Italy

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I. Introduction

This chapter aims at analysing the developments concerning the extension of access to social protection to new categories of self-employed persons in Italy until spring 2024. After a period during which a "tailor-made" approach linked to a certain typology (subordination and autonomy) prevailed, the new approach based on an arbitrary application of a social protection statute (as a "package") according to a political assessment of the weaknesses of specific groups of workers ("social types") is being used more extensively. Paramount examples would be "hetero-organised" collaborations and autonomous riders.

II. Subordination and Autonomy: A Political and Legal Issue

Italian legislation was confronted with the challenge of classifying work for the first time when mandatory social insurance against work accidents (*Infortuni sul lavoro*) was introduced by Act No. 80 of 17 March 1898. This Act defined who should be covered as a "worker" (*operaio*) for social law purposes. Such a notion included – in line with the purpose of Act No. 80 – paid or unpaid *supervisors* and *apprentices*, who from a labour law perspective may not necessarily be regarded as workers (*operai*). One has to stress that social security legislation at the beginning used a different classification of workers covered by mandatory insurance for accidents at work, deviating from the one used for labour relations. In the same manner, the definitions in the then introduced Mandatory Old Age and Invalidity Social Insurance[1] did not replicate those provided for in the legislation on employment contracts in the private sector enacted two months earlier.[2] Furthermore, manual workers (*operai*) were covered by the Mandatory Old

1 Royal Lieutenant Decree-Law No. 603 of 21 April 1919.
2 Royal Lieutenant Decree-Law No. 112 of 9 February 1919.

Age and Invalidity Social Insurance whereas they did not fall under the notion of contract of employment in the private sector. As a consequence, access to and protection by early social security legislation in Italy was provided in an autonomous way, not linked to labour law and its classifications.[3]

A decisive turning point in the evolution of notions and classifications is represented by the adoption, in the Civil Code of 1942, at the very sunset of the Fascist regime, of the notion of *subordination* that applies to all "collaborators" of the entrepreneur (Art. 2094). The notion of subordination has become the decisive classification tool, both for labour law and social law purposes. Nevertheless, social law may pursue more comprehensive coverage strategies in an autonomous way, as has been the case for some liberal professions which already had their own categorical old-age protection schemes.[4]

At the beginning of the constitutional period (1948), the very notion of *hierarchical subordination* was questioned because of its negative political significance and progressively substituted with that of *technical subordination* – to be understood in terms of "hetero-direction" of the employer on his "collaborators". Integration through the subordination of "collaborators" in the business as a hetero-organised structure excludes any form of autonomy inside it. The labour law protection of "purely" autonomous work, i.e. work performed without any form of integration whatsoever in the company, further to that already provided by the Civil Code (Art. 2223–2238), became an issue for the legislator only in 2017, when Act No. 81 was adopted.

Some forms of autonomous work were protected, as for social security, within the system of Professional Funds, while separated from the General Social Insurance System (*Assicurazione Generale Obbligatoria*). For

3 Indeed, the labour law legislation of that time did ignore, on purpose, the conditions of the worker (*operaio*) in order to exclude any recognition of rights during a period in which the worker movement was still struggling to overturn the existing political order. On the contrary, in a clear Bismarckian approach, the social security legislator tried (in vain) to appease workers' protests by introducing old age and invalidity pensions on a mandatory basis. Cf. *Gaeta, Lorenzo*, Storia (illustrata) del Diritto del Lavoro Italiano, Turin: Giappichelli 2020, pp. 388 ff.; *Ales, Edoardo*, Die geistigen Grundlagen der Sozialgesetzgebung des Kanzlers Otto von Bismarck und das Entstehen des Sozialstaates in Italien, in: Eichenhofer, Eberhard (ed.), Bismarck, die Sozialversicherung und deren Zukunft, Berlin: Berlin Verlag Arno Spitz 2000, pp. 55-74.

4 See below.

instance, since 1933 this has been and still is the case for barristers and solicitors. Furthermore, social protection had been extended beginning in 1956 to artisans and merchants, who are by definition small entrepreneurs. In 1990, the social security legislator has addressed artisans and merchants as "autonomous workers"[5] (Act No. 233 of 2 August 1990) with a view to distinguishing them from entrepreneurs falling outside the scope of social protection on the grounds that they "just" conduct the business.

