Employee sharing: a new type of employment, opportune in a globalized context

Mihaela-Emilia MARICA

Bucharest University of Economic Studies, Bucharest, Romania

avocatmihaelamarica@yahoo.com

Abstract. *The legal contemporary framework regarding individual employment relations has proven to be generally based on the proliferation of non-standard forms of employment, which respond equally to both employer and employee's need for flexibility. While atypical contractual arrangements are perceived as key elements in finding solutions to problems related to the reconstruction of economic life and reaching a much-wanted balance between family and professional obligations, wide debates were noted regarding the negative effects generated by such situations on a legal protection basis. From the employee's angle, atypical contractual arrangements generate a situation surrounded by insecurity, analysed under following aspects: remuneration and limited social protection, insecurity and instability that characterizes this type of employment, work conditions of the precarious, as well as limited promotion opportunities. Since the category of atypical contractual arrangements is heterogeneous and we are not able to analyse the incidence of these negative effects related to all the atypical methods of employment, the following article emphasizes the particular features of the employee sharing as a new, flexible form of employment, considerably convenient in a globalized context. Based on a comparative law analysis conducted in order to uncover various perspectives of the European Union's Member States, this paper highlights the usefulness of implementing the employee sharing system on a national labour market and the opportunities created for the employees.*

Keywords: employee sharing, flexible employment, globalization, labour market, non-standard employment contract.

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Introduction

As stated in the specialized literature, the main effect of globalization is abolishing financial boundaries and „integrating all nations into a world market”, while in the social realm globalization is perceived as a phenomenon that „unites and separates, creates similarities and differences” alike (Wilpert, 2009). In the realm of communication and information, an important aspect of globalization lies in the general access to information due to the development of computerized technologies; in the realm of individual mobility, the phenomenon is manifest in the increase of international tourism as well as the intensified migration of the workers (Wilpert, 2009). Related to the migration phenomenon, other authors noted that labour migration and the relocation of the employer units - a current trend of the European Union - have fundamentally changed the dimension of labour relations (Dimitriu, 2016b). In other words, the globalization phenomenon – manifest in various ways worldwide – has had a significant impact on workers and workplaces, generating an increasing number of non-standard employment contracts for atypical (non-standard) work. Given the labour market trends towards increased diversity, the new work arrangements are seen as preferred types of employment, because they meet the

companies' need to reinvent themselves, with positive consequences as their expenses are reduced (Bercusson, 1996).

Information technology now impacts virtually all work environments through the emergence of the so-called „smart machines” (Wilpert, 2009), which has inevitably reduced the data storage timeline and changed the organizational processes, with significant effects on the demand and supply of jobs on the labour market. As far as the workers are concerned, the emergence of new computerized technologies has allowed flexible work, boosted individual autonomy, and has also provided them with a tool for increasing their competitiveness; on the other hand, for the employers, the rules imposed by globalization have often generated an uncertain, unpredictable business environment. Under these circumstances, only those innovative companies which have proved able to identify business opportunities and adjust to change, have remained competitive (Bajzikova et al., 2013). In other words, by following a number of performance indicators such as more flexible and cheaper workforce, provided by the non-standard labour market, these companies have better adjusted to the demands of today's marketplace (Gunnigle et al., 1998). These economic and juridical realities have led analysts to the conclusion that today's society is really faced with a decline of the traditional employment – full-time work contracts of indefinite duration – which are being replaced by much more flexible work arrangements, whose downside is a certain degree of insecurity and low social protection (Wilpert, 2009).

Research in the field of law and doctrine of labour relations emphasizes a diversity of work contracts and a trend towards increased flexibility of work relationships – as a characteristic of the European labour market today – as well as a consequence of the globalization phenomenon. The changes in economy and production, the development of information technology, the increase in competitiveness, have resulted in the collapse of the traditional ways of work organization, and implicitly in the emergence of atypical, non-standard employment (Marica, 2019). According to other scholars, the development of new strategies in the management of human resources has had major consequences on the structure of labour market, as standard, uniform employment is renounced in favour of diversity (Dimitriu, 2016).

