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New modes of business organization and precarious employment: towards the recommodification of labour?

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Summary While much of the international debate on the future of work focuses on the links between new forms of employment and social protection, and especially on transitions between jobs, this paper addresses a still under-researched issue: the interconnections between employment regulations and business strategies in the production of precarious employment. It seeks to make a contribution to a new strand of research which has emerged in France, Britain and the United States and has cast light on the link between new modes of business organization and new forms of employment. The paper particularly highlights labour recommodification processes as the key instrument in this link and illustrates the dynamics at play in three service sectors known for a high incidence of precarious employment – call centres, performing arts, and domiciliary care for the elderly, in five European countries.

Key words precarious employment, collective bargaining, insecurity, risk, mode of business organization

Résumé Alors que la plupart des débats sur le future du travail se centrent sur les liens entre les nouvelles formes d'emplois et la protection sociale, avec une attention particulière sur les transitions d'un emploi à l'autre, cet article investigate une question qui n'a fait l'objet que de peu de recherche: les interconnexions entre les régulations de l'emploi et les stratégies des employeurs dans la production de l'emploi précaire. Il vise à contribuer aux recherches de même nature qui ont émergé en France, au Royaume-Uni et aux Etats-Unis et qui ont éclairé le lien entre les nouveaux modes d'organisation et les nouvelles formes d'emploi. Cet article souligne particulièrement les processus de re-commodification du travail en tant qu'instrument central dans ce lien. Il illustre les dynamiques à l'œuvre dans trois secteurs de services connu pour leur haut niveau de précarité de l'emploi, les centres d'appel (call center), les arts vivants et les soins à domicile pour les personnes âgées et ce dans cinq pays européens.

This article seeks to assess and account for the incidence of precarious employment in five European countries (France, Germany, Italy, Spain and the UK).¹ In particular, we provide an analysis of the way in which labour-market regulations are used and combined with business strategies to shape new modes of business organization largely based on the mobilization of precarious employment. Precarious employment is understood as *a variety of forms of*

employment established below normative standards, which results from an unbalanced distribution towards and among workers of the insecurity and risks typically attached to the labour market (Frade and Darmon, 2003). Following Karl Polanyi's pathbreaking work (1944), the commodification of labour (the treatment of labour as a commodity) was the very foundation of market societies, but emerging unionization and work regulations in the

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last quarter of the 19th century implied a partial protection (and thus a partial 'decommodification') of labour against market insecurity and risks, a development considerably reinforced after 1945 with the establishment of modern welfare states (e.g. Esping-Andersen, 1990). The underpinning hypothesis to this article is that labour 'commodification' has increased again over the last two decades.

The article thus contributes to a recent strand of research looking at the impact of new modes of business organization on the employment relationship. In France, a study of business services has shown that new modes of business organization in this sector led to the 'strict limitation of the object of exchange (e.g. labour) to the task that the company requires, in the framework of a business contract with a third party, or of a limited employment contract' (Morin, 1999: 8). This strict equivalence between 'employment' (a relationship involving a status protected by legal and collective regulations and not just a market contract) and work tasks corresponds to a management of the employment relationship in the pure market mode, and thus to 'recommodification'.

In the UK, research has indicated that new modes of business organization involving inter-organizational relationships led to a blurring of the notion of 'the employer', and, consequently, to tensions and conflicts in the employment relationship and inequalities between employees (Earnshaw et al., 2002; Rubery et al., 2002). Similarly, in the US, Wenger (2004) identifies gaps in the coverage of what he calls 'contingent workers' by social protection benefits as a result of this dissolution of the employer-employee relationship.

In line with these contributions, this paper looks at the link between new modes of business organization – almost all emerging as a consequence of externalization processes – and the mobilization of precarious employment, in particular through the development of labour-market intermediation functions, which go considerably beyond legal prescriptions. We also highlight the processes of normalizing the mobilization of precarious labour through col-

lective agreements and employment regulations. Three service activities were selected for this analysis: call centres, the performing arts, and domiciliary care for the elderly. These were chosen on the basis of their common strong employment growth and high incidence of precarious employment; and for their contrasts in terms of novelty, professionalization and structure of the services provided. Call centres provide new services; the performing arts are a traditional activity now being redefined along more managerial lines; and the provision of care for the elderly has been shifting from the family to professional services.

