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"MANIFESTO"

FOR A SUSTAINABLE LABOUR LAW

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Presentation

The idea of writing this text, which we have called Manifesto, not for emphasis, but to justify its assertive rather than argumentative style, came to its authors (who have different origins and backgrounds but share some values and principles underlying labour law) about a year ago. Finally, it was with some hesitation that we decided to write it due to the need to question ourselves publicly on issues that are raging in the world of work and on the future that lies ahead for its actors and our discipline.

As testified by many debates, we believe that such a need is shared by those who care about the fate of work and labour law.

We do not claim to provide a complete picture of the problems affecting our subject today, let alone definitive solutions. Instead, we intend to share questions, rather than answers, offering some stimuli for broader reflection on the most important and critical issues, in the hope that our thoughts will stimulate more in-depth research.

Moreover, when the text was already at an advanced stage, the whole world was overwhelmed by the Covid-19 pandemic. The impact it has had, and still promises to have for who knows how long, on the economy and society, has naturally led us to question the relevance of our reflections.

However, we believe these reflections remain valid, although they need to be brought up to date. We know that no one holds the keys to the future at a time like this.

Still, among the many readings and interpretations that are being advanced in the public debate, we are struck by the positions of those who see the unfolding events of the present as a starting point for reviving the expectation of a sort of ethical-spiritual palingenesis of human beings, which should be accompanied by the renewal, if not the overcoming, of the current economic models and their reference values. In this perspective, the labour law of the "coronavirus emergency" is viewed, albeit with all due precaution, as a model, or at least as a source of inspiration, for a labour law aimed at re-establishing a strong priority of ethics and rights over the logic of the economy.

This is not our approach, as will become more evident as the text unfolds. First of all, history teaches that 'the new' will not concern people and their

basic inclinations, which will continue to vary across the whole multicoloured spectrum of what is human, although hopefully starting (at least in the immediate future) from a greater sense of community and collective responsibility, as well as increased individual self-responsibility.

Instead, the new will concern the organised contexts of action: economic mechanisms, social and cultural models and personal forms of interaction. However, there will be discontinuities, even radical ones, that will be woven into a pre-existing fabric, often shaped by evolutionary dynamics already in progress, which will respond, in turn, to the new context. Like nature, history does not proceed by leaps, but by additions and transformations, which always carry with them a part of the past even in the presence of exceptional events such as those which, despite ourselves, we are now witnessing.

To the advocates of "nothing will ever be (rectius, must ever be) the same again" our position will sound disheartening. On the contrary, we believe it opens the door to significant opportunities. The interpretative hypotheses that seem most convincing to us are, in fact, those that underline how the pandemic crisis will lead to a dramatic acceleration in socio-economic transformations that were – to various degrees - already underway. Two reflections, in particular, are enough to comfort us on this point.

The first is that the main driving force behind the processes mentioned above will undoubtedly be represented by digital technologies, the economic and social weight of which will be further increased by the current crisis; the second is that the systemic response to the new state of affairs will have to revolve around the word "sustainability", which has been crucial since the time this Manifesto was first conceived.

Therefore, the real crux remains that of how to deal with these transformations - before and after the emergency - to try to orient them in a positive direction and, at the same time, to manage, as far as possible, the risks they entail. In short, in our view, the pandemic crisis reinforces the reasons for which this Manifesto was conceived. This does not, of course, exempt us from building on our analyses by taking into account the main challenges that this crisis has brutally thrown up, even if we were already aware of several of them: the inestimable value of public health; the duty to provide more generous care for the elderly, whose silent massacre is the most dramatic element of this terrible period; the

opportunity to go back to valuing the intelligence of material work and not just of cognitive work, and to reconsider that the Italian Republic is founded on work, seen both as a means of personal fulfilment and as every individual's contribution to social coexistence; the need to reinforce the systems that protect the health and safety of workers; the intrinsic difficulty of balancing health and privacy; the European and global implications of the above (particularly the interactions between the fight against the pandemic and environmental policies).

