Introduction

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Precarity of work is one of the core concerns of contemporary labour law research. The need to examine closely the notion of precariousness in employment relationships emerged in the context of globalisation and automation that induced a breakdown of traditional modes of working in the first decade of the twenty-first century and made increasingly commonplace the practice of using more ‘flexible’ forms of employment without the whole spectrum of rights associated with the standard employment relationship of regular, full-time work. The need to address precarious work through labour regulation has been given new impetus by the worldwide shift to more insecure jobs since the global financial crisis, as well as the rise of the ‘gig economy’ which has, through digitalisation, transferred the risk element in the employment relation from the employer to the worker.

Since the 1970s, discussion within academic and policy circles has been largely centred on a key question: What constitutes precarious work?¹ Despite the persistent conceptual conundrum over the correlation between precarious work, atypical employment and contingent work, and the lack of a universally acknowledged taxonomy of standard/nonstandard employment in the literature, considered cumulatively the existing conceptions, superficially at least, provide the fullest portrayal of the complexity of the precarity of work phenomenon, an understanding of which is vital for the proper legal articulation of the protection machinery/framework required. However, in the academic discourse, the question of what the impact of precarious work should be on

¹ See e.g. P. Sylos Labini, ‘Precarious Employment in Sicily’ [1964] *International Labour Review* 286; Gerry Rodgers, ‘Precarious Work in Western Europe: The State of the Debate’ in Gerry Rodgers and Janine Rodgers (eds), *Precarious Jobs in Labour Market Regulations: The Growth of Atypical Employment in Western Europe* (IILS 1989), pp.1–16; Judy Fudge and Rosemary Owen (eds), *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (Bloomsbury 2006); Sonia McKay, ‘Disturbing Equilibrium and Transferring Risk: Confronting Precarious Work’, in N. Countouris and M. Freedland (eds), *Resocialising Europe in a Time of Crisis* (Cambridge University Press 2013), p.199; Guy Standing, *The Precariat – The New Dangerous Class* (Bloomsbury 2014), p.17.

labour market regulation within the EU and its Member States, considering the recent process of remodelling of the transnational component of the European social model, remains a contested terrain.²

At this juncture, it is self-evident that the deepening proliferation of new types of precarious employment, such as that found in the ‘gig’ economy, poses unique challenges to the European social model of secure employment and decent social protection as a result of its engendering considerable labour market fragmentation and social polarisation. The prohibition of abuse of employment relationships leading to precarious working conditions, including abuse of atypical contracts, incorporated in the recently adopted European Pillar of Social Rights Chapter II: ‘Fair working conditions’ points beyond the current social *acquis* of the EU centred on the guarantee of equal treatment with respect to workers working under nonstandard employment relationships (part time, fixed term and agency work). The inclusion of such a broadly conceived principle of fair and equal treatment is undeniably a step forward in acknowledging the importance of the issue for the preservation of the European social model and raises hopes for the development of more adequate norms of protection for workers whose employment relationships lack certainty, such as zero hours contract workers. Yet, it may not *per se* suffice to counter precariousness and the resultant poverty, social exclusion and inequality in Europe, since, without further regulation at the EU level, each Member State may define the balance between security and flexibility in its labour market differently, which makes the risk of deregulatory competition between national labour law regimes in Europe still tangible.

This book provides a wide ranging comparative analysis of the legal and social policy challenges posed by the spread of different forms of precarious work in Europe, with various social models in force and a growing gig economy workforce. It aims to contribute to an improved comparative understanding of one of the main facets of risk to the European social model. It not only considers the theoretical foundation of the concept of precarious work in

² The literature on supranational and national aspects of precarious work phenomenon continues to flourish, yet none of the available books addresses the issue as a challenge for labour market regulation in Europe. The available literature instead explores various aspects of this subject, e.g. from the perspectives of women’s work and new economy (Judy Fudge and Rosemary Owen (eds), *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (Bloomsbury 2006)); young people (Manuela Samek Lodovici and Renata Semenza (eds), *Precarious Work and High-skilled Youth in Europe* (Franco Angeli for European Commission 2012); policy framework (Margaret Anne Wilson, *Precarious Work: The Need for a New Policy Framework* (Rydalmere 2013); and vulnerable workers (Tayo Fashoyin, Martina Ori, Malcolm Sargeant and Michele Tiraboschi (eds), *Vulnerable Workers and Precarious Working* (Unabridged 2013).

Europe, but also offers invaluable insight into potential methods of addressing this phenomenon through labour regulation at the EU and/or national level.