Since the category of atypical contractual arrangements is heterogeneous and we are not able to analyse the incidence of effects related to all the atypical methods of employment, the following article tackles only the employee sharing program. This analysis focuses on some of the most visible elements of this trend towards increased employment flexibility, with special emphasis on the particular features of the *employee sharing* as a new flexible form of employment, very convenient in the globalized context. I deemed it opportune to approach not only the contents of this notion and its characteristics, but also some elements of *comparative law*, in order to identify how other states perceive the *employee sharing* programs. Also, this investigation of the major consequences of the employee sharing schemes on labour markets, from the standpoint of both employers and employees, reveals the fact that this work arrangement has better potential for development than other flexible forms of employment. Moreover, the study will offer the possibility to gather information about the new trend of the flexible work arrangements. This is particularly relevant since, the present study attempts to contribute theoretically to the specialized literature on the perceived utility of this new employment program in the event of its implementation in Romanian legislation. This aspect is important, since Romania is one of the European Union member states which have yet to update its labour legislation by including the flexible work arrangements, and which continues to prefer standard employment contracts as the predilect type of employment.

Literature review

Interest in these atypical work arrangements, to the detriment of the standard work contracts, has resulted in the emergence of a *heterogeneous* category (Eurofound, 2015) a very wide range of non-standard contractual arrangements, which in one way or another differ from the traditional work contracts, that is full-time, employer-supervised, indefinite, and at the employer's place of business (Kalleberg & Arne, 2000). Therefore, the configurations of flexible employment forms that depart from „the standard job” may refer to the duration of work (fixed-term employment contract), reduced workload (part-time contract), work done elsewhere than the employer's precincts (homeworking), use of technology (teleworking) or a combination of them (*employee sharing contract*, job sharing contract, on-call contract) (McCann, 2008).

The concept of „new forms of work” or „very atypical work” was originally created by Eurofound in 2010 to define the new relationships between employers and workers, with regard to the working hours, the time intervals and the place where work is carried out, the computer technology involved, or a combination thereof (Eurofound, 2014). Furthermore, the phrase *new forms of work* is not synonymous with those atypical work contracts known to all European legislative systems – respectively temporary employment, part-time employment or teleworking contracts – but they actually presuppose a work arrangement profile which is much more different from the standard contracts, having a much greater precarity of working conditions as well as employment terms (McCann, 2008).

According to many scholars, the diversity of these atypical arrangements for workers allowing them to be integrated into the labour market, expresses on the one hand the specific needs of employers who aim to adjust to today's business environment – which requires more flexibility of the labour market – and, on the other hand, it expresses the general views promoted by the current European policy, which see the new work arrangements as important tools in fighting against unemployment and, implicitly, boosting employment (Dimitriu, 2016). To put it briefly, they are perceived as a flexible way of managing the workforce, in the context of an extremely unpredictable labour market, despite the fact that they offer lower social protection to the workers so employed. The problem is that these new practices essentially meet the needs of employers, and much less those of the workers (Wallace et al., 2011).

The emergence of the new forms of work has generated two main attitudes evinced by the specialists who have addressed this phenomenon. On the one hand, some authors emphasize the importance of flexibility and the improvement of the family-work balance gained by the labour market, strongly associated with the use and developments of the new contractual forms of employment (Eurofound, 1998). On the other hand, debates focus on the negative effects often remarked about the non-standard work arrangements: the high degree of precarity of working conditions and employment terms, and the division or segmentation of the labour market into two sectors: the standard, permanent, traditional one and the non-standard one, where the security and protection of workers is significantly lower (Blanpain & Tiraboschi, 2008).

Moreover, a complex body of literature designates the category of atypical workers as „vulnerable workers”, as most of the times they hold precarious positions within the companies – with low wages, limited social protection, lack of opportunities for professional development, for training and implicitly for upward mobility (Popescu, 2008). According to other scholars, the work carried out under these new work arrangements is identified by such phrases as „vulnerable work”, „precarious employment”, „vagrant or peripheral employment”, „contingent work” (Kalleberg, 2000).