That said, in this presentation we limit ourselves to mentioning some thematic avenues that will guide the in-depth analyses in the following sections.

An important assumption for us is that many of the categories hitherto used in labour law are no longer suitable to interpret the new realities of work and business, much less the innovations foreshadowed by the digital, global, and post-pandemic world. We also believe that simple adjustments are not enough to revive them. But we are equally convinced that the founding principles and values of labour-law tradition do not require profound upheavals. Instead, a constructive re-examination of their implications in the current and future context can yield new methods of application and new tools capable of updating their meaning to make labour law relevant to the actors of the world of work of today and tomorrow.

We believe that our responsibility, as intellectuals and jurists, is to look at the above uncertain events with new eyes, without prejudice and the preconceptions of the past. This attitude would be useful, if not to overcome the conflicts, at least to clarify their reasons and the issues at stake.

We have tried to explain our reasons and the value options underlying the reconstructive hypotheses presented here, with our minds focused on the challenges of the future rather than the disputes of the past. This attitude has not prevented us from looking at the difficulties of the present in the face and criticising the numerous regulatory solutions advanced in recent years and the worst shortcomings in our social policies: the lack of active labour policies, the ineffectiveness of employment support, the inability of welfare to meet the needs of old and new workers and to combat growing inequalities, the issue of labour productivity, and the underestimation of the links between labour and industrial policies.

We have also advanced proposals - some provocative - on neglected but already looming issues such as the dramatic implications of demographic change, the stability of the intergenerational pact and the role of globalisation in national labour relations, a prime example of which is the transfer of entire production chains outside our borders, along the global value and distribution chains.

History has caused our discipline to broaden its objectives and areas of activity beyond those deriving from tradition. These objectives correspond to different functions and techniques.

The traditional mission of labour law (to protect the worker from the inequality of power that characterises the subordinate employment relationship), is not exhausted. However, it must be measured in terms of its ability to extend protection, with modulations, to non-standard employment relationships, not only subordinate ones but also those characterised by various degrees of autonomy.

It is precisely here that we need to enrich the forms of labour law protection with goals and instruments for defending and promoting the fundamental rights of the individual.

Furthermore, to meet the needs of the complex society and the self-fulfilment needs of people who work, the traditional legal approach of limitations and prohibitions must be accompanied by measures to promote the enrichment of personal resources, allowing everyone to fully develop their personality, also at work.

We are talking here about measures that promote the skills of individuals and strengthen the collective voice of workers and their representatives to counter-balance the powers of the employer and influence the company's choices.

At a broader level, our discipline must reconcile, not oppose, the enforcement of labour rules and the governance of the labour market. The functions to be performed in this respect are new and manifold; not only to match labour supply and demand, but also to include increasingly diverse forms of employment in the labour market and enhance all jobs, including care jobs, which the market penalises because it is unable to evaluate them. A historical task, but one that needs to be reinterpreted, is that of educating people to orient themselves in civil life and the world of

work. For workers and companies, the goal must be to improve the quality of the human resources employed, by offering support for professional growth during the increasingly frequent transitions between different jobs.

Furthermore, labour law must help create bridges and connections between the rules concerning the work of the employed and the welfare measures able to satisfy security needs differing from the risks traditionally covered by social insurances and requiring forms of organisation and services adapted to market instability. In our view, the regulation of individual labour relationships has lost its centrality; instead, we need to assign tasks and seek contributions from the labour market institutions and develop instruments aimed at providing security between occupational transitions. This applies even more in the post-pandemic phase in which there will be a greater need to reallocate workers from the sectors of the economy most affected and weakened by the pandemic to those spared or even strengthened by it.

