



“Involuntary self-employment” as a public policy issue: a cross-country European review

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Abstract

Purpose – There is growing political interest in new forms of precarious self-employment located in a “grey area” between employment and self-employment. A wide range of concepts has been used to debate this issue, and this paper aims to clarify these debates through the concept of involuntary self-employment.

Design/methodology/approach – The paper reviews the empirical, conceptual and legal-policy approaches to involuntary self-employment via three country case studies in Finland, Germany and the UK. A range of relevant domestic academic literature, articles in the media, selected key expert interviews, and policy and legal documents are employed.

Findings – Conceptual clarity regarding involuntary self-employment is achieved through a discussion of two aspects of the phenomenon: the characteristics of involuntariness from a motives-based perspective, and the legal/economic perspectives and policy issues. The motives-based analysis argues that involuntariness as such does not seem to have severe implications on the individuals’ well being, given that the individual earns a satisfactory livelihood from her or his business activities. The discussion of the characteristics of and regulation related to working arrangements in the “grey area” between employment and self-employment, where the self-employed individual is strongly dependent on the principal, shows that it is very difficult to regulate quasi self-employment without harming “voluntary” forms of enterprise and inter-firm cooperation at the same time.

Originality/value – The key contribution of the paper is to facilitate a foundation for subsequent empirical research and policy development.

Keywords Self employed workers, Involuntary actions, Industrial relations, Public policy

Paper type General review



Introduction

The movement towards vertical de-integration, outsourcing and the use of new technologies are increasingly contributing to an erosion of conventional organisational structures and working arrangements (Beck, 2000; Boyle, 1994; Harrison, 1994; Sennett, 1998). These developments have given rise to growing political interest and concern regarding people being “pushed” into new forms of precarious self-employment, which are located in a “grey area” between employment and self-employment (Perulli, 2003; Schulze Buschoff, 2004). The employer’s motive for such arrangements is to look for flexibility by avoiding the costs, obligations and responsibilities related to employment relationships. The employee, on the other hand, is often effectively “forced” into becoming a subcontractor.

Two streams of literature and policy discourse can be distinguished in this context, each approaching the phenomenon from a different perspective. One perspective focuses on the negative “push” motives of starting up in business by using terms such as involuntary (Kautonen *et al.*, 2009), forced (Hakala, 2006; Hughes, 2006) and reluctant self-employment or entrepreneurship (Boyle, 1994; Galbraith and Latham, 1996; Stanworth and Stanworth, 1997). The other perspective refers to the legal and economic aspects of operating in the grey area between an employment relationship and self-employment. Terms used in this context include quasi self-employment (Dietrich, 1999; Schmidt and Schwerdtner, 1999), false self-employment (Burchell *et al.*, 1999; Harvey, 2001), para-subordination (Perulli, 2003), employed self-employment (Paasch, 1990; Wank, 1988), hybrid self-employment (Bögenhold, 1987) and dependent self-employment (Böheim and Muehlberger, 2006).

This paper adopts the notion of “involuntary self-employment” to encompass both of these perspectives. Thus, the concept of involuntary self-employment consists of two elements referred to as “involuntariness” and “quasi self-employment”, which relate to the aforementioned two perspectives, respectively. Accordingly, involuntary self-employed are defined as individuals who have been “pushed” by the employer’s initiative (involuntariness) into precarious working arrangements which are neither employment relationships nor “real” self-employment (quasi self-employment). Involuntary self-employment emerges when an employer decides to re-define a task that has been conventionally performed in a “normal” employment relationship as a self-employed subcontracting arrangement.

In spite of its increasing topicality, little is actually known about involuntary self-employment. The present paper attempts to narrow this research gap by providing a broad overview of the existing research and current policy debates in this topic area, which serves as a starting point for further research and policy development. First, by means of an interdisciplinary literature synthesis, the conceptual section provides an overview of both the motives-based perspective and the legal/economic discourse on involuntary self-employment, focusing on the main conceptual arguments and policy issues. Second, the paper illustrates the versatility of the phenomenon across Europe by discussing its political topicality, the nature and extent of the phenomenon as well as the related legal discourse in Finland, Germany and the UK. The analysis is based on research conducted in an international collaborative project commissioned by the Finnish Ministry of Labour in 2006-2007.

Involuntary self-employment: characteristics and policy issues

The following discussion addresses the phenomenon of involuntary self-employment from the two perspectives that are manifest in the extant literature:

- (1) the motives-based perspective which considers the negative “push” motives for becoming self-employed; and
- (2) the legal and economic aspects of precarious quasi self-employment arrangements which may emerge when employers re-define employment relationships as self-employed subcontracting arrangements.