Field studies were carried out in 2002 in call centres in Germany, Italy and Spain; in the domiciliary-care sector in France, Italy, Spain and England;² and in the performing-arts sector in France and the UK. *In-depth interviews* and *documentary analyses* were carried out at the 'sectoral level' proper and at the 'site level' (call centre premises, arts organizations and companies, domiciliary care providers and local authorities). Overall at least 25 interviews were conducted per sector and per country. About five to seven interviews took place at the sectoral level with policymakers, union representatives, employer representatives, provider networks, client/user organizations, and in Spain with labour inspectors (call centres). At the site level at least 20 interviews were conducted with managers, local authorities (domiciliary care), employees, and staff delegates (members of the works councils or committees). Documentary analyses involved the review of both primary sources (relevant legislation, collective agreements, documents provided by companies and particularly by unions and staff delegates, and in the call centres in Spain several court rulings and sanctioning reports by labour inspectors) and secondary sources (mainly scientific and market studies).

The paper is structured in three sections. In the first, we analyse the main forms of employment mobilized in the sectors and markets studied. In the second section, we examine the modes of business organization associated with the externalization processes at play and high-

Table 1 Incidence of non-standard employment in the five countries studied and in the European Union, as a share of total employment

	<i>Self-employment (as a share of non-agricultural civil employment)</i>		<i>Part-time employment</i>		<i>Fixed-term contracts</i>	
	1980	2000	1994	2001	1994	2001
France	10.71	8.06	15.2	16.4	11.5	14.9
Germany	6.98	9.22	15.8	20.3	10.4	12.4
Italy	19.2	23.21	5.9	8.4	6.8	9.8
Spain	16.26	16.02	6.7	8.1	33.8	31.7
UK	7.11	10.83	24.2	24.9	7.0	6.8
EU	10.87	12.54	15.5	17.9	11.5	13.4
	(incl. Norway) (incl. Norway)					

Notes: Most of the growth in self-employment took place in the 1980s. Fixed-term contracts include all contracts of limited duration, including temporary work agency contracts, seasonal work, and training contracts.

Sources: Self-employment – Pedersini (2002); part-time and fixed-term employment – *Employment in Europe 2002*.

light the labour-market intermediation role of service providers and the transfer of insecurity and risks towards workers. Finally, we highlight the contribution of collective bargaining and specific labour regulations to the normalization of these modes of labour mobilization. We conclude by discussing the diverse measures proposed in order to limit the incidence of precarious employment.

Labour as a commodity: new forms of employment

The well-known diversification of forms of employment over the last two decades has led to the development of precarious employment, derogatory to the standard norm of employment, understood as permanent, full-time employment with one employer (Supiot, 1999). In other words, what Rodgers (1989: 1) has called the ‘standard employment relationship’, understood not as a mere question of empirical frequencies, but as a *normative* pattern, has been eroded. Labour law used to organize the partial decoupling of employment and work, as the employment contract went beyond the mere transaction over labour and

gave rise to rights protected by employment regulations, which constituted the employee status, but this has now weakened (Morin, 1999: 43). The forms of precarious employment mobilized differ from one sector and one country to the next, according to what is made available by regulations (see Table 1), but certainly converge in one key respect: evading the traditional employer–employee relationship (Wenger, 2004). In that process, the boundaries between waged employment and self-employment became blurred.

Overall, and making allowance for a partial overlap between fixed-term and part-time employment, more than 40 percent of the workforce is today employed in atypical or non-standard contracts in the countries studied. This is without counting undeclared work, which may represent 7–19 percent of total employment in Europe today, according to the European Commission (1998).

Recommodification involves the imposition of a strict relationship between employment terms and conditions and work tasks. This adjustment may bear on the duration of the contract, on working time and/or on pay. A paradigmatic case of adjustment is through the use of self-employment.

Table 2 Incidence of non-standard employment in the three sectors/markets (latest figures available, all post 2000)

	<i>Temporary contracts</i>	<i>Part-time contracts</i>	<i>Self-employment</i>
		<i>Call centres</i>	
Germany	Estimated at 20%	72%, including 16% in 'marginal employment'	Less than 4%
Italy	Empirical evidence of use of temporary work agencies and casual work	No data	60% in freelance coordinated work
Spain	92% Average: 2.5 contracts/year	Frequently contracts for 33 hours a week	Unknown but unlikely to be relevant
		<i>Domiciliary care for the elderly^a</i>	
France	Less than the national average	65.3% in associations 76.8% in direct employment by user	Unknown but unlikely to be relevant
Spain	Estimated at more than 70% of the publicly funded private sector	Empirical evidence that a majority is on 20–30 hours per week	Unknown but unlikely to be relevant
England	4% in the public sector, unknown in the private sector but not very relevant	84% in the public sector 60% work less than 29 hours per week in the private sector	Unknown but unlikely to be relevant
		<i>Performing arts</i>	
France	80% of dramatic artists and dancers 55% artists entertainment industry 40% technical assistants	(Difficult to assess: project work)	Unknown but unlikely to be relevant
UK	No data – likely not to be relevant	(Difficult to assess: project work)	77% of musicians 60% of actors 45–55% rest of occupations

Note: ^a The Italian domiciliary-care subsector was studied but the statistical base is still poor, and is excluded from the table.