The book is divided into three parts, with the chapters arranged according to three categories: first, those related to the theoretical foundations of the precarious work concept; second, those that analyse the legal contours of precarious work in chosen EU Member States; and third, those that discuss the challenges of the gig economy. Contributors consider relevant inputs from the EU, the ILO and the Council of Europe as part of their reflection upon the adequacy of the conceptual foundations of labour law and the regulations in force.

Part I of the book provides an overview of the new theories arising from the labour law and policy discourse that both explain precarity and offer labour law solutions to the problems it creates.

Chapter 1, by Izabela Florczak and Marta Otto, ‘Precarious work and labour regulation in the EU: current reality and perspectives’, provides an overview of the underlying normative and structural causes of the development of the precarious work phenomenon in Europe, analyses the policy and judicatory answers to it at EU level and discusses the perspectives for and potential trajectories of the development of an adequate institutional architecture against precarity at EU level. The chapter provides a conceptual framework to the analyses presented in Parts II and III of the book, which are concerned with legislative/policy examples in several EU Member States, for comparative analysis, and the challenges of the gig economy as a recent feature of precariousness.

In Chapter 2, ‘Precariat: next stage of development or economic predominance in a new scene?’, Barbara Godlewska-Bujok and Andrzej Patulski describe the nature of the precariat through the lens of ‘the centuries-old conflict between the expectations of capital and the lack of a real counterweight on the part of workers’. They use the Polish example as a *sui generis* laboratory in which the relevant socioeconomic background, the fundamental features of labour relations and the interplay with relevant European legislation are distilled to expose the phenomenon and the dynamics of the precarisation of labour market.

Chapter 3, by Calogero Massimo Cammalleri – entitled ‘Precarious work and social protection: between flexicurity and social pollution’ – contends that the lack of security arising from the flexibilisation of firms, which has produced the precariat, is a ‘social pollution’. It addresses the issue of flexicurity as a lens through which to see precariousness. It identifies sources at international and constitutional level as a foundation for the ‘incompressibility’ of rights which guarantee decent work against a lack of security in precariousness. It proposes a change of paradigm to fight and to tackle the lack of security at precariat level with a solution in terms of internalisation of externalities (that is, social costs), rather than affecting precarious work either

by enlarging the area of the employment contract or proposing an intermediate way of regulation.

Part II is devoted to elucidating the legal challenges across Europe related to regulating precarious work in the relevant national contexts, and to analysis of measures recently adopted/recommended in several Member States to improve the terms and working conditions of workers in precarious employment.

In the opening chapter in Part II – Chapter 4, ‘Deepening precarity in the United Kingdom’ – David Mangan uses three examples from the UK to explore a troubling movement towards precarity. First – a tired trope in English labour law – trade unionism has again been challenged with new trade union legislation, the Trade Union Act 2016. Second, the stifling of workers’ access to redress complicates employment protections, betraying the truth of the situation that workers are often one dismissal away from difficulty. Third, with the development of information technologies, workers may now be disciplined (up to and including termination) for anything they may post on social media platforms that, in the employer’s opinion, causes embarrassment or harm to the employer. The recent UK Supreme Court decision regarding tribunal fees is assessed as a signpost regarding precarity – a potential tipping point in the understanding of employment regulation that renders the workforce more vulnerable.

Anna Ginès i Fabrella’s Chapter 5, ‘The rise of precarious work in Spain: the effects of the increase in labour market flexibility’, offers a comprehensive analysis of the Spanish labour law reforms adopted in the past 15 years and their employment consequences, as well as a thorough assessment of the legal drivers acting on employment and job quality in the Spanish labour market. The significance of the analysis of the Spanish labour regulation’s evolution is to determine its impact in terms of increasing or decreasing labour precariousness, not only from the perspective of temporary or atypical work, but from a multidimensional conception of precarious employment. The author suggests that the relevant labour law reforms, although aiming at fostering job creation, introduced higher levels of labour market flexibility that have resulted in an increase in formal precariousness.

In Chapter 6, ‘Precarity of new forms of employment under Swedish labour law’, Annamaria Westregård analyses the consequences of the Swedish binary legal system for precarious workers. The chapter focuses especially on the working protection for self-employed and short fixed term employees in labour legislation and collective agreements, as well as the impact of the Swedish attempt to improve conditions for precarious workers. In the author’s opinion, the major difficulty lies in the fact that the collective agreement, the most important regulatory instrument of wages and working conditions in Scandinavia, can easily conflict with the competing EU legislation if steps are taken to narrow the regulatory gap between employed and self-employed.