The discussion addresses the characteristics of involuntary self-employment and the principal policy issues from both of these perspectives.

“Involuntariness” as a motive for self-employment

“Involuntariness” as a motive for self-employment implies that an individual becomes self-employed even if they prefer paid employment, while at the same time they perceive the benefit from the self-employment to exceed the opportunity cost of the next best alternative in the labour market (or unemployment). Involuntariness in an employee’s decision to become self-employed is related to a strong influence of “push” factors. While the entrepreneurship literature has identified many different “push” factors (see, e.g. Brüderl *et al.*, 1996; Granger *et al.*, 1995; Mallon, 1998; Stanworth and Curran, 1973), the most relevant one for the present discussion of employers “forcing” employees to become self-employed subcontractors is unemployment or its threat. Even though unemployment is not the only factor leading to self-definitions of involuntary self-employment, it is we feel the most objectively demonstrable, and is thus what we concentrate on below. The threat of unemployment affects people in outsourcing situations where they face the choice between continuing working for the present employer as a self-employed subcontractor or leaving the firm and risking unemployment. Similar logic applies also to individuals who are offered work but only if they do this as self-employed. These individuals would not start up in business were it not for (the threat of) unemployment.

However, the involuntariness of self-employment is not static and depends on both individual subjectivities and contextual factors. Previous studies point out that self-employment which began as a reluctant choice may evolve to a desirable alternative over time (Granger *et al.*, 1995; Hinz and Jungbauer-Gans, 1999; Williams, 2007). Thus, the central empirical question in the longer term is whether the self-employed individual, at a given time, would be willing to give up self-employment if they could continue doing the same work in an employment relationship. If the individual rather stays in business for himself or herself, the self-employment cannot be deemed involuntary, even if the entry into self-employment might have been motivated by such reasons.

The central policy question concerns whether the involuntariness of self-employment has any consequences to the individual personally or to the performance and development of their business. Examining the motives for starting up in business is a classic issue in entrepreneurship research (e.g. Blackburn, 2001; Davidsson, 1995). The aim of this research is to identify which “types” of entrepreneurs are more successful in developing their venture and thus produce more of the expected positive externalities associated with entrepreneurship, such as job creation and

increased potential for innovation. Thus, the discussion around whether self-employment or entrepreneurship is “push” or “pull”-driven implicitly assumes that the motives for entering self-employment and subsequent business development are closely linked.

This has been examined in the Global Entrepreneurship Monitor studies, which tend to judge necessity entrepreneurship (as opposed to opportunity entrepreneurship) as a negative factor as far as national growth and development are concerned (e.g. Allen *et al.*, 2006; Kwong *et al.*, 2009; Reynolds *et al.*, 2002; Sternberg and Bergman, 2003). According to this reasoning, involuntary business start-ups are unlikely to generate significant positive externalities. However, the primary aim for the involuntary self-employed is likely to be replacing their previous paid employment with the new self-employment as a source of livelihood, rather than creating a thriving innovative business. The next question then becomes whether the involuntary self-employed can succeed in working for themselves so that they can earn a satisfactory livelihood. In other words, does an involuntary start-up reduce the economic viability of self-employment?

Most of the studies that have discussed reluctant business start-ups indicate that individuals who have been “pushed” into self-employment have lower income levels than those driven primarily by “pull” motives (Andersson and Wadensjö, 2006; Block and Wagner, 2006; Filion, 2004; Hughes, 2003). Filion (2004) believes that this is partly the result of the involuntary self-employed often seeing their business activity as a temporary exigency which is why they are less interested in developing themselves and their business. Furthermore, their satisfaction with income, job security and retirement savings has been found to be strikingly lower (Block and Köllinger, 2008; Hughes, 2003, 2006). On the other hand, Block and Sandner (2007) found that being necessity or opportunity-driven did not impact on the business success for individuals who started up in their own professional field: experience in the familiar branch has been noted to predict success and good profitability (see also Hinz and Jungbauer-Gans, 1999). Hence, the involuntariness behind the transition to self-employment as such should not matter to the survival propensities of businesses set up by individuals whose employers “force” them to become self-employed subcontractors in their own profession. However, the limitations set by the quasi self-employed working arrangement may affect the economic viability of their self-employment. This issue is discussed in more detail in the next section.

