Multiparty work relationships in Europe: Introduction to this Special Section

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Several years ago, labour statisticians at the International Labour Office detected a need to introduce a new category of work relations: one which would enable them to capture developments which deviate from the idea of the employment contract as a fundamentally bipartite relationship. A working document drafted in 2018¹ eventually coined the term ‘multi-party work relationships’ to refer to this phenomenon.

Labour law is, generally speaking, not well equipped to deal with situations in which the roles of employer and employee are, in one way or another, not unambiguously attributable to two parties linked by a single contractual relationship. The arsenal of contractual classification under national law regularly does not allow a court confronted with a situation of complex dependencies² to allocate responsibilities where they can be most effectively assumed. Such a purposive allocation of employer duties might imply that the party on which a worker depends in a structural and organisational way should be subject to rules relating to social security and dismissal protection, while the party (or parties) entitled to give concrete work instructions should be responsible for working time and health and safety protection. The effectiveness of collective bargaining rights in turn may depend on whether they are recognised in relation to the party which ultimately determines the worker’s remuneration.

The constraints of national labour law may not only result in the allocation of (certain) employer duties with a party that is not well-placed to fulfil them. The classification of a worker as an employee under national law also regularly depends on their unambiguous dependence on a single principal. Workers who are equally or even more deprived of any genuine entrepreneurial independence by reason of their simultaneous or varying dependence on more than one entity may end up being classified as self-employed – and consequentially fall outside the bulk of protective provisions under social and labour law.

¹ Available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_636045.pdf.
² Cf. the much-cited notion of the fissured workplace, referring to the concept introduced by David Weil, The Fissured Workplace: Why Work Became so Bad for so Many and What Can Be Done to Improve It (Harvard University Press 2014).

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Present-day legal systems tend to contain scattered provisions imposing obligations on their addressees in respect of someone else’s employees. Some provisions of this kind can even be found in the EU’s legal acquis. Most prominently, the Temporary Agency Work Directive requires user undertakings, e.g., to ensure the hired-in employees are informed about vacancies and have access to collective facilities. Further health and safety-related duties for temporary agency workers are prescribed by Directive 91/383/EEC. The central management of a group of undertakings is the addressee of provisions of the European Works Council Directive; and a (modest) requirement of subcontractor liability has been included in the Enforcement Directive supplementing the Posting of Workers Directive. A particularly intriguing component could be added by the Commission’s recent proposal for a Directive on corporate sustainability due diligence.

Such regulations address situations of clear incongruence between employer status and the capacity to effectively fulfil employer functions. A more systematic approach to identifying and addressing such situations is currently hampered by the scarce information available on the nature and regulation of multiparty work relationships in the European labour market. Equally lacking is any noteworthy consensus on how to approach structures meant to benefit workers who would basically be characterised as self-employed, such as umbrella companies (or the ‘service agencies’ mentioned in Natalie Videbaek Munkholm’s contribution), which involve an intermediary to providing access to some or all of the advantages of employee status.

The present Special Section constitutes a spin-off from a comparative research initiative of the European Centre of Expertise (ECE) in the field of labour law, which aimed to address precisely this lack of information. For this purpose, the phenomenon of multiparty work relationships was explored in respect of all EU Member States, as well as Iceland, Norway and the UK. To provide an insight into the conclusions emerging from the 30 country reports submitted in this context and their comparative analysis, the three articles assembled for this Special Section combine general findings on cross-country developments with an illustrative account of the phenomenon in two selected national contexts.

In their comparative overview, which distils common issues and trends from the country-level development in 30 countries, Emiliano Maran and Elisa Chiergato present a categorisation of multiparty work relationships. Beyond the various constructions amounting to a ‘hiring-out’ of workers to a user and those in which workers are used to provide a service to a third party, the authors identify a number of other situations in which workers depend, in one or other significant way, on more than one party. The contribution provides an overview and analysis of national-level regulation and case law with regard to temporary agency work, the outsourcing of labour or of services, umbrella organisations, platform work, payrolling, franchising, workers’ co-operations, groups of companies and co-employment.

3. Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. (See Articles 6 et seq.).
4. Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.
5. Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.
6. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’). (See Article 12).
7. Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. COM/2022/71 final.
This compilation shows how many countries oscillate between restricting (or even prohibiting) and regulating various forms of labour relations which threaten to circumvent core protective mechanisms which the national law in question would uphold in any bipartite employment relationship.

A particularly illustrative example of the multifaceted approach that may be required to tackle multiparty work relationships is presented by Iván Rodríguez Cardo and Diego Álvarez Alonso in their assessment of the situation in Spain. Their contribution tells a story of ‘piecemeal regulation and case law solutions’, through which a country with a traditionally very high share of temporary workers evolved in response to rapidly changing business structures. It showcases the cat-and-mouse type interaction between changes in regulation and ever new forms of circumventing them, which has characterised many countries’ policies in this field to some degree. The present-day regulation in Spain, as described by the authors, entails a clear set of protective standards for temporary agency workers (notably as regards, e.g., the applicability of collective agreements), a remarkably differentiated delimitation and regulation of liability in case of subcontracting, and strict consequences in case of violations (including workers’ rights to claim an open-ended employment contract with any of the involved undertakings). Both courts and legislators have also actively developed responses to risks of evasion of protective standards via constructions such as groups of companies, co-operatives, recruitment agencies, multiservice companies, franchising, or platform work.

A different but equally intriguing approach is described for Denmark by Natalie Videbaek Munkholm. In a national context which generally prioritises self-regulation, various forms of multiparty work relationships have been addressed mainly by clauses in collective agreements in the sectors concerned and the resolve of the courts to disregard formal classifications if they do not seem to align with the actual situation. The contribution describes how, for each type of multiparty work relationship, the question of restriction or prohibition of its use, of workers’ rights vis-à-vis a party that is not the employer, of subsidiary or joint liability, and of penalties in case of non-compliance are effectively regulated by the social partners and their implementation is safeguarded by the courts. As far as statutory provisions exist, they are often open to derogation by the social partners. The potential of the resulting tailor-made solutions seems particularly evident in relation to areas characterised by specifically complex or large-scale interconnectedness of undertakings (as in the case of franchising) or by rapidly changing business realities (as with platform work).

All in all, readers should gain an insight into the complex challenges posed by the increasingly relevant phenomenon of multiparty work relationships, which occur in diverse forms yet often raise similar questions. The description of the design and analysis of the effectiveness of various existing or contemplated approaches to tackle the resulting problems, as provided in the articles of this special section, may provide food for thought for the ongoing debate on how to preserve the relevance of protective mechanisms in the rapidly evolving realities of modern labour markets.

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