relationship who is the user of contingent labour. The user is the actor with a demand for work to be conducted. The term refers to all 'users' of contingent labour, regardless of ownership (private or public) or purpose (non-profit organization or profit-maximizing firm). Users are the buyers of contingent labour but they do not always exclusively hold the employers' responsibility. This rests with the employee when he or she is self-employed, or with an intermediary if the employee is hired through an agency or a consultancy firm. However, the employee is working under the user's supervision and guidance, as opposed to being in a subcontracting relationship (Blanpain, 1993). Thus the term 'employer' is problematic and inadequate to describe the function of the user of contingent labour. It is important to distinguish between the user as an employer and the purposes and interests connected with this role, and the user as an actor engaging in a market relationship, that is, as an agent in the labour market.

The Intermediary

The introduction of intermediaries in the labour market means that the employment relationship takes the form of a three-party relationship (see

Figure 1.1). There is no common agreement on what to call this intermediate actor. In Convention 181 (Convention on Private Employment Agencies), the International Labour Organisation (ILO) defines intermediaries as ‘Services consisting of employing workers with a view to making them available to a third party . . . which assigns them their tasks and supervises the execution of these tasks.’ This definition is also put forward by the International Confederation of Temporary Work Businesses (CIETT) (de Roos *et al.*, 1998). Blanpain (1993) uses the term ‘temporary work firm’. We use the term *temporary work agency (TWA)*, which we define as an *intermediary in the labour market that provides both the individual and the user with the services of matching supply and demand of labour and risk diversification.*

Figure 1.1 The main actors of contingent employment

This definition highlights the fact that the temporary work agency provides the service of job matching and risk diversification to both parties in the contingent employment relationship. Furthermore, it distinguishes TWAs from placement agencies, which provide the service of matching seller and buyer, but not of engaging in any employment relationship with the individual. It also distinguishes them from subcontractors, where the employers and employees may regard their relationship as permanent, while selling services to the user on a permanent or temporary basis (Nesheim, 1997). It should be noted that intermediaries are not always included in contingent employment relations (as in the case of a direct LDC between employee and user). In fact, in most cases they are not. However, we regard TWAs as important catalysts in the development of the labour market. In their role as labour market intermediaries they may help to solve some of the negative consequences of contingent employment, for example by providing opportunities for risk diversification. These possible functions in the labour market will be discussed further in Chapter 2.

THE STRUCTURE OF THIS BOOK

To create a better understanding of the implications of labour market regulations for the use of contingent employment, we will begin by discussing the nature of contingent employment and the different forms of regulation that apply to its use. In Chapters 3 to 8 we go on to compare the use of contingent employment and the institutional framework in five European countries and the United States. By 'institutional frameworks' we mean not only the statutory regulations affecting the use of contingent employment, but also the national industrial relations context, collective bargaining procedures and other labour market institutions.

This highlights two characteristics of the use of contingent employment, which are summarized and discussed in Chapter 9. First, the use of contingent employment varies considerably among the different countries studied, but there are some features common to all countries in the study. Second, the statutory regulations of contingent employment in the European countries are rarely designed on the basis of the nature of contingent employment. Instead they are a result of institutional blockage, favouring insiders rather than outsiders. Regulatory frameworks are only partially reformed. In this instance it is valuable to compare this with the US case. We find that, despite the various efforts to control and limit the use of contingent employment in the countries studied, the problematic features of contingent employment still exist. We argue that temporary work agencies limit some of the problems of limited duration contracts and that they have a particular function in the labour market that may be facilitated. However, we find that the efforts by various European countries to limit and control the use of TWAs are contradictory and that they are most often not taking into account the difference between regarding a TWA as a form of employment and regarding it as an industry with specific functions in the labour market that should be treated like any other industry. This distinction, we believe, is important in identifying labour market policies in trying to limit or facilitate the use of temporary work agencies in any labour market context.

NOTES

1. In this definition we do not include part-time work or self-employment, since these contracts and employment relationships are not necessarily limited in time. Both part-time employment and self-employment are increasing in most advanced labour markets and their character is similar to other forms of contingent employment in our definition. However, in this study we do not discuss these forms of employment explicitly.
2. As we are writing, the European Commission has distributed a Proposal for a Directive

of the European Parliament and the Council on working conditions for temporary workers, owing to the failure of the previously initiated negotiations between the social partners.

3. According to Rogowski and Schömann (1996), there are several advantages of country-specific evaluations. However, an evaluation of parts of a legal system that treats law only as an external reference without its own dynamics adopts a static view of law and thereby overlooks the fact that legislation is itself not stable, but is continuously changed by amendments, collective agreements or judicial interpretations (ibid.). Thus a combination of national studies and comparative analysis would be preferable.
4. Dissatisfaction with the statistics of the national labour force survey to measure recent developments in the US labour market, in particular the permanence of the employment relationship, led the BLS to sponsor a substantial effort to develop estimates to measure the permanence of employment relationships in the US labour market in 1995. The major criticism against previous estimates was that data on part-time jobs, self-employment or jobs in certain industries did not automatically qualify as 'contingent', since they were not necessarily jobs which lacked permanence (Cohany *et al.*, 1998). Previous studies were also criticized because the categories used were not mutually exclusive, so that double and even triple countings of the same people could occur. Furthermore, Cohany *et al.* claimed that some jobs that were clearly temporary did not fit into any of those categories, such as when workers are hired directly by a firm to fill a temporary position.

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