In Chapter 7, ‘From student work to false self-employment: how to combat precarious work in Slovenia’, Darja Senčur Peček and Valentina Franca analyse the challenges that precarious work has brought to the Slovenian labour market, the legislative solutions and other measures intended to prevent the abuse of atypical forms of work and the effects of precarious work for the exercise of collective labour rights. The analysis presented by the authors clearly confirms that besides abuses of atypical employment contracts, the most problematic trend in Slovenia is the conclusion of civil law contracts in cases where there should be an employment contract. Yet, as the authors argue, there is a growing awareness among Slovenian policymakers and experts of the problem of precarious work and the need to provide adequate legislative and institutional solutions.

Chapter 8, Łukasz Pisarczyk and Urszula Torbus’ ‘Precarious work in Poland: how to tackle the abuse of atypical forms of employment?’, provides analysis of the phenomenon of precarious work in Poland, including measures implemented to limit the segmentation of the labour market, some of which were partially forced by decisions of the Commission and Court of Justice of the EU. The authors’ analysis addresses, *inter alia*, amendments to the Labour Code, the introduction of a minimum hourly rate of pay granted to the self-employed or those performing work under a civil law contract, and regulatory changes concerning temporary works agencies, freedom of association in trade unions and parental rights. The conclusion draws lessons from the relevant changes.

In Chapter 9, ‘On the balance between flexibility and precarity: atypical forms of employment under the laws of the Czech Republic’ – the final chapter in Part II – Jakub Tomšej presents the current regulation of flexible forms of work under Czech law and evaluates whether the relevant regulatory patterns represent a welcome option for both employers and employees, or rather trigger the risk of increasing precarious work. The author describes such legal instruments as agreements on performance of work outside the employment relationship, fixed term employment, part time employment, employment through agencies and remote working. Particular attention is paid to illegal work issues and related proceedings against employers. Notably, in Tomšej’s opinion, the increase of flexibility in labour relations has had positive consequences in many aspects; however, the author also elaborates on the potentially challenging issues arising from the relevant legal regulation.

Part III discusses the specific challenges for labour law raised by the ever expanding gig economy which has taken precariousness to a new level and raised new questions about the theory and practice of precarious work.

In Chapter 10, “‘Digital work’ in the “platform economy”: the last (but not least) stage of precariousness in labour relationships, Gionata Cavallini and Matteo Avogaro analyse the labour relationships emerging in the so-called

platform or gig economy, the two main categories of which are seen as ‘work on demand via app’ and crowd work. In the authors’ view, the ‘Uberisation’ of work represents a key challenge for labour lawyers, as it jeopardises, together with employment law rules and standards, the founding idea that labour is not a commodity. In order to provide an in depth analysis of the phenomenon and of the possible solutions at the EU level, the analysis addresses the most relevant types of platform work and the contractual schemes adopted by platforms; the various approaches adopted in different jurisdictions to face the challenge, both at an interpretative and at a policymaking level; and the possible remedies deriving from the recent ‘Jobs Act’ reform in Italy and the so-called *Foodora* case, that is, the first mobilisation organised by gig workers in Italy.

In Chapter 11, ‘Uber drivers are “workers”’: the expanding scope of the “worker” concept in the UK’s gig economy’, Jeff Kenner evaluates the importance of judicial decisions, most notably the London *Uber* case, in awarding intermediate ‘worker’ status to self-employed on demand gig workers. The chapter addresses complex issues of precarity that remain even when workers have some modicum of employment protection. It assesses the impact of the gig economy on the UK’s vibrant but precarious labour market, identifying problematic issues such as sham self-employment, pay, working hours, tax and social security. Analysis of the *Uber* case builds on the tribunals’ broad protective approach to the law on worker status and availability for work. It draws insight from the parallel case before the EU Court of Justice on the regulatory powers of municipalities over Uber. It concludes by comparing the protective common law approach in *Uber*, and subsequent cases, with proposals for legislative solutions that may reverse this trend and suggestions for solutions that embed the courts’ purposive approach.

The closing chapter in Part III – ‘Digital work – real bargaining: how to ensure sustainability of social dialogue in the digital era?’, by Joanna Unterschütz – highlights problems regarding the gig economy workforce’s freedom to organise and bargain collectively. The author suggests that with the rapid developments of the digital economy, new trends such as cloud computing, mobile web services and social media lead to changes not only in enterprises and business models, but also in industrial relations. While they can provide new avenues (good match of job opportunities, flexible working schedules), these forms of work can be perceived within the wider trend towards the casualisation of labour. The new business model can be also challenging for traditional collective labour law institutions, such as collective bargaining or collective action.