Beyond purely economic arguments, also social and psychological hardship caused by the involuntary transition into self-employment should be considered in this context. In fact, people who have ended up self-employed involuntarily have been found to have a lower job satisfaction and a higher level of stress and risk related to the personal unsuitability of self-employment compared to paid employment (Block and Wagner, 2006). A recent study by Kautonen and Palmroos (forthcoming) found that individuals who have become self-employed involuntarily are somewhat more likely to want to switch back to paid employment later in their entrepreneurial careers than their opportunity-motivated counterparts (see also Hughes, 2006). The authors also found that if the individual earns a satisfactory livelihood through self-employment, the negative effect of a necessity-based start-up on subsequent entrepreneurial satisfaction diminishes. In other words, it appears that the involuntariness of becoming self-employed because of (the threat or risk) of unemployment (or some other “forced”

motivation factor) as such does not have significant negative consequences to the individual, if their self-employment is or becomes economically viable and generates a sufficient livelihood. The following section discusses the characteristics of quasi self-employed working arrangements in the “grey area” between employment and self-employment, and how these impact on the economic viability of self-employment.

The legal and economic aspects of involuntary self-employment

The notion of quasi self-employed, which encompasses the legal and economic aspects of our definition of involuntary self-employment, refers to individuals who are mainly self-employed in contractual terms but in practice are treated as employees because of the way the contract is executed (Dietrich, 1999; Schmidt and Schwerdtner, 1999). By which criteria individual working arrangements are classified as employment, self-employment or something in between, and what rights and obligations such classifications involve, is a political and legislative matter that varies between countries and governments, as will be illustrated later in this paper. The following discusses three general characteristics of quasi self-employment. While none of these characteristics alone makes a working arrangement quasi self-employment, it becomes an appropriate term when more of these characteristics are manifest and the more strongly they are present in a relationship between a self-employed worker and a client.

The first possible characteristic of quasi self-employment is the external impulse provided by the former employer and/or the present exclusive client for the individual’s decision to become self-employed (Vainio, 2007). An external impulse from the employer involving a(n indirect) threat of unemployment is a pre-requisite for the term “involuntary self-employment” to apply. However, an external impulse alone does not suffice to identify quasi self-employment (or involuntariness behind self-employment) because it also applies to various common business arrangements such as spin-offs, buy-outs and franchising as well as to many new ventures in general, which might rely on one or a few main clients in their first years in business. Hence, any policy intervention would need to target only those self-employed for whom the external impulse has been negative and whose transition into self-employment has been involuntary. In this context, the argumentation concerning the consequences of involuntariness presented in the preceding section applies.

The second characteristic relates to the degree of integration of the self-employed worker in the principal’s organisation (Harvey, 2001). From a juridical perspective, the main question concerns how closely the contractual arrangement between the self-employed worker and the principal resembles an employment relationship as prescribed in law. Two characteristics are particularly relevant in this context. First, quasi self-employment status can be suspected if the self-employed worker performs tasks which are normally performed in an employment relationship and which are characteristic of employment relationships (Kunze, 2006; Vainio, 2007). The main characteristics in this context are the stability of the contractual relationship and the continuous nature of the performance of duties. Relevant empirical indicators might include, for example, the principal having employees who perform the same tasks as the self-employed worker and the self-employed worker not having their own business office but operating in the principal’s premises (Kunze, 2006). The second characteristic refers to the degree to which the self-employed individual is under the principal’s direct authority (Böheim and Muehlberger, 2006; DTI, 2002; Harvey, 2001). The degree of

authority ranges from full supervision, meaning that the worker merely follows the principal's instructions, to complete independence, where the self-employed worker makes most decisions concerning how to carry out their tasks and is responsible only for the final result. The more the principal's authority takes the form of direct supervision and decision making, the more likely, *ceteris paribus*, the working arrangement can be characterised as quasi self-employment.

Since a quasi self-employed worker works mainly or even exclusively for one client, the third characteristic of quasi self-employment is a strong economic dependence on the principal (Böheim and Muehlberger, 2006; Harvey, 2001). Empirical criteria of economic dependence would include a very high share of turnover generated by one client and the same client having a strong influence on the self-employed individual's business decisions. On the other hand, “real” self-employed can also be highly economically dependent on one client. However, they have (at least theoretically) an unlimited potential clientele and it is their choice to work for one client only. The quasi self-employed, on the other hand, may be formally (*de jure*) or informally (*de facto*) prohibited from working for other clients than their present principal. For example, the Finnish media has reported cases where self-employed lorry drivers have been “forced” into exclusive contracts with their former employers, i.e. they are contractually prohibited from working for other clients.

A central policy issue here is to what extent a high degree of integration into the principal's organisation and/or a high degree of economic dependence on one client compromise the economic viability of the individual's self-employment. A strong dependence of the self-employed worker on the principal in terms of the “time, place, and content of work” (Böheim and Muehlberger, 2006, p. 3) constrains the self-employed individual's freedom to work for multiple clients and to develop her or his business activities. On the other hand, since the work is mainly performed in the premises and with the facilities of the principal, the quasi self-employed lack costs and risks associated with these factors, since they are merely selling their know-how. Therefore, a high degree of integration into the principal's organisation as such is not necessarily a negative factor, but it depends on the specific characteristics of the individual working arrangement.