With regard to the trends followed by the new flexible work arrangements, we must note

that not all these categories of atypical employment are considered to be inherently precarious, as specialized literature points out. According to Dimitriu (Dimitriu, 2016a), interim-management contract – a type of activity conducted by highly skilled managers, is not a potential source of precarity because remuneration is very high despite the short duration of work. Studies have also revealed a „dualism in part-time employment”, with good jobs defined in terms of the high skill levels of certain categories of workers (professors, librarians, etc.) and bad jobs defined in terms of the vulnerability of part-time workers, generated by lower payment and reduced benefits (Kalleberg, 2000). One European research report notes that among the non-standard work arrangements, employee sharing does not evince the potential precarity associated to atypical work, and identifies a clear win-win potential for companies and workers as it provides employers with access to flexible employment while offering stability and predictability to workers, particularly when compared to other atypical job arrangements (Eurofound, 2016).

Starting from these hypotheses outlined by the specialized literature, the present study examines the importance of adopting in internal practice the employee sharing program as a new flexible form of employment, with comparatively lower potential for precarity. Based on the analysis of the main implications for employers and employees, and on a comparative law analysis conducted in order to uncover various perspectives of the European Union’s Member States, this paper highlights the usefulness of implementing the employee sharing system on a national labour market and the opportunities created for the employees. Also, the comparison with other non-standard work arrangements is relevant for this purpose.

Methodology

Research methodology consists in a comparative law analysis centred on employee sharing programs. Thus, this study investigates the situation of states whose legislation is oriented towards the development of employee sharing models as a new forms of work – such as Germany, Belgium, Hungary, France. The aim is to underscore the importance of this trend towards increased flexibility, by including employee sharing in the practice of work relationships, in contrast with Romania which has not yet regulated them by labour legislation.

With the same purpose, of stressing the usefulness and benefits of adopting this atypical work arrangement in Romanian internal legislation, the research methodology has included a comparative analysis of the characteristics and implications of the employee sharing scheme, by looking into the characteristics of other flexible types of work accepted by the Romanian legislation, such as Temporary Work Agent, part-time work or homeworking.

Results and discussions

„Employee sharing” work arrangements as a new type of employment generated by globalization.

Employee sharing is one of the new forms of employment that have emerged in response to the increasing need for more flexibility in the work relationships. In brief, it designates the „joint hiring” of one worker by several employers. In other words, the formal employer is actually a „Group of employers” (Ștefănescu, 2017), which take joint juridical responsibility for payment of salary and other payments; the employee works for each of the group’s employers in turn, according to a schedule they agree on. The European Foundation for the Improvement of Living and Working Conditions (Eurofound, 2015) defined *employee sharing* in its report on the new forms of employment.

As today's market economy is characterized by high risk and uncertainty, it is difficult for employers to appreciate the exact amount of work they will need; many times, they are equally unable to estimate their own financial capabilities. Thus it is possible that at certain times they face difficulties in paying the salaries as the employment contracts stipulate, or on the contrary, they may not need some of their workers – usually, experts in particular fields – over some periods of time; however, terminating the contract is not the best option as it is less expensive to keep them at their disposal in case they need them, than proceeding to hiring another professional. This particular type of work arrangement is used, for example, for workers skilled in specific areas such as equipment maintenance and repairs; these workers are employed by several employers, when their equipment and machinery need repairing. In practice, the companies resorting to this form of employment may belong to the same organizations (Dimitriu, 2016a). By establishing a group of companies with similar profiles and which usually are close to each other or located in the same region, which hire skilled workers already trained in the respective field, costs with the professional training of the employees can be significantly reduced, which indirectly results in increased productivity and economic efficiency. On the other hand, as the companies that form the „Group of employers” pay jointly for all the expenses entailed by workers' remuneration and the other rights of their employees, this work arrangement actually doubles the benefits of workers who are thus not affected by the possible financial difficulties met by one of the members of the Group of employers.

With respect to the European organizations' increasing interest in flexibility, some authors have postulated a direct relation between the incentive offered to employers seeking increased employment flexibility, and their need to improve competitiveness and reduce operating costs (Gunnigle et al., 1998). From this standpoint, resorting to employee sharing programs allows this flexibility to companies and does not necessarily mitigate employment security for workers.

Elements of comparative law concerning employee sharing. A comparison with the Temporary Work Agent or other flexible work models.