Sources: Call centres – various sources quoted in Düll et al. (2003) (Germany); Frey et al. (2003) (Italy); Frade et al. (2003a) (Spain). Domiciliary care for the elderly – various sources quoted in Barbier et al. (2002) (France); Laparra and González (2002) (Spain); Baldauf (2003) (England). Performing arts – various sources quoted in Barbier et al. (2003) (France); Galloway and Lindley (2003) (UK).

Employers may first organize the strict equivalence between the duration of the employment contract and the duration of the task. *Temporary or non-permanent employment* (i.e. employment not based on an open-ended and continuous contract, but limited in time such as, in particular, fixed-term contracts, temporary agency work and casual or seasonal work) among the countries presented here, is

particularly resorted to in Spain and to a lesser extent in France, despite its regulation as an exceptional form of employment. In particular, fixed-term employment cannot be resorted to for the regular activity of the firm, except in some specific sectors in France for which it is considered normal practice not to hire on a permanent basis. These exceptions are authorized by law on account of the nature of the activity.

For example, the Spanish call-centre market was found to be based almost entirely on the use of temporary employment, particularly on fixed-term contracts: according to the employer association of the 'telemarketing' sector, 92 percent of the staff of its members have such contracts, and the average is 2.5 contracts per person per year. As can be seen in Table 2, the French performing-arts sector, and generally the cultural sector, also makes heavy use of fixed-term contracts, which are authorized by the Labour Code. As the duration of contracts has shrunk by 70 percent between 1987 and 2000 (Menger, 2002: 94), this particular form of employment has led to ever more employment insecurity.

The recommodification of labour also takes place through the strict adjustment between *working time* and the time required for task performance. Among the countries studied in our research, both Germany and the UK have very high rates of part-time employment, in both cases with a heavy gender bias. But part-time employment appears particularly developed in the domiciliary-care sector, whatever the country. Low volumes of working hours, split working days and changing schedules are a direct translation of the activity pattern onto working time. This pattern particularly concerns French care workers, as average working weeks stand at 16 hours (for staff employed in third-sector organizations) and 11 hours (for care workers directly employed by users) (Dutheil, 2000; DARES, 2001). Furthermore, care workers have very little control over the volume of working hours: in England, 70 percent of private providers do not guarantee their staff a minimum number of hours (Matosevic et al., 2001); and in France, the fixed volumes of hours stipulated in the employment contracts are not always respected (Barbier et al., 2002). Elsewhere, endless changing schedules have also been identified in the retail sector (Jany-Catrice, 2001).

A third dimension of recommodification comprises the adjustment of wages to pay for the task performed. The mechanisms for such an adjustment identified in the sectors under

review include performance-related pay for up to 10 percent of the wage (in the Italian call centres); no pay progression (call centres) or only limited pay progression (e.g. a 24 percent rise for 20 years' experience and a certificate as compared with unqualified beginners in the French domiciliary-care collective agreement); the distinction between 'hours actually worked' and 'hours of attendance' in the collective agreement for *employés de maison* (domestic workers) in France (Barbier et al., 2002); and indeed abuses such as not paying overtime (as reported in the public domiciliary-care sector in England – UNISON, 2000 quoted in Baldauf, 2003).

The purest example of equivalence between work assignments and employment is the resort to *bogus self-employment* (subordinate employment disguised as autonomous work). The increase in the number of self-employed people in situations of disguised subordination and/or economic dependence on one employer, though difficult to quantify, is now better documented at the European level (Pedersini, 2002; Perulli, 2003).

Self-employment is highly developed in the cultural sector across Europe, and particularly in the UK. As we shall see in the following section, this high incidence derives from the increase in subcontracting in this sector. The TUC (2000) considers that a large proportion of British musicians and performing artists are 'economically dependent' workers. In that sense, it is revealing that the campaign by the Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU) resulted in a European Court of Justice ruling in 2001, that the UK government was in breach of the European Working Time directive in denying freelance workers and those on short-term contracts the right to four weeks' paid annual leave (Greene, 2001). The mobilization of self-employment for ever shorter projects, combined with the attraction capacity of the sector, resulted in the fact that, according to Equity (the actors' trade union), in 2000, only 33 percent of British actors and dancers were employed professionally for more than 10

weeks, while 60 percent of Equity members were employed in jobs outside their professional area (Galloway and Lindley, 2003).