Similarly, even though a strong economic dependence restricts business development, it is not necessarily a negative factor because it can guarantee a steady flow of business. However, the economic dependence becomes a burden if a company hires self-employed workers primarily in order to shift the risk of fluctuations in demand to the new self-employed (Böheim and Muehlberger, 2006). The risk shift means that the self-employed are dependent on the business income generated by the principal, and the latter may decide to increase and decrease the amount of the self-employed workers' business according to its own economic situation. As a result, the self-employed may experience periods of financial hardship or even *de facto* unemployment.

As has become apparent above, many of the characteristics of quasi self-employment apply to “regular” forms of enterprise and inter-firm cooperation as well. For example, in a strategic network consisting of a large focal enterprise and a number of small businesses (e.g. Jarillo, 1988), the position of the very small firms may resemble that of the quasi self-employed. However, if this position is the small business entrepreneur's voluntary choice, intervening with legislation which brings into the

working arrangement responsibilities and costs associated with an employment relationship may harm the entrepreneur, who might actually enjoy a stable flow of business from the focal enterprise in the network. Similarly, a joint venture of self-employed professionals – such as a dental, medical or legal practice owned jointly by two or more professionals – may resemble quasi self-employment for example in terms of integration (e.g. same office hours; shared premises, facilities and clerical staff). A further case concerns franchising. A typical franchising arrangement fulfils a number of criteria for quasi self-employment: the business idea and the concept originate from the franchisor (external impulse); the franchisee is often restricted in terms of how to run the business (integration); and is economically dependent on the franchisor. Given these ambiguities any policy response to quasi self-employment would have to be careful not to harm voluntary forms of enterprise and cooperative business arrangements by regulating the aforementioned characteristics in a mechanistic manner.

In addition to the high degree of dependence on the principal, another policy issue concerns the ambiguities regarding the legal status of the quasi self-employed – whether their working arrangement is interpreted as employment, self-employment or something else by tax or other authorities (Harvey, 2001; Koskinen *et al.*, 1997; Vainio, 2007). The problem with regulations that apply to quasi self-employed working arrangements, however, is less the diversity of the interpretations than their unpredictability: whether one is to be legally considered employee or self-employed is not of such importance as it is to know this in advance. If the individual and their client know how a working arrangement will be interpreted, they know to prepare accordingly. If the interpretation varies, it causes uncertainty and possible repercussions for example in the form of additional taxes and stress. In order to reduce the ambiguity as to which rights pertain to the quasi self-employed and which obligations to their clients, the central legal question concerns how to correctly assess and legally classify (self-)employment and to distinguish one from the other (Perulli, 2003). The three characteristics introduced in the preceding section can be used as a conceptual basis in making this distinction within the legislative framework of the country in question. The next section provides examples of legislative treatment of quasi self-employment from three European countries.

Involuntary self-employment in Finland, Germany and the UK

Background

The following discussion illustrates the manifestation of involuntary self-employment and the related policy and legal discourse in three European countries: Finland, Germany and the UK. The choice of these particular countries reflects the versatility of the political topicality of involuntary self-employment across Europe. The topic has recently become very prominent in Finland, especially in the trade union agenda. In Germany, on the other hand, the discussion on involuntary self-employment can be traced back to the 1980s. Given its highly deregulated labour market, involuntary self-employment is not an especially prominent issue in the UK and the foci of the debate are somewhat different from the other two countries. The aim of the country case studies is to assess the policy relevance of involuntary self-employment from a European perspective. However, the present discussion is limited to the national level of the three countries and it does not include supranational regulation at the EU level.

This analysis will enable scholars and policy-makers to appraise the direction of further research and the need and possible means of controlling the phenomenon by national and/or EU policy initiatives and legislation.

The research conducted in each country consists of a review of relevant academic literature, articles in the media, and policy and legal documents. This review was complemented with selected key expert interviews in Finland and in the UK. In Finland, four key expert interviews were conducted with senior officers at the Federation of Finnish Enterprises, the Service Union United, a regional Employment and Economic Development Centre and a regional Chamber of Commerce. In the UK, Senior Research Officers in the Trade Union Congress and the GMB Union were interviewed, and telephone and e-mail communications had with ten contacts and officials in a wide range of organisations, including the Small Business Service (since disbanded and subsumed within the Enterprise Directorate, a cross-cutting arm of the Department for Business, Enterprise and Regulatory Reform, BERR), Regional Development Agencies and academic and commercial legal specialists.