With regard to the implementation of this type of work arrangement in the labour legislations of other European states, in **Hungary** (Eurofound, 2018) the work contract explicitly mentions which one of the employers will be paying the employee taxes and it also indicates clearly the wages to be paid to the shared employee by each of the group members. Concerning the social security obligations to be paid by the companies that form the group, the Hungarian legislation stipulates that the employers shall inform the tax authority on the designated employer in charge of paying tax and social security obligations. If they fail to report who is the selected employer, the authorities may select any of them as responsible for fulfilling the obligations. The wages are paid by each member of the group of employers, at the same rate, proportionally to the time the employee works for them. It may be agreed by a contract that one employer will pay the wage, and should be reimbursed by the others (each paying their own quota) through a civil law contract, which makes this form of employment a very attractive one for the Hungarian companies (Kozma, 2012).

Although at first sight, as far as structure is concerned, there are similarities to temporary agency work, the difference between the two forms of employment lies in the fact that the workers who are hired jointly rotate regularly among the participating employers and work exclusively for these employers, while the network itself does not aim to make a profit; their intention is to create a sustainable relationship between companies and workers, so that the workers hired jointly always remain with the participating employers. For instance, the

legislation passed in 2014 in **Belgium** states that the „Group of employers” created with a view to *employee sharing* can be established only and exclusively with the previous agreement of the Ministry of Labour, mentioning that the respective legal entity must operate as a non-profit juridical entity whose objective is sharing the employees, not making a profit. Although the „Group of employers” seems similar in form to a Temporary Work Agency, the distinction between the two concepts is clear in Belgium. The principle of equal treatment between shared workers and the other employees of the organizations that join the Group of Employers is a principle consecrated by Belgian legislation with regard to the employee sharing scheme (Eurofound, 2015).

In **Luxembourg** the Labour Code, art. L 132-1, allows *employee sharing* (*prêt temporaire de main d'oeuvre*), on condition that the participating employers are not Temporary Work Agencies and that they obtain a license from the Ministry of Labour, Employment, Economy and Social Solidarity, precisely in order to differentiate this institution from Temporary Work Agents.

In **Germany**, the distinctions between the two forms of employment – the *employee sharing* scheme versus the employment through Temporary Work Agents – are ambiguous. The Group of employers must declare themselves as Temporary Work Agency, in accordance to the law that puts into practice the concept of *employee sharing*, respectively *Arbeitgeberzusammenschlüsse* (AGZ). In addition to this peculiarity, the German legislation does not stipulate any joint responsibility for the participating companies. This has generated a negative perception of *employee sharing*, because work secured through temporary work agents is associated to high precariousness, bad working conditions, as well as low income. Moreover, labour law regulations impose the minimum wage legally established for temporary work agencies, in the case of those companies which implement *employee sharing*. However, most of the times, in **Germany**, this type of activity is used in economic sectors which are less advanced and therefore are characterised by low wage levels. Thus, by adopting this employment scheme, participating companies are obliged to pay higher salaries to these workers than the wages they pay to their core staff, which creates difficulties in financing this atypical work arrangement (Eurofound, 2015). Consequently, work secured through a Temporary work agent – with all its negative implications about wages, social security, working conditions – influences the general perception of the *employee sharing* scheme. A bad image can entail serious reluctance about implementing this form of employment on the German marketplace.

In **France**, employee sharing schemes can be used on condition that the Labour Inspector is informed in advance. It is mandatory to conclude a written contract between the Group of Employers and the shared workers, specifying the employment terms, the companies which form the Group of Employers, as well as the places where share workers will be working. Like the Belgian legislation, the French one also enforces equal treatment between the shared workers and the core staff of the organizations which form the Group of Employers, with regard to wages and other benefits (Fadeuilhe, 2012).

Although the *employee sharing* system – as well as other flexible forms of employment – is spreading and is increasingly widely used in most states, so that today it tends to become a common occurrence on the European Union labour market, in **Romania**, the current legislation does not cover this type of employment. Moreover, it is actually very restrictive in face of the variety of employment contracts proliferating across Europe in the labour market. According to the Romanian legislation, non-standard work comprises only the usual flexible work relationships: the fixed-term employment contract, the part-time contract, homeworking and

teleworking, as well as employment through the temporary work agency. As far as the latter is concerned, there is no similarity to the *employee sharing* scheme, as the legislation makes no stipulations in this sense, as is the case in Germany. This does not mean, however, that the parties cannot resort to employee sharing on the grounds of their *free-will agreement*, but the norms and regulations that govern such a juridical relationship pertain to the sphere of civil law. In such a situation, the worker is not considered an employee, and as such is deprived of PICBE | 1193 the social protection provided by labour legislation.