III. Coordination: From Labour to Social Security Protection

From the perspective of notions and classifications, specific consideration must be given to *sales agents or representatives* who operate under an *agency contract* as regulated by Art. 1742 ff. Civil Code.[6] Although, at least in view of the Civil Code, they do not belong to the "collaborators" of an entrepreneur, their activity has to be *coordinated* with that of the company. Relationships of such kind caught on rapidly in the labour market also outside the realm of the agency contract. This is confirmed by the fact that, some years later, the legislator included in the scope of application of the new Employment Proceedings *coordinated and continuous collaboration other than that of the sales agents and representatives* (Act No. 533 of 11 August 1973 modifying Art. 409 No. 3 Civil Procedure Code). Nevertheless, the legislator did not provide these groups immediately with any other form of protection, social security included. As autonomous workers they could have been entitled to social security only if they fell within the scope of application of one of the specific schemes, which was almost never the case.

The possibility to qualify a work relationship as "coordinated and continuous collaboration", de facto outside any social security scheme (and burden), accentuated the fraudulent contractual behaviour of a part of the employers, stimulating the doctrine and the case law to look for an intermediate classification of such collaborations as "para-subordinated"[7] – with the consequence that at least part of the labour law provisions could have applied to them.

5 Act No. 233 of 2 August 1990.
6 *Ghezzi, Giorgio*, Del contratto di agenzia, Bologna: Zanichelli 1970.
7 *Santoro Passarelli, Giuseppe*, Il lavoro "parasubordinato", Roma: Franco Angeli 1979.

From the social security perspective, with reference to pensions, the legislator in Act No. 335 of 8 August 1995[8] has adopted a decisive provision. In fact, Art. 2(26) has extended the General Social Insurance System to any person who performs professionally, although not exclusively, an autonomous activity for which no registration by a professional board is required (as specified by Art. 18(12), Decree-Law No. 98 of 6 July 2011). Art. 26(2) also recalls the "coordinated and continuous collaborations". Decisive is the idea that, as it happens with sales agents and representatives, autonomous work can be compatible with *a certain degree of coordination* if the modalities of the latter are co-determined by the parties in a kind of *co-organisation* of the activity.

IV. The Extension of Subordinated Social Protection to Autonomous Work

From the late nineties, the legislator extended to female self-employed workers insured only by the *Gestione Separata* the provisions on maternity, family allowances and hospitalisation grant, increasing proportionally the contribution rate. This is a sign that, on the one hand, the integration into the organisation of the undertaking is not quite the same as in the case of subordinate work, but also, on the other hand, that the legislator considers the need for protection of the coordinated collaborator to be the same as that of the subordinated one.

From the perspective of notions and classifications, it is important to stress that in 2015 the legislator referred to "coordinated and continuous collaborators" insured by the *Gestione Separata*, but not entitled to a pension and without a VAT number, as beneficiaries of a specific unemployment grant (DIS-COLL, which was introduced by Art. 15 of Legislative Decree No. 22 of 4 March 2015). On the contrary, subordinated workers are entitled to NASPI, an unemployment benefit that is calculated based on the last wage. Both are of a typical social insurance nature.[9] Recently, Art. 1 paras. 142 to 155 of Law 213/2023 introduced a benefit for self-employed persons still enrolled in the Gestione Separata: the so-called ISCRO. It is recognised for those who have had a VAT number for at least three

8 Cinelli, Maurizio/Persiani, Mattia (eds.), Commentario della riforma previdenziale: dalle leggi "Amato" alla finanziaria 1995, Milano: Giuffré 1995.