Topicality, manifestation and primary policy concerns

The three countries vary considerably in terms of the current policy relevance of involuntary self-employment. However, a consistent unsurprising divergence between employers and trade unions on this issue was evident in all three countries. Employers are concerned about the possibility of rising labour costs through extensions of employment rights (and thus employer’s obligations) to more of the atypical workforce, or the possible regulation of quasi self-employment harming “voluntary” forms of inter-firm cooperation or business concepts such as franchising. Trade unions, on the other hand, reject this and emphasise the confusion, short-sightedness and injustice involved in involuntary, precarious self-employment.

The topic has recently come to the forefront of political debate in Finland, particularly in the concerns of the Central Organisation of Finnish Trade Unions (SAK) and the Service Union United (PAM). The concerns have emerged in the context of increased outsourcing by large enterprises and so called chair rental arrangements in small businesses in certain sectors, especially beauty care services. The chair rental system involves a host enterprise, for instance a hairdresser’s salon, letting self-employed hairdressers a working area (a hairdresser’s chair) in their premises instead of hiring these individuals as employees. A particular policy concern in Finland relates to a desire to establish clear rules to distinguish between employment and self-employment in the grey area, with the aim of uncovering such working arrangements where the employer seeks to avoid its legal obligations. The policy objective of the trade unions is to protect the interests of individuals, who as involuntary self-employed would likely find themselves without employment protection or access to benefits. Finland is also the only one of the three countries where the actual involuntariness of entering self-employment has recently received particular political and media attention (e.g. Hakala, 2006; Kaihovaara, 2007; Sippola, 2007). However, the concerns of the injustice of “forcing” employees into self-employment have remained on the level of rhetoric so far, while the primary discussion on the actual policy measures has focused on the aforementioned regulatory issues.

While involuntary self-employment is highly topical in Finland, its political relevance has abated in recent years in Germany, where precarious self-employment

has been a well-known topic in academic research and policy discourse since the 1980s. The focus of the German debate has been on the legal aspect of the phenomenon, i.e. the notion of quasi self-employment (*Scheinselbständigkeit*). The primary policy concern is similar to Finland: where should the line be drawn between self-employed and employed? This question becomes especially relevant when considering social security. In Germany, the self-employed are seen as potentially higher-income earners so the state does not provide welfare protection or contribute to pensions and health insurance provision. Employees are fully integrated into the German social insurance system with statutory health, nursing care, accident and unemployment insurance as well as social pension programme. Similarly to Finland, employees are protected by law (e.g. against unjustified dismissal and maternity protection) and they are entitled to a minimum number of leave days and continuation of payment in case of illness or inability to work. The employer is also required to pay a substantial share of the employee's monthly social insurance contribution. From the perspective of employers these rules are often seen as a considerable bureaucratic and investment burden, as well as stifling flexibility (Nökel, 2001).

In the UK, on the other hand, the notion of involuntary self-employment (and related terms) has not been much debated. In spite of not being of particular policy relevance, the topic is neither unknown nor absent in the UK. Examples of related discussion have been raised from the construction sector (Harvey, 2001), the book publishing industry (Stanworth and Stanworth, 1997), the milk delivery industry (Boyle, 1994) and the ancillary services in the airline industry (GMB, 2006). Some of these sectors, such as construction, have also been noted to suffer from other related problems such as an increase in the informal economy (Williams, 2007). These examples have addressed both the involuntariness of self-employment as well as the legal position of the quasi self-employed. Although the types of workers and industries are varied, at least one factor seems prevalent: most of the above examples have seen changes in industry context whereby large organisations have divested themselves and "evicted" (Smeaton, 2003, p. 381) a section of their previously directly employed work force. Moreover, migrant workers are especially prominent in more marginal forms of employment, where there exists a hinterland of illegality (see Williams, 2005) and lack of enforcement, particularly for those who do not have legal employment status.

Estimates of the scope of involuntary self-employment

Empirical assessments of the scope of involuntary self-employment have been scarce and they also vary according to the definition used, which reduces their comparability. However, the estimates performed in different countries do provide at least an approximation of the scope of the phenomenon.