Compared with other contracts that govern remote working – homeworking and teleworking – which are accepted by legislation for internal work practices (article 108-110 in the Labour Code and Law 81/2018 regulating telework, Romania) as arrangements which best express contractual flexibility, the employee sharing scheme has one additional advantage. Both types of contracts mentioned above offer employment for permanent (or indefinite) duration; however, a homeworking contract allows high flexibility for the employees who are able to conduct their work close to their families, but it also generates a great disadvantage – the feeling of social isolation which often affects the workers (Tavares, 2017). In contrast, *employee sharing* significantly reduces this stressful feeling. In other words, the mechanism on which this type of activity is based involves a Group of Employers to hire the shared workers jointly, while they work for every one of these companies in turn. Although this model does not require them to be permanently present in the companies that form the Group of Employers, we consider that the employee sharing scheme entails lower risks of social isolation for this atypical category of workers, as they work successively at all workplaces provided by the participant companies.

Conclusions

The employee sharing work arrangement is a non-standard scheme which offers a major advantage in comparison with other contractual arrangements belonging to the category of the new forms of work, proliferating across European labor legislations. Maybe the most significant advantage concerns job security, from the standpoint of employees, as long as this scheme offers to possibility to conclude a full-time work contract, with all the advantages it entails: a stable job, stable income, similar working conditions and terms of employment as the core staff. The flexibility of the employee sharing scheme is a benefit for the employer companies, who by resorting to employee sharing become able to cope with the unpredictability of the labour market, and to stay competitive. Consequently, the main argument in favour of the idea that this form of employment is a flexible option worth implementing in the Romanian labour legislation, concerns the job security from the standpoint of workers and meets the need for flexibility from the standpoint of employers. Besides reducing the employers' costs with the workforce, this type of employment also involves lower risks for the workers with regard to their job security, since those workers who join an *employee sharing* arrangement conclude a contract for a permanent position. In contrast with other types of flexible employment, where job precariousness and workers' insecurity are much higher (see the Temporary Work Agency), this work arrangement satisfies the interests of employees as it offers a permanent contract, concluded with one employer (respectively the Group of Employers), which guarantees a full workload. In the absence of such alternative forms of employment, the workers could be forced to accept jobs with a higher potential for precariousness (Eurofound, 2016).

One last remark is in order, concerning the high level of insecurity met by workers in most flexible employment arrangements. If the aim of these arrangements is to promote flexibility and combat unemployment, then resorting to new forms of employment could prove

beneficial, as long as the phenomenon's evolution is controlled. For instance, increased concern with adjusting the labour legislation to these developments and evolutions, so that it should extend social protection to this vulnerable category of workers (non-standard workers), could improve the current business environment which is now faced with such diversity of new employment arrangements.

Based on the comparative law elements, it would be opportune for the Romanian domestic legislation to acknowledge *employee sharing* among non-standard forms of employment. In this perspective, ensuring conditions for work and employment similar to those granted to the core staff of standard workers, would become a legal obligation for the companies that choose to implement *employee sharing* programs. Also, guaranteeing the minimum wage for this category of workers should become mandatory for the companies that embrace these new forms of employment, in order to offer protection to these workers as well as security about their income. Similarly to the legislative systems discussed in the comparative law subchapter, for the same safety reasons, the Romanian legislation should stipulate explicitly that the employment contract must specify which of the employers in the group will be paying the social security obligations, in order to complete the set of protection measures granted to this category of workers.

However, the extant European labour law systems have proved unable to cover all the new work arrangements, and so most of them are based on the freedom of contract of the parties involved (Dimitriu, 2016a), as is the case of Romania. This obviously has consequences on the social security of the workers hired under the new forms of employment, as they are deprived of the protection provided by labour legislation to the standard employees.

Consequently, the national regulations in the realm of labour legislation could take a first step in this direction by adopting norms that allow the national companies to resort to work arrangements such as employee sharing.

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