New modes of business organization and labour-market intermediation

The erosion of the standard employment relationship has happened alongside – and, of course, not independently from – the development of more diversified and complex modes of business organization. These modes include employment-agency work; the outsourcing of core activities from the public to the private sector and more generally contracting out; private-finance initiatives (in the UK) (Earnshaw et al., 2002); subcontracting of core and peripheral services or the direct mobilization of self-employed and assimilated workers (Morin, 1999); and the creation of quasi-markets (Frade et al., 2003b). This enumeration reveals the multifarious organizational forms taken by business, and hence the difficulties of sector-based employment regulations; in fact, evading or downgrading such regulations is precisely one of the factors underpinning organizational diversification, as explained below. All these new modes of business organization, which should be clearly distinguished from modes of work organization, can be traced back to a general trend towards externalization.

In the analyses of the consequences of externalization for the employment relationship, the issue of who has *control over staff* has attracted particular attention, as it is the key to determining ‘who is the employer’ (Earnshaw et al., 2002). Morin (1999), for example, studied in-store marketing services, where employees of the supplier company sometimes only have administrative contact with their employer, but wholly depend on the work organization of the retail firm, which is their employer’s client. Things are even more complex when staff are employed by a marketing company, seconded to a supplier, but work in the retail firm. Similarly, Earnshaw et al.

(2002) have unravelled the consequences of new modes of organization (e.g. outsourcing regulated by the Transfer of Undertaking Regulations) on the employment relationship, and noted that this raises questions about the creation of a two-tier workforce, and issues of fairness and comparability of employment conditions.

In the sectors and markets of our study, the issue of who *controls the work performed* is also crucial. In *call centres*, the monitoring of performance targets (number of minutes per call, number of calls) and highly intrusive and sometimes degrading staff surveillance are shared with the client company, and staff may be required to present themselves as representatives of the client company (and may even have to wear a client company shirt). In the first development phase of the market, managers were in some cases employed by a parent company, while operators belonged to the call-centre subsidiary: this was the case of the subsidiary call centres set up by the Telefónica group in Spain. In this first period there were legal claims of illegal traffic in labour by former employees of the Telefónica group, which were won, but these remained individual actions (Frade et al., 2003a). In publicly funded *domiciliary care*, both the user (who is only partly the payer) and the funding or purchasing local authority control the work of the care worker, who is also monitored by her employer, the domiciliary-care provider, and/or directly by the user. Nonetheless, in this case, providers are usually recognized as being the legal employers.

However, the question is not only who the employer is, but also what is the *role and status of the provider organization* of externalized services. Both in the call-centre market and in the domiciliary-care sector, the client or funding organization largely defines the service, conditions of service delivery and the price. Provider organizations have little organizational autonomy, either because of harsh competition (in the call-centre market) or because of the low public funding provided in the domiciliary-care sector.

Case-study evidence from the *call centres* in Spain has shown that commercial contracts between call centres and their client companies permit endless changes in the character, rhythm and/or duration of the assigned work. Call-centre companies are under the permanent threat that the parent or client company may not renew the contract and may allocate the next campaign to another provider (which may be another subsidiary). Client companies usually break up tasks (e.g. sales campaigns) into various lots according to the category of services (in their own terminology, 'low' v. 'high value-added services', 'VIP' v. 'time-wasting customers'), and allocate each lot to different providers. Providers may in turn subcontract part of their lots to others. This is how the large telecom and banking companies, which are the dominant clients, manage to organize a captive market composed of providers positioned within a rather hierarchical market structure.

In the *domiciliary-care sector*, constraints on providers appear, at first sight, to be very severe, although more so in England and Italy than in Spain or France. Providers are required to provide 'just-in-time' services whose definition they do not control, as the local authorities are responsible for drawing up care plans with the service user (elderly person or his/her family). Nor do providers have control over prices, while having to comply, to a greater or lesser extent, with organizational standards set by the local authorities. However, these constraints affect providers differently and may indeed be used by some players to their advantage to build a dominant position.