The assessment that is closest to the definition of involuntary self-employment used in the present study is the survey of 850 small enterprises conducted in 2006 in Finland (Kautonen *et al.*, 2009). The aim of the study was to determine the scope of involuntary self-employment in Finland based on five specific characteristics, which were derived from the general characteristics of involuntariness and quasi self-employment that were described previously in this paper. The results suggest that the phenomenon is in fact marginal in relation to the Finnish small business population as a whole. While varying numbers of respondents fulfilled one or more of the criteria set for involuntary self-employment, only two respondents fulfilled all of them. Hence, the results of the

survey cast doubt on the seriousness of involuntary self-employment as a public policy issue. However, the authors point out that the results of their study do not exclude the possibility that involuntary self-employment could be a serious issue in certain sectoral niches, such as hairdressing or transport services, which have been highlighted in the Finnish media and which might be small enough to remain “hidden” in broad cross-sectoral samplings. Moreover, the key expert interviews conducted in Finland as part of this study suggest that precarious forms of self-employment are likely to become more common in the future, and hence its empirical insignificance is belied by its ideological-political significance.

In Germany, the political debate has mainly concentrated on assessing the extent of quasi self-employment. However, there is but one official study, conducted by the Institute of Labour Market Research (IAB) (Dietrich, 1997). This study estimated that nearly 940,000 self-employed individuals might be categorised in the grey area between self-employment and employment, which was at that time equivalent to 2.9 per cent of the economically active population. Depending on the specific criteria employed, the number of people that could be categorised as quasi self-employed varied from 19 per cent to 46 per cent of those in the grey area. The lower estimate of 19 per cent was achieved by employing criteria related to the degree of integration into the principal’s organisation, that is, whether the self-employed worker is under the direction of the principal and working with the principal’s equipment. The higher estimate of 46 per cent resulted from defining quasi self-employed as having no employees, regularly working for only one client (economic dependence) and doing typical employee’s work (integration).

The academic research on involuntary self-employment in the UK has focused on particular sectors such as construction, book publishing, milk delivery and ancillary services in the airline industry (Boyle, 1994; GMB, 2006; Harvey, 2001; Stanworth and Stanworth, 1997). To the best of our knowledge, no cross-sectoral statistical evidence on the phenomenon is available. However, a rough indication of the existence of quasi self-employment is reported by the Department of Trade and Industry (DTI, 2002). The report states that even though most people in the UK work in permanent jobs and only 7 per cent of employees work on a temporary basis, “30 per cent of those in employment had an ambiguous status” (DTI, 2002, p. 32). A senior Trades Union Congress (TUC) research officer consulted for this study further pointed out that there has been a significant change in recent years with a sharp growth in agency and casual employment, including the rise of “forced” self-employment.

The legal and policy discourse on quasi self-employment

The legal dilemma mainly concerns how the borderline between self-employment and an employment relationship should be defined, and to what extent the quasi self-employed should be considered as employees or self-employed. The legal discussion on the position of quasi self-employed reflects the policy relevance and the primary political concerns in each country. The following discussion is a brief illustration of the legal issues in the three countries, rather than a fully-fledged legal analysis.

In Finland, the topic has only recently gained political relevance and thus the legal discussion is also at a nascent stage. Finnish law is, however, clear regarding the distinction between employment and self-employment: quasi forms are not recognised

(Hietala *et al.*, 2001). That is, in terms of labour law one is either employee or not. Consequently, the quasi self-employed are usually categorised as self-employed, which entails a number of primarily negative implications for the quasi self-employed worker compared to the legal status of an employee. While Finnish law considers an employee the weaker party in an employment relationship who needs to be protected by a range of regulations (relating for example to minimum wage, holiday entitlement, occupational safety and job security), self-employed and their clients are legally regarded as equals. Thus, the protective regulations do not apply even though in economic terms a quasi self-employed is likely to be the (considerably) weaker party in relation to the principal.

Nevertheless, Finnish labour law is applicable whenever sufficient characteristics of employment are present. According to the law, employment is a contract consisting of the three basic parameters of work for a salary under the direction and supervision of the employer. If and when these elements exist, any working arrangement can be legally considered an employment relationship. The legal definition is based on the actual circumstances, rather than how the parties themselves define their working arrangement (Kairinen *et al.*, 2006; Kröger, 1995). The legal definitions and their interpretations may, however, vary in different areas of legislation and depending on the respective authorities. A person could, for instance, be regarded as an employee in taxation even when they are not considered such in labour law (see Koskinen *et al.*, 1997; Vainio, 2007). Therefore, the quasi self-employed in Finland suffer from the uncertainty, and the potential (unnecessary) stress, caused by legal ambiguity.

Similarly to Finland, being quasi self-employed is not a legal status in Germany, which generates problems concerning whether a working arrangement is interpreted as employment or self-employment. The German government's interest in legally restricting quasi self-employment is two-fold. One is to protect the interests of the individual employee who by becoming quasi self-employed moves outside the protective sphere of employment law. The other main interest relates to protecting the social insurance system comprising health, pension and unemployment insurance: in Germany, employers and employees pay social insurance contributions in addition to taxes. Since only formal employment relationships generate social insurance contributions (the self-employed purchase these services from private insurers), quasi self-employment reduces receipts for the social insurance system. Therefore, policy-makers have introduced legislation to make it easier for the social insurance system to fight against quasi self-employment and thus compel the quasi self-employed and their "employers" to pay their contributions.