Labour law, understood in this broad sense, cannot, therefore, yield to the temptation of isolation and must open up to a theoretical and operational dialogue with other economic, sociological, and technical disciplines. Its traditional attention to distributive problems cannot lead it to disregard the issue of growth, particularly at present, in the post-pandemic recovery. To be effective and credible with workers, it must share with other disciplines and public policies the intention of promoting sustainable development so that it does not neglect any of the three dimensions to which this expression refers: economic, social, and environmental.

Even the most recent declarations by the ILO have reiterated that the central function of labour law today more than ever, is that of reconciling the imperatives of social justice with the goals of growth. For this reason, labour rules and policies must take account of the economic context and not passively suffer from its conditioning, but rather guide the structures and markets to look for the best possible compromise between efficiency and social justice.

It is the task of experts in the sector and its protagonists to translate this research into coherent public policies, without losing faith in the possibility of reconciling the rationales of work with those of the economy, even more so in a phase of a necessary rethinking of this relationship. Our Manifesto intends to contribute to this research and provide arguments for reinforcing

this necessary trust, even more so in the dramatic context of the emergency the world is going through.

It can be assumed, as has been critically pointed out, that our arguments and proposals embody yet another variant of the "Third Way". But we believe that if we do not want to pursue improbable exits from market economies or accept market rules outright, we must look for some intermediate way, as reformers of different eras have done.

We, therefore, do not look at a single predefined path, but one that best interprets the rationales of work and of the economy in the current context - a path that can achieve a fair and sustainable balance between the opposing interests of the world of work and business in the mutually shared context of the ecological protection of the planet.

The objective, indicated by the European Union, of a sustainable, just transition offers a new horizon not only for the world of work but also for businesses, or at least the most innovative ones, as it indicates a development model in which economic, social, and environmental values, are reunited in the medium and long term. In this horizon, growth is not measured only on the production of material objects, but also, as indicated by the UN 2030 Agenda (in the wake of previous achievements such as those contained in the Human Development Index), on the ability to provide the tangible and intangible goods necessary for the well-being and quality of individual and collective life.

I. The values of labour law. The relationship with the economy in a sustainability perspective. The methods.

Labour law and its paradigm: change or decline

Labour law has long been in the eye of the storm throughout the economically advanced world. This situation has meant that the discipline has undergone continuous and profound transformations. Hence the proliferation of public debates on its crisis. Attitudes oscillating between extreme polarities have engendered on the one hand, the guardians of tradition, and on the other, the revolutionaries of iconoclastic change in the name of modernisation.

Indeed, in retrospect, it is almost surprising that labour law has remained standing. The foundations of the discipline were established in a relatively stable environment, characterised by limited competition. Economic crises naturally occurred, being inherent to capitalist cycles, but they were transient and led to only minor adjustments. Although the 1973 oil crisis - perhaps the most serious of the second half of the twentieth century - had significant repercussions on labour law systems (including the 'emergency labour law' in Italy), it did not change its trajectory.

In any case, nothing compares to the impressive sequence of transformations and shocks that have occurred above all since the 2000s. In order of appearance: the growth of post-Fordist production systems; the 'true' globalisation, namely, the Chinese one, with what has ensued in terms of the deconstruction of the value and distribution chains and the displacement of entire sectors in economically advanced countries; the financial crisis, and then the subsequent Great Recession of 2008; the 2011 sovereign debt crisis in Italy and other European countries; continual technological leaps, finally entering the terra incognita of the digital revolution; the worsening of global warming and the ineffectiveness, especially during the Trump presidency, of the policies adopted to counter it; and finally, and no less severe (also because it is connected to at least two of the others), the pandemic.

In addition to this, labour law, for example in institutions such as collective bargaining which have been (and still are) essential for democratic development, is experiencing difficulties deriving from a broader crisis of the classic forms of democratic participation and the disintermediation processes underway at various levels (also linked, in turn, to technological globalisation, in particular in the form of social media).