Unlike in the call-centre market, the provision of services in domiciliary care has to be local, and thus local reputation, networks and the relationship with local authorities is in all countries a brake to the formation of a national market. However, private for-profit providers, in England and Spain, have a national strategy of expansion, leading to the standardization of procedures, economies of scale, and the consolidation of their position by *driving prices down*. The formation of a

national market is most clearly seen in England. The government has just issued monitoring procedures for domiciliary-care providers (including for social services departments – SSDs). This monitoring takes the form of compulsory registration with the new National Care Standards Commission, and involves submitting documents demonstrating the suitability of the service (especially in terms of staffing), as well as inspections. Although these standards might be seen as another turn of the screw in terms of the demands placed on providers, in reality they represent a substantial advantage for large national holding groups, whereas they obviously constitute an additional bureaucratic burden for small local providers. Furthermore, local-authority SSDs are themselves increasingly subjected to stringent performance control by central government. The Local Government Act, 1999 has placed a duty on local authorities to conduct so-called 'best value reviews' of all their services (including services for elderly people). Performance indicators have been developed by the Department of Health (DoH) and in 2002 the DoH first published a star rating for SSDs (Baldauf, 2003). Such a centralized system of performance control, which is essential for the new modes of governance now being implemented, is likely to unify in the medium term the contracting-out criteria used by local authorities and, as efficiency criteria are dominant, the low-price constraint is unlikely to diminish. This again favours large providers with possibilities of standardization of human-resources management and of the care services themselves (Frade et al., 2003b).

In England, mergers and acquisitions have started to take place, with large insurance and health-care providers, both for-profit and non-profit-making, absorbing local players and organizing national presence. A clear example is that of the Nestor Healthcare Group, a holding company encompassing domiciliary-care providers and other health-care-related businesses, and with a workforce of more than 8,000 (Baldauf, 2003). The Eulen group, one of the major players of the domiciliary-care

market in Spain, with international presence, has set up a 'Global Outsourcing' strategy ([www.eulen.com]), whereby it presents itself as the 'single interlocutor' of local government, which can 'solve all problems without losing either specialization or effectiveness'. Between 1991 and 1999, its turnover increased twofold and its staff by 68 percent to reach about 32,500. Out of the 1,000 Eulen staff employed in domiciliary care in Madrid, only 200 are on permanent contracts, all of whom were transferred from previous providers (Frade et al., 2003b).

In the performing arts, the development of intermediary functions is due to the increasing use, by cities, public institutions or private companies, of 'event organizers/managers' subcontracted for the organization of a whole event, and in particular, the recruitment of staff. The market for the organization of cultural events has been growing very fast, and 'cultural managers' are indeed on the rise. However, cultural organizations (television, performing-arts centres, festivals etc.) still recruit producers, performers, technicians, or an entire company, mainly by resorting to *informal networks* for identifying the right person for the right job. In this case the intermediary network has no economic role. Furthermore, it is not 'mobilizing labour', as was the case in the other two sectors. Rather, people are admitted (informally) to such networks on the basis of their reputation, achievements and connections. It is a mechanism for forming and maintaining the positioning of an elite, for separating, including and excluding, thus operating a segmentation in the cultural labour market and limiting the effects of the excess in labour supply. In short, these networks act as *informal filters*.

In the markets reviewed, providers have one key variable of adjustment: labour management. Their position in the market, or sheer survival, depends on their capacity to match labour volumes with 'business' assignments. The providers' function chiefly becomes one of *management and, in part, control of labour pools*, and is thus comparable to that of a

labour-market intermediary. Contrary to legislators' intentions to strictly limit labour-market intermediation (e.g. through the regulation of temporary work agencies – TWAs) in all European countries, such a function seems to go far beyond legal provisions, as already noted in Morin (1999: 197).

In the *domiciliary-care sector*, for example, providers deal with fluctuations in demand by adjusting working hours to volumes of care hours, and worker schedules to user schedules, with consequences on the incidence of on-call and part-time work described above in the first section. Providers may even penalize staff's 'lack of flexibility' regarding hours by offering them the most flexible contractual forms (see Baldauf, 2003). The organization of large providers into holding groups enhances the role of local outlets as managers of labour pools, as they are transformed into *internal providers* within the (national) organization, and face internal targets and procedures, in addition to pressures from local-authority purchasers. In addition, the transfer of staff from local authorities or former providers to newly contracted providers raises specific issues, especially when the new provider positions itself as a generalist service provider without subsector specialization. Even though transferred staff maintain their former employment conditions to some extent, one of our case-studies in Spain has shown that qualified staff transferred from small or specialist care co-operatives to the Eulen group experienced a loss of professionalism and de-skilling (Alvarez et al., 2003).

In the call-centre market, work shifts may change on a weekly or even shorter basis. In Italy, the free distribution of the 35 or 40-hour working week has been agreed with the unions. Employees in Spain systematically report that their company changes schedules and shifts without prior notice, although the law and collective agreement insist that such changes require prior communication to the staff representatives and employee consent.