9 *Renga, Simonetta*, Post fata resurgo: la rivincita del principio assicurativo nella tutela della disoccupazione, in: Lavoro e Diritto 29 (2015) 1, p. 77.

years, who have had a decrease in revenue of 70 per cent in the previous year, and who comply with the payment of social security contributions, who are not entitled to pension and who are not insured under other mandatory social security forms, and only if they are not beneficiaries of Inclusion Allowance. The audience who are entitled to protection is gradually expanding beyond just those who are subordinate. Finally, the legislator has taken note of the need to also protect self-employed persons – until a few years ago not considered as a potentially weak party in the work relationship. Despite this, young self-employed persons who have had VAT numbers for less than three years (among which are also many on-location platform workers) remain outside the protection system, and often form part of the "working poor" in the Italian labour market.[10]

A still highly controversial turning point as far as notions and classifications are concerned is represented by Art. 2(1) Legislative Decree No. 81 of 15 June 2015, as modified by Art. 1 Act No. 128 of 2 November 2019. It provided for the application of the protective statute of subordinate work (one could argue both from a labour law and social security perspective) to "collaborations that consist of exclusively personal and continuous work in the execution of modalities which are organised by the client, with particular reference to the time and place of work". The difference regarding subordination has to be found in the use of "organisation" instead of "direction" in order to describe the way in which the client relates to the collaborator: as a result, one could not define the former as an employer. Scholars have named this "hetero-organisation", with a view to distinguishing it from "hetero-direction". What is clear is the clash between "hetero-direction" as a typical feature of "traditional" subordination, and "hetero-organisation" as the main character of what we can call an "autonomised subordination",[11] in which *neither hetero-direction power nor full autonomy is at stake*.

A big chance to clarify the situation has been offered by the case of food delivery riders, contracted as coordinated and continuous collaborators, who have lodged claims before several Italian courts. In parallel to the court proceedings, the legislator has classified riders as autonomous workers by

10 The measure was introduced definitively after a three-year experimental period under Art. 1, paras. 386-400, Law No. 178/2020. *Bozzao, Paola/D'Avino*, *Emilia*, Gli ammortizzatori sociali in costanza di rapporto di lavoro: passato e futuro alla luce della recente riforma, Variazioni Temi Diritto del Lavoro (2022) 4, p. 713.

11 *Ales, Edoardo*, Subordination at Risk (of "Autonomisation"): Evidence and Solutions from Three European Countries, Italian Labour Law e-Journal 12 (2019) 1, p. 65.

adopting a specific regulation (see below) that could not have been taken into account by the judges due to its nonretroactive effect.

The *Corte di cassazione*,[12] although aware of the stance taken by the legislator, upheld the judgement of the Court of Appeal of Turin, according to which the activity of riders must be classified as "hetero-organised" collaboration, thus falling within the scope of application of subordination according to Art. 2(1) Legislative Decree 81 of 2015. Moreover, the *Corte di cassazione* has deemed irrelevant any investigation of the very meaning of "hetero-organisation", on the assumption that, by recognising the entitlement to the protective statute of subordination, Art. 2(1) constitutes a *remedial provision*. In the view of the *Corte di cassazione*, the legislator does not intend to classify *a new typology of work relationship*, focusing, on the contrary, on the positive effects that the remedy will have on the worker. What remains obscure is how to figure out when a work relationship falls within the scope of Art. 2(1) without having any idea of the real meaning of "hetero-organisation". This ruling remains until today an essential point of reference for interpreting the law. According to jurisprudence, it is enough to determine whether the coordination required serves the client's organisational needs to establish the existence of hetero-organisation in collaborative relationships under Art. 2 of Legislative Decree No. 81 of 2015. Worker activity can be adjusted based on the client's organisational structure. This allows for the client to have complete control over the timing and location of the service provided. However, this is just one way in which the power of hetero-organisation can be applied. There are other methods available as well.[13]

Finally, yet importantly, nothing is said about the social security aspects, neither by the legislator nor by the *Corte di cassazione*. However, remaining consistent with the clear statement of the legislator, "hetero-organised" collaborators shall fall within the scope of application of the General Social Insurance System, in the *Fondo Pensioni Lavoratori Dipendenti* (FPLD). It has been confirmed through a ruling that clarifies that there are no textual or logical reasons to exclude social security rights from Art. 2 of Legislative Decree 81/2015. The *principle of parallelism and automatism* between labour laws and social security regulations is well established. This