Those listed above cannot be classified as mere factors of uncertainty, albeit radical (in the sense of the 'Knightian uncertainty' evoked by Maurizio Ferrera surrounding the consequences of Covid-19). We are facing a series of discontinuities of increasing gravity that tend to feed each other, and that have made 'our part of the world' (to use an expression of Salvatore Veca) structurally more fragile and vulnerable. We are fully inside the 'risk society' that was prefigured by Ulrich Beck. In this regard, it is surprising that many labour law criticisms have too often made do with lashing out (often with good reason, but this is not the point) against certain

simplifications of liberal thinking, without adequately confronting the extent of the changes described.

Nevertheless, despite everything, labour law remains a fundamental and inalienable conquest of liberal democracies. Reaffirming its underlying values remains a crucial step in building a concept of social citizenship that can counterbalance the destabilising forces. But the deep-seated reasons are one thing, and the historical forms of its realisation are another, as the latter must adapt to changing external contexts to be able to address the present challenges adequately. This non-alignment brings with it the risk of losing contact with these contexts, generating a process of decline.

It is also crucial that labour lawyers experience these processes constructively, not as disillusioned spectators of the loss of an identity that was supposedly fixed once and for all, but as protagonists in the natural and periodic redefinition of the mission of labour law.

Values, old and new inequalities, and social upheavals

In this spirit, it seems justified to go back to reflecting on the founding values of labour law, as has been done for some time in the international literature. This is also for reasons connected to the transformations mentioned above. Due to the thrust of powerful historical forces, labour law has emerged and developed in various countries particularly in collective and social movements. While the latter has now almost disappeared, the spaces for discursive communication within societies are incomparably larger, even at a global level.

Such a change increases the importance of basing the regulatory process on values. However, these can no longer be limited to the work dimension, which today does not have that exclusive nature or those emancipatory projections that it had in the twentieth century.

That said, we do not believe that the traditional values of labour law need to be overturned, but rather, adapted and made better suited to the conditions and needs of the times we are living in. Preserving by changing: this was, after all, the cultural and methodological approach of the founding fathers of modern labour law, as well as thoroughbred reformists, such as Otto Kahn-Freund and Gino Giugni.

There is no doubt that the future labour law will have to continue to protect workers – especially employees - from the inequality of bargaining power inherent in the employment relationship and from commodification and exploitation risks. Workers continue to need this protection, consisting of prohibitions and mandatory limits, to limit the employer's domination and safeguard their fundamental resources and rights.

At the same time, labour law must also perform the function of ensuring economic support for workers and possibly redistribution, to counterbalance the global markets, which are experiencing an exponential increase in inequalities, especially in the more developed countries. As is well known, the middle classes have not been spared, but the most exposed victims have been the poorest workers, many of whom are immigrant workers, caught up in the traps of precariousness; agricultural labourers; domestic workers - almost all informal workers - mainly present in southern Europe.

However, we must stress that the pandemic and the macroeconomic shock that will follow is likely to generate an upheaval in the morphology of the social classes and a possible re-mapping of poverty. These phenomena, which will be better understood once the pandemic's effects have settled, should be analysed with appropriate investigation tools.

However, some issues deserve to be mentioned here. As far as the first phenomenon is concerned, the pandemic could accentuate the breakdown of the middle class and work already triggered by globalisation and new technologies, as well as adding something of its own. In other words, it could increase what has been described as the 'bad equality syndrome' i.e. a process of further loss of identity of the middle-class status, which was produced in a framework of fair and reasonable stability, predictability, and security, and which constituted the solidity of the society we have known.

In this context, the pandemic crisis could also help redraw the map of winners and losers. There could be a strengthening of the securities and protections of the 'remote workers', namely, the technicians and professionals of companies that had already adopted remote working. Likewise, there could be an increase in the visibility of the role of key workers, namely, the professions that have been rediscovered and/or emancipated by the pandemic emergency in a sort of "redistribution of

respect": doctors and healthcare workers, logistics workers, shop assistants, riders, etc.