Providers justify the strict matching between 'business' and volumes of labour and/or

working hours by resorting to a *new definition of their activity*. Indeed, this is crucial especially with regard to the mobilization of fixed-term employment, as legislation has often specifically prevented the resort to temporary employment for carrying out the ‘regular activity’ of the firm. However, such restrictions on temporary employment have been reduced in the last few years.

A paradigmatic example of this change, and a revealing illustration of how commercial law is dramatically intruding into labour law through jurisprudence and new collective agreements, can be found in the Spanish call-centre sector (Frade et al., 2003b). In a sector characteristically riven with industrial conflict and litigation, Courts used to pronounce rulings against call-centre companies which abused temporary (particularly fixed-term, but also temporary agency) contracts on account of the fact that – to paraphrase one of the many rulings – labour law conceives of temporary contracts as *exceptions* to the standard or normal contract. As such exceptions, they are subject to specific, legally recognized, *causal* contingencies. This means that the very existence of a temporary contract, no less than the termination of such a contract, has to be justified according to law and must therefore not be the result of the discretionary or arbitrary will of the employer. ‘Contracting for a particular task or service implies the maintenance of the contract for as long as the cause which motivated its establishment lasts, and [contrary to what the company argued] no agreement can be admitted on the termination of the contractual relationship outside the legally established cases’ (Court ruling 451/2000 of the High Tribunal of Catalunya, Social Section, 28–07–2000).

These rulings against the abuse of temporary employment contracts would radically change in 2001, once the collective agreement had been signed and became legally binding. In the case of an appeal by the largest Spanish call-centre company (Telefónica group) against the sanctions imposed by the Labour Inspectorate on account of the abuse of temporary contracts

(all the 1,796 workers in Barcelona were on temporary contracts), the Court accepted the company’s claim that ‘it devotes itself to the activity of telemarketing on behalf of third parties, and that it provides this service always for third parties through *commercial contracts*’, which would justify the temporary nature of such activity, even though it was carried out on a ‘regular’ basis. In an unprecedented ruling, which has subsequently triggered more decisions of the same kind, the Court argued that ‘for the company there is a need of work temporarily limited and objectively defined’, and that ‘this is a limitation known by the parties when they sign up to the contract’, concluding that ‘therefore, it cannot be argued that these activities constitute the normal activity of the company’. The Court further supported its decision by arguing that ‘the Collective Agreement of the sector recognizes this form of contract as the one which “will be the most normal” [the Court here quoting the Agreement] for teleoperators’ (all quotations from the Ruling 238/2001 of the Administrative Court No. 11, Barcelona, 2–12–2001). In this ruling, the Court dismissed the forceful legal claims made by the Labour Inspectorate, namely, that the commercial contracts (renewed on an annual basis with the same client company, actually the owner of the call-centre company) cannot possibly justify that practically all staff have temporary contracts, for this would ‘transform the temporality of the employment relation, which in our law continues to be *exceptional*, into the general contractual *norm*’ (ibid.), and that a collective agreement cannot contradict higher level legislation such as the Workers’ Statute.

Thus the introduction of an intermediary layer in business organization means that what was considered to be regular business in the parent or client company is now treated as a specific task, whereas it is actually the organization, not the nature, of the activity that has changed (Frade et al., 2003a). The definition of the company’s activity is a crucial issue in many externalized business-services sectors. Morin (1999: 138) shows, for example, that the resort

to fixed-term contracts in the French training sector corresponds to a way of managing business assignments.

Externalization is thus generally based on the simultaneity of two contracts: the commercial contract between the provider and the client, and the employment contract between the provider and the worker. Importantly, the latter depends on the former, in its duration and/or in its conditions (in particular in relation to working time). This simultaneity underpins the encroachment of commercial law on labour law. This encroachment is most obvious in the case of temporary work agencies in the UK, as temporary agency workers are usually considered self-employed (Hegewisch, 2002), and more generally when the provider is himself or herself a self-employed or quasi-self-employed worker.

The externalization process can thus be said to lead to the organization of an 'insecurity-and-risks transfer chain' – in contrast to the idealized model of the 'service profit chain' proposed by Heskett et al. (1997). This chain involves at least double and sometimes multiple transfer of business risks (or risks linked to the activity) when providers themselves resort to subcontracting or to temporary work agencies. It converts the client company or institution into a service manager, which reaps the benefits of the new mode of business organization, while the main business risks are transferred to the provider organization. The latter, which sometimes may itself be in a very weak position in its market, in turn transforms these business risks into employment and work-related insecurity and risks for the staff hired to deliver the service. The redefinition of what constitutes an activity, and the provider's function as intermediary for the mobilization of labour, have been shown to be crucial elements in this transfer process, although direct resort to self-employed workers leads to similar results.