12 Cassazione, sez. lav. of 24 January 2020, No. 1663.

13 Tribunale Milano of 28 September 2023; Tribunale Milano of 19 October 2023, No. 3237; Tribunale Roma sez. lav. of 3 April 2023, No. 10401; Tribunale Firenze of 1 April 2020, No. 886.

principle arises from the fact that the labour relationship is the basis for the legal relationship, and once it has been identified and qualified, it determines the legal discipline and, consequently, the social security regulations that apply. Based on the described parallelism, if the conditions for the application of Art. 2 of Legislative Decree 81/2015 are met, the relevant social security legislation applies. If the provisions of Legislative Decree 81/2015 do not apply to collaborators, even if they are hetero-organised, due to the derogations of collective agreements referred to in Art. 2(2), the social security provisions for subordinate workers will not apply to them either, and the above-mentioned parallelism will no longer be valid.

Additionally, a teleological interpretation needs to be included in this systematic interpretation. This is because Art. 2 of Legislative Decree No. 81/15 was enacted to provide better protection for a certain category of workers who are similar to indirectly employed individuals. Therefore, in the absence of an express provision indicating otherwise, it is unreasonable to assume that such enhanced protection was only meant for labour law purposes and not for social security and workplace accident purposes. However, it imposes a *disproportionate burden* on the client who is not entitled to the managerial prerogatives he or she may enjoy as employer in terms of "hetero-direction".

On the other hand, individual or collective bargaining cannot derogate from social security. From a classification point of view, "hetero-organised" collaborations are neither subordinated nor autonomous. However, the subordination protective status applies, social security included. The practical effects of such a solution are not yet perceivable: Indeed, scholars are only beginning to discuss them.[14]

V. Platform Work as a Modality of ("False") Autonomous Work

As already highlighted, Act No. 128 of 2019 adds a Chapter V-*bis* to Legislative Decree No. 81 of 2015, with the very promising heading "Protection of

14 *Gragnoli, Enrico*, La subordinazione e l'art. 2 del decreto legislativo n. 81 del 2015, Lavoro Diritti Europa (2023) 3; *Speziale, Valerio*, Indici giurisprudenziali della subordinazione, presunzioni semplici, lavoro autonomo etero-organizzato e co.co.co, Lavoro Diritti Europa (2024) 1; *Zoli, Carlo,* La subordinazione e i nuovi scenari: un cantiere aperto, Lavoro Diritti Europa (2024) 1, p. 2.

Work through Digital Platforms" (Art. 47-*bis* to 47-*octies*).[15] Chapter V-*bis* does not apply to all forms of platform work, but only to "autonomous workers who carry out activities of goods delivery on behalf of others, in urban areas by bicycle or motor vehicles", the so-called riders (Art. 47-*bis*).

The contracts of the riders shall be in written form *ad probationem*, meaning the absence of the written form does not affect the validity of the contract. In the absence of a written form, one may advocate the existence of a subordinate contract, as it is useful to prove the actual conditions applied to the relationship and, if applicable, the infringement of workers' rights. Riders shall receive adequate information on their rights and on health and safety regulations. The scope of information duty has also been expanded by Legislative Decree 104/2022. Recipients of specific information obligations now include company trade union representatives (RSA) or the unitary trade union representation (RSU), and in the absence of the aforementioned representations, the territorial branches of the most representative trade union associations at the national level (Art. 1-*bis*, para. 6 of Legislative Decree 152/1997). The right to information can serve two distinct purposes. Firstly, it can be useful for exercising a control role, which the labour union must play regarding the correct use of new technologies in the company. Secondly, by opening up to participatory logic, it is functional to a real algorithm negotiation.

Failure to comply with the information duty results in a violation of Legislative Decree No. 152 of 1997, implementing the Written Statement Directive.[16] Effective sanctions are provided in such a case[17] (Art. 47-*ter*).

Riders shall receive remuneration (*compenso*) that, notwithstanding their classification as autonomous workers, can be determined by national collective agreements, signed by the comparatively more representative trade unions at national level. This is a very controversial point since it implies that in order to have their pay defined by collective bargaining, riders shall

15 *Ales, Edoardo*, Oggetto, modalità di esecuzione e tutele del "nuovo" lavoro autonomo. Un primo commento, Massimario di Giurisprudenza del Lavoro 72 (2019) 3, p. 719.