But all this is against the backdrop of possible new "losers", since they depend on the macro sectors (tourism, hospitality, etc.) most affected by the social distancing measures, to the extent that these remain in force. They could find themselves exposed not only to new job insecurity, or to radical processes of mobility and relocation, but also to the abyss of poverty if compensatory mechanisms fail to work. This will lead to further geographical and territorial imbalances, both old and new, a case in point being the crises in cities highly dependent on international tourism and university students.

Hence the second factor, poverty, which the pandemic is tragically and rapidly remapping. The macro-economic shock of the pandemic affects in different ways, not only the worker categories dependent on the macro-sectors mentioned above, but also individual micro-activities even in the informal economy, and not only. As already mentioned, the effects will differ in the various areas of countries. As far as Italy is concerned, there is the likelihood of new and aggravated gaps between North and South and risks for social cohesion.

The above scenarios confirm that the primary mission of labour law and welfare policies remains that of protecting against all economic and social vulnerabilities; therefore, first and foremost, to quote Maurizio Ferrera, of the members of the "Fifth State".

The two levels of protection

If what has been outlined above is to remain the first level of protection, its importance will grow in proportion to the conditions of accentuated socio-economic weakness. But a second level of intervention of labour law is emerging, one where employee status remains central. We will describe this in more detail when we talk about the 'new employment contract' (see III below).

However, we can say here that the new employment contract must be developed or consolidated on the basis of a precise set of values (founded, for example, on the capabilities approach of Amartya Sen and Martha Nussbaum), which consists of a protection that is not merely 'tutorial', but

rather, proactive and enabling; i.e., aimed at supporting workers in enhancing their professional and personal resources, so as to allow them to fully develop their own personality at work and reconcile it as much as possible with other spheres of life.

In work, as in social life in general, the objective to be pursued must be that of the maximum possible promotion, within the given context, of the subjectivity of people, removing them from any form of enslavement, guided by social individualism linked to protection of fundamental human rights, as well as the fight against the renewed power of big business (see, for this approach, the latest work by Alain Touraine).

On the other hand, this new focus on individual capacities and even on the different needs of workers should not imply the loss of collective links or the dimension of social solidarity. However, vectors of these links, and the concept of solidarity, must be revisited in the light of the changes taking place, which require that we follow mobile aggregations of interests, and in any case beyond the rigid boundaries of the traditional social classes and the possible redefinition that will follow. The community of labour lawyers can no longer escape from the challenge of rethinking traditional ideas and values through the prism of technological, economic, and social change.

Looking economic rationality in the eye

Over the last twenty-five years, the dialogue between mainstream economic science and labour law culture has been little more than a dialogue between the deaf: the former anxious to subsume the "diversity" of the labour market by re-establishing pure market dynamics as far as possible; the latter as tight as a clam, sometimes claiming the moral high ground in an attempt to repel the attack of neoliberalism. Regardless of the scientific disputes, it is evident this confrontation that has been conditioned by the alliance that has taken place in the name of the Washington consensus, between the influencing certainties of mainstream economic thought and the leading economic and international financial institutions.

More recently, as a cultural fallout of the global crisis that exploded in 2008, the grip of neoliberal thought has weakened considerably, leaving room for more multifaceted and problematic approaches. A number of economists -

though their ranks are bound to grow following the pandemic - are engaged in an effort to rethink their assumptions and methodologies.

In this new context – shaped moreover by the digital revolution, which we will discuss below -labour law culture cannot avoid confronting economic issues. We must also try to dialogue with neo-institutional thought, focusing on the quality of corporate governance mechanisms, and consider law and economics in the manner of Guido Calabresi.

'Keeping in touch' with the transformations of the real economy.

However, the question is obviously not just about promoting scientific dialogue among disciplines, but also about staying in touch with economic reality and the ongoing transformations in production and organisation.