The normalization and legitimization of precarious employment

Admittedly, the possibility of evading collective agreements is a powerful argument for externalization. Even though employers may be forced to take on the workforce of the client company on their previous terms and conditions until a new collective agreement is signed (a requirement of the 77/187/EEC European Transfer of Undertakings directive amended in 1998–98/50/EC), new staff will be recruited on different, usually lower, terms. However, there always remains the threat that Courts will reassess the employment relationship and consider the transferred employees as employees of the client or parent company. More generally, companies may face numerous industrial conflicts, as in the case of call centres and domiciliary care in Spain, and call centres in Italy (see Frade et al., 2003a; Frey et al., 2003).

Thus, in emerging sectors in Spain and in Italy, the employers' strategy has been to obtain a *dedicated collective agreement* normalizing the employment conditions in the sectors concerned (call centres, domiciliary care). However, in the Spanish domiciliary-care sector, they were only partly successful, as the national agreement also covers residences for the elderly, where staff enjoyed better employment conditions. A claim against the agreement was introduced by some associations of domiciliary-care providers for this reason (it protected some better staff conditions), but the claim was rejected by the Courts (Laparra and González, 2002).

More surprisingly, the main unions in Spain and Italy have backed this normalization strategy. This is to be understood in a context of weakening of the unions, and in relation to their primary goal to be seen as interlocutors in collective bargaining, to the detriment of a more grass-roots combative and defensive position in a transformed workplace. We already referred to a 2001 Court decision in Spain concerning a call-centre subsidiary of the Telefónica group, which largely relied on the new collective agreement for the telemarketing

sector to justify the systematic resort to temporary employment. This decision is crucial, and surprising, as it relies on a collective agreement to contradict higher-level legislation.

Other examples include the adoption of a collective agreement in the call-centre sector in Italy in 2000, which excludes *parasubordinati* (quasi-subordinate) workers, even though these form the majority of the workforce; of the collective agreement for employees staffing residences for the elderly and domiciliary care at the national level in Spain, which stipulates the modest objective of 30 percent of the workforce in permanent contracts. This objective has not been complied with (Laparra and González, 2002), perhaps because the collective agreement also includes an opt-out clause. Likewise, in Italy, the second collective agreement between cooperatives in the social services, health and education sectors and some Confederate sectoral trade unions links implementation of the agreement to obtaining better procurement conditions with the public administration.

Yet the normalization of precarious employment is not only a result of collective bargaining, but may also be an unintended effect of labour law itself. The clearest example is that of the French regime known as *régime de l'intermittence* (intermittent employment regime) which governs various professions of the cultural sector. Under this regime, fixed-term contracts are made legal and coupled with a specific form of unemployment compensation, accessible above the threshold of 507 hours worked over 12 months, and funded by the mainstream unemployment insurance fund.

While having contributed to shape the sector, and stimulated artistic creation and diffusion in France, the regime constitutes a key source of indirect funding for cultural organizations, as 'firms treat unemployment benefits as an indirect means of subsidising production by lowering labour costs' (Benhamou and Gazier, 2000: 128). It should be pointed out that this regime is directly responsible for the increasing fragmentation of work assignments and for the 'financing of a large and flexible

labour pool' (Barbier et al., 2002). In this case, paradoxically, a decommodification mechanism (the access of some cultural workers to a fairly generous, although unequal, system of unemployment protection) leads to increased precariousness of employment. The indirect subsidization of a sector through the unemployment-benefit system not only concerns the French cultural sector. The dynamics in the training market are quite similar, with trainers alternating assignments with unemployment benefits, when they qualify (Morin, 1999: 136). The perverse effects of such systems pose a serious challenge to the advocates of 'flexicurity' mechanisms such as the generalization of social protection and 'active' measures for individuals in transition periods (Supiot, 1999; Gazier, 2002; Schmid, 2002).