In 1998, the German law that defines the notion of employment was amended with a "rule of assumption". This specified four characteristics that constitute employment. If at least two of these characteristics could be identified in self-employment, an employment relationship would be assumed in law and the respective social insurance obligations would apply. These characteristics were: no employees, only working for one client, doing an employee's work and no entrepreneurial activities. This law simplified the identification of employment status. However, it met with harsh criticism from both practitioners and academics (Adomeit, 1999; Reiserer, 2000) because the law was not consistent with the overall policy aim of fostering a culture of entrepreneurship in Germany (Lageman and Welter, 1999). Even though the law was eventually amended to include a fifth characteristic (having worked as an employee in

the same field of activity) and three out of five becoming the “rule of assumption”, it was subject to further criticism and debate. The “rule of assumption” was abandoned in 2003 in the course of the Second Law for Modern Services on the Labour Market, the so-called “Hartz II” law. In legal terms, the status of 1998 was restored. Thus, in order for quasi self-employment to be classified as employment or self-employment today, the working arrangement needs to be evaluated as a whole, rather than on the basis of characteristics being met. As a result of the abandonment of the “rule of assumption”, the political discussion around quasi self-employment abated.

The UK legal and fiscal determination of employment status is as complicated as it is subtle. Until legislation in the late 1990s there were two tiers of workers: employees and self-employed. There are now three tiers. There is employee, which ascribes the fullest set of employment rights (www.direct.gov.uk). The new category of worker – which includes most agency workers, short term casual workers and some freelancers – has slightly fewer rights with for example provision made for maternity, paternity and adoption pay, but not leave, as in the case of employees: “To qualify for maternity leave you must be an ‘employee’” (www.direct.gov.uk). However, establishment of status is not straightforward and some “employees” on short-term contracts, including many without an employment contract, are entitled to maternity leave. It is only a particular definition of “short term casual workers” that are not. In part this new category of worker was created to afford flexible employees with a minimum threshold of rights. The third status, at the bottom in terms of employment rights given that they “do not have employment rights as such” (www.direct.gov.uk), are the self-employed. Thus though they do not have a right to maternity leave, they are entitled to maternity pay and, are afforded legal protection such that they “mustn’t be discriminated against and [are] entitled to a safe and healthy working environment” (www.direct.gov.uk). As the UK government state: “A ‘worker’ is any individual person who works for an employer, whether under a contract of employment or not, who provides a personal service, e.g. a casual worker, agency worker, or some freelance workers. For the most part, genuinely self-employed people or businesses to whom an employer subcontracts are not defined as workers. All employees are workers, but not all workers are employees.” (BERR, 2007).

However, Harvey (2001) argues that the new three-tier designation has done little to clarify employment status in the UK, and that to compound this further the taxation regime is not synchronised with the legislation, as was the case in Finland, noted above. Thus, he argues that it is possible that an individual is treated as an employee for tax purposes, while they are simultaneously classified as self-employed for certain employment protection purposes, and as a worker for other employment protection purposes. The government itself recognises this potential for confusion and has conducted a review of employment status (DTI, 2002). The same document recognises that there are those that fall between the statuses of employed and self-employed. In March of 2006 the DTI (now part of a new ministry called the Department for Business, Enterprise and Regulatory Reform (BERR)) published a “summary of responses” received from the Employment Status Review consultation process (DTI, 2006a). Following this review process the government decided that there should be no change to current legislation. The government argued that “we were given examples of abuse and *lack of knowledge of existing rights* but there was a lack of evidence suggesting the only appropriate remedy for this was wholesale change to the current system” (DTI, 2006b, p. 16).

Conclusion

Involuntary self-employment was defined as consisting of two components. One is the subjective experience of being “pushed” into self-employment as a result of (the threat of) unemployment. The other component is the quasi self-employed status, which refers to the working arrangements of these individuals being somewhere in the grey area between employment and self-employment. The following sums up the key arguments focusing both on the conceptual review and the country case studies, and discusses their implications for further research and policy development.

Even though the literature generally tends to associate entrepreneurship motivated by necessity or involuntariness with a lesser contribution to the economy than opportunity-motivated entrepreneurship, a negative start-up motive as such does not necessarily mean that the business could not thrive in the long term, given that many necessity-oriented entrepreneurs turn into more opportunity-oriented ones as their businesses become more established (Williams, 2007). However, involuntary self-employment as discussed in this study, comprising situations where “normal” work is redefined as self-employment, is unlikely to make a significant economic contribution in terms of the positive externalities often associated with entrepreneurship. This is compounded by the likely reduction in social insurance receipts. The flip side of the economic contribution concerns increases in flexibility in existing (large) firms as a result of outsourcing “normal” work to self-employed workers.