16 Directive 91/533/EEC – after 1 August 2022 Directive 2019/1152/EU of 20 June 2019 Relating to Transparent and Predictable Working Conditions in the European Union.

17 According to Art. 4 Legislative Decree No. 152 of 1997, the worker can contact the Provincial Labour Office so that the latter obliges the employer to provide the information required by the decree within fifteen days. If the employer does not comply with the order, the worker is entitled to an indemnity that cannot exceed the remuneration received in the last year and which must be determined based on the seriousness and duration of the violations and the behaviour of the parties.

be represented by already existing unions, usually focused on subordinate workers. In Italy there have been attempts at collective bargaining, but at the moment the contract of the logistics sector is considered applicable for riders, thus confirming the ambiguity about the nature of the relationship.[18] Under Art. 47c co. 1 of Legislative Decree 81/2015, on 1 September 2020 the first-ever National Collective Bargaining Agreement in Europe was signed in Rome. However, it was declared an illegal contract (yellow contract) because the parties involved did not meet the requirement of "greater comparative representativeness" in the category.

Riders shall be insured against work accidents and occupational diseases, features that are no longer typical of subordinate work only. Contributions are fixed according to the risk rate of the performed activity with reference to the general minimum daily remuneration for social security and social assistance contributions (€ 56.87 – INPS Circular Letter No. 21 of 25 January 2024), related to the days of actual activity. The physical or legal person providing the platform is responsible for the issue of work accidents and occupational diseases legislation, as provided by Decree of the President of the Republic No. 1124 of 30 June 1965, as well as for health and safety regulations, as provided by Legislative Decree No. 81 of 9 April 2008, (Art. 47-*septies*). As far as social security is concerned, being classified as autonomous workers, riders perform "an autonomous activity for which no registration with a professional board is required", thus falling within the scope of application of the *Gestione Separata* (Art. 2(1) Act No. 335 of 1995). Nevertheless, one may wonder whether as "false" self-employed persons to whom a wage is paid as set by collective agreements, they should not fall within the scope of application of the General Social Insurance System in the *Fondo Pensioni Lavoratori Dipendenti* (FPLD).

Although in a different way, compared to "hetero-organisation" protected as subordination, also the case of riders shows a further inconsistency between their formal classification and the protective statute that the legislator applies to them. In fact, that statute positions riders closer to the subordination than the autonomy category. Indeed, formally classified as autonomous workers, riders seem to have been provided by the same legislator with all that is needed to be reclassified by the Court of Justice

18 *Danesin, Giulia*, La contrattazione collettiva nel settore delle piattaforme digitali: Italia e Francia a confronto, Lavoro Diritti Europa (2023). See the bibliography and the sources mentioned within it.

as "false" self-employed workers. In any case, a few years later the debate is still open.

VI. Conclusion

The labour law categories of "hetero-organised" collaborators and autonomous riders are paramount examples of a clear trend towards the abandonment of a "tailor-made protective statute" based on subordination. The recent extension of unemployment protection to self-employed persons confirms the current approach of the legislator based on the (factual or assumed) need for protection and not on the old-fashioned typology of subordination and autonomy. However, the current approach of the Italian legislator often consists of an "arbitrary" application of labour law and social security protective statutes (as a "package") according to a political assessment of the weaknesses of specific groups of workers ("social types"), but without taking into account the way in which they are integrated into the organisation of increasingly "deconstructed" businesses. Until now, neither the *Cassazione* nor the legislator have investigated the legal nature of "hetero-organisation" and of "autonomous riders".

The labour law classification of the work relationship is still relevant for social security matters, although increasingly in a way that does not necessarily coincide with the way of assessing the needs of a certain category of workers. In our opinion, new forms of protection should be designed that take into account the degree of integration within the organisation of a business and provide for a proportional contribution burden on the part of the client/the principal. Such a "new-fashioned" tailored approach would require the abandoning of the "package" approach.