In several countries there is currently an attempt to extend basic social protection to workers without employee status, sometimes more with a view to putting a brake on fiscal evasion than to preventing precarious employment. Recent regulations in Italy have legalized *parasubordinazione* (quasi-subordinate status), 'a range of contractual relationships which for certain purposes are deemed to be similar to the employment relationship . . . identifiable by the continuous, co-ordinated and mainly personal nature of the work performed' (*The European Employment and Industrial Glossaries*, [www.eurofound.eu.int]). This new status has led to some improvement in the social protection of self-employed workers, as the client/employer must contribute to a pension fund and for health and accidents at work (Pedersini, 2002). In that sense, the conversion of 500 self-employed into quasi-subordinate workers in a very large call centre of the Telecom Group in Italy has certainly improved their situation. The Labour Inspectorate, concerned with fiscal evasion, forced the change of status, which led to requirements for written contracts, of at least 3 months, and the recognition of social rights (Frey et al., 2003). Nevertheless, the fact that workers work on the employer's premises, using the employer's equipment, and are subjected to the same

(harsh) discipline and surveillance as other workers, casts serious doubt on their non-employee status. The quasi-subordinate status appears to be based on the workers' registration with the specific Pensions Fund established in 1995 for quasi-subordinate workers, rather than on their effective employment situation. The creation of new, weakened, statuses highlights a more general blurring of the frontiers between waged employment and self-employment. This makes it difficult to enforce the principle of reclassification of bogus self-employment as waged employment by the Courts – as advocated in the Supiot report (1999).

We end this section on the normalization of precarious employment by mentioning the role of European directives. In particular, the 1999 Directive on Fixed-term Work encouraged member states and/or the social partners to introduce *one or more* of the following measures:

- Defining objective reasons justifying the renewal of such contracts;
- Limiting the total duration of successive fixed-term employment contracts; or
- Limiting the number of renewals of such contracts.

The fact that the Directive leaves the choice between the three measures, and does not specify the content of the 'objective reasons' (which, in addition, only apply to the renewal of the contract and not to its adoption in the first instance) obviously limits its protective status. In fact, it has been pointed out that the introduction of the Directive has led to the promotion of fixed-term employment in several countries, including Italy (Pedersini, 2002).

Conclusions

In this article, we have tried to explain and illustrate how the structuring of service activities as insecurity-and-risks transfer chains, based on the use of intermediary actors (call

centre companies, domiciliary care providers, and possibly cultural management agencies), has led to the widespread use of non-standard forms of employment relationships, stripped of nearly all the dimensions which are not strictly to do with labour management. We have also shown that creation of new collective agreements has then allowed for the normalization and legitimization of the use of all available precarious forms of employment or the absence of collective agreements.

In this process, the meaning of what is an 'activity', and particularly its framework of temporality, is dramatically transformed. *The activity of the company, or of the provider, seems to be equated to a discontinuous series of assignments*; in fact the very company or provider claims to have no autonomous identity beyond these assignments. In terms of the regulation of employment, this amounts to introducing commercial law into labour law. The use of various forms of precarious-employment contracts (temporary contracts, on-call contracts, changing and low volumes of working hours, or the resort to bogus self-employment) is justified by a reference, not to the organization as a whole, but to specific assignments taken as separate entities. This reduction of employment to work tasks amounts to what we have called a 'recommodification of labour'.

The promotion of new mechanisms of support for the labour force in transition periods – e.g. through 'transitional labour markets' (Gazier, 2002; Schmid, 2002) – does not seem to have any decommodification effect as such, as suggested by the French experience of the intermittent employment regime. There is evidence that such mechanisms may even contribute to the legitimization of the insecurity-and-risks transfer chain described. Furthermore, key support agencies for transitions (such as training organizations for unemployed people) have been shown to function as devices for inducing trainees to take up precarious jobs (Darmon et al., 2004). This brings out the abstract character of the 'transitional approach' and its difficulties in dealing with

the dynamics of market societies. The provision of basic rights for all categories of workers, suggested by other authors (Earnshaw et al., 2002; Wenger, 2004) might be more effective in limiting recommodification. Nevertheless, such developments also contribute to reducing the scope of waged employment and take the fragmentation of employment forms for granted.

Our empirical research leads us to support the view that there is a need to halt the introduction of commercial law into labour law and the use of non-standard employment forms. Proactive measures such as the introduction of criteria bearing on the quality of employment and the past record of compliance with labour law in public procurement markets (Belorgey, 2002) could contribute to such an endeavour, as such markets, according to the European Commission, now amount to 14 percent of the European GDP. It has also been suggested that union action should change focus, for example by addressing supply chains rather than individual companies (Earnshaw et al., 2002). However, the evidence gathered in this research casts doubt as to whether this is sufficient given the current balance of forces at play. Finally, while most measures advocated in recent years have focused on institutional support for individual adaptation by workers themselves and on new governance arrangements, none of them addresses the heart of the matter – i.e. regulating business conduct and putting a brake on labour recommodification through legislative change and institutional action. This, of course, would stand in contradiction to the current trends towards the promotion of flexibility for all.

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- 2 We have studied domiciliary care in England rather than in the UK due to the different institutional frameworks in that sector derived from the devolution process.

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