The economic benefits to the outsourcing enterprises may be offset by the social costs to the involuntary self-employed, and society more broadly. These may include, for instance, high levels of stress due to increased levels of risk, insecurity and workload associated with starting and running an own business, especially when the individual feels personally unsuitable for self-employment and has little or no training in business issues. However, tentative research evidence (Kautonen and Palmroos, forthcoming) suggests that involuntariness as a start-up motive has only a modest negative impact on the individual’s later satisfaction with their self-employment and that this impact becomes even milder if the individual succeeds in earning a satisfactory livelihood from self-employment. Therefore, the individual level consequences of involuntary transitions to self-employment do not seem to pose a serious policy issue.

The estimates of the scope of involuntary self-employment presented above indicate that it is not a widespread phenomenon, but that it tends to concentrate on particular sectoral niches. As the case of Finland suggests however, the significance and importance of involuntary self-employment as a topic of research lies less in its statistical prevalence, but on its novelty as a new form of employment. If the importance is accepted, our admittedly exploratory study needs supplementing by research aimed at producing accurate estimates based on longitudinal research designs and perspective: motivations for self-employment might change and develop over time and, consequently, the impact of involuntary self-employment to the economy and society can only be captured in full by a longitudinal research approach.

Interestingly, even though the involuntariness of precarious self-employment is addressed in the academic literature and appears in the Finnish media discourse, the actual main policy concerns seem to relate to the legal position of the quasi self-employed rather than the benefits and costs of “pushing” people into self-employment. One reason for this may be that the problems related to the legal

position are more concrete, while the costs of involuntariness are subtler and thus more difficult to assess. In order to provide a basis for an estimation of these costs, further research is required to illuminate the economic, social and psychological consequences of involuntary self-employment at the individual level. Furthermore, estimates of the benefits of such working arrangements for the outsourcing enterprises are required as well for a cost-benefit analysis of involuntary self-employment that would serve as a guideline for policy.

The status of operating as quasi self-employed in the grey area between employment and self-employment is associated with a number of drawbacks, which represent some of the potential social costs of involuntary self-employment. These were detailed in the conceptual section above and need to be addressed in more detail in future empirical research. In the following, the main concern is with the possible approaches to regulating quasi self-employment. Two broad alternatives emerged based on the country case studies.

The first approach is parallel to what was done in Germany in the 1990s and involves broadening the scope of application of the laws governing employment relationships. Here, a number of criteria could be determined based on the characteristics of quasi self-employment described in the conceptual section of this paper, and if the working arrangement matched a sufficient number of these characteristics (see the German “rule of assumption”), it could be interpreted to correspond to an employment relationship and the respective regulations could be applied. However, the risk with this approach is that it might harm “regular” forms of enterprise and inter-firm cooperation, and thus the development of enterprise in the society. The second alternative might stress the definition and categorisation of employees and be based on the UK approach whereby the concept of employee is split into three categories; “employee”, “worker” and “self-employed”. The “worker” category encompasses the quasi self-employed, who work under a marginally more limited set of employment rights. The result would be a protection status for the quasi self-employed which is more limited than that of an employee.

In terms of planning policy, policy-makers need to assess a range of economic and social factors. One of the key factors in this discussion is that policy-makers need to decide whether they think that there would be more work if there were more insecure work, and if so, would this benefit the economy and society? That is, does the benefit of added flexibility to the employers exceed the cost of involuntary and insecure self-employment to the workers? Part of what government has to decide is whether these jobs would exist as “normal” jobs if legislation was effective in outlawing them.

A risk behind any legislative intervention in this context is that the employer’s economic motives underlying the emergence of working arrangements such as quasi self-employment are difficult to change by law at least in the short term. Thus, a new regulation could lead to new ways to circumvent it and other unintended consequences: the evasion of employment relationships could transform to the evasion of quasi self-employment. One such effect could be that demand for labour focuses on such service providers that allow for dynamism without the risk of incurring costs due to the working arrangement being interpreted as quasi self-employment. For example, firms could start using more agency employment or “regime shopping”, that is, moving labour intensive operations to countries with a more favourable regulatory environment.

New forms of labour in “new capitalism” (Beck, 2000; Sennett, 1998) will likely always provoke legislative and regulatory responses. The task for policy-makers is to ensure that these responses to developments such as involuntary self-employment do not stifle economic dynamism or social stability.

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