Labour law cannot fail to be concerned, for the sake of workers, about defending the capacity of businesses to compete, which remains the primary driver of economic development and employment. The market economy must be well regulated, not opposed. This idea is by no means incompatible - as is almost superfluous to stress - with the growth in the presence of state entrepreneurs in strategic sectors of the economy.

Hence the additional implication: labour lawyers must look at industrial policies, and their quality, as the other side of the coin of labour policies.

Nonetheless, what is important to note is that today it is not just a question of negotiating compromises with the business system, as has always happened. It is not even a problem of playing defence as happens in crisis situations, but rather, of building, together with businesses and the public sector, new positive-sum synergies that focus on the interest of businesses in increasing the value of human resources and cultivating their market reputation.

The strategic point concerns the opportunity to support the transformation of business models and the organisation of work. These transformations have been going on since the decline of Fordism. They must be considered as an opportunity, rather than an a priori threat, to widen the spaces of industrial democracy, and promote, also through a new generation of rights as well as by virtue of a renewal of trade union action, the enhancement of personal work.

The digital revolution in progress promises to be a decisive leap in the quality of this evolution, to the extent that it raises, in addition to the great fear of the disappearance of work, the great opportunity of its enhancement as knowledge-intensive work, and as such, less and less "dependent" in the traditional sense of the term.

In the meantime, this must take place without forgetting the disturbing and already noted tendency towards polarisation of new jobs between a technologically talented group and a poorly paid and often precarious group (including gig workers) which must be subject to specific protection.

The sustainability trail

All this is part of a context in which experiences and movements proposing new ways of doing business are growing in importance in real capitalism and the sociological and managerial literature, one which sees greater internalisation by companies of stakeholder interests and therefore, greater assumption of social responsibility. More generally, the challenge is to include social value within the process of generating economic value so it becomes a "shared value". In this regard, the role of trade unions can be significant in consolidating the Italian model of capitalism, which has always been far removed from neo-liberal simplifications.

In this context, sustainability is key. It arouses growing interest among the most innovative businesses, especially those operating on an international scale. The leading such businesses are to be found on the Euro Stoxx Sustainability Index, which records the adoption of sustainability strategies in the Eurozone. They exemplify a new development model that combines economic value and social value in the medium or long term.

Sustainability, as is well known, is the daughter of environmentalist culture, and is at the centre of ambitious programs such as the UN 2030 Agenda, which makes even more sense in the post-pandemic world.

There is a growing awareness of the need for an integrated approach to the three types of sustainability - environmental, social, and economic -, and labour law should take this into account.

However, the integration of social, economic, and environmental sustainability is neither easy nor achievable in the short term. To argue otherwise would sound vaguely irenic.

Nor do we want to deny the existence of tragic conflicts, for example, not only between public health and the economy, as in the current pandemic, but also between environmental protection and employment protection.

Rather, we want to reiterate how the medium and long-term perspective can only be that of thinking together and trying to resolve these three significant issues, all of which are, among other things, of great social importance.

This is all in the awareness that while we cannot realise such policies in the "all and now", they cannot be postponed to an indeterminate future either; they must be visible, tangible and produce results in the present. The current dramatic environmental damage (first and foremost climate change, and now also the pandemic) calls for immediate responses, albeit with effects and repercussions spread over time. The burden of responsibility for the choices that must be made today cannot be transferred to future generations. A fact worth underlining, however, is that new technologies have solutions for reconciling ways of working and producing and environmental sustainability which were unthinkable in previous industrial revolutions. Proof of this is their massive use during the pandemic, both to counter infection, making social distancing possible, and to continue working and producing, thus avoiding an even more dramatic fall in GDPs.

These trends, already clearly recognisable in recent years, will probably be accentuated by the current emergency, due to the drive towards a greater sense of collective responsibility, which it will hopefully trigger, at least in the immediate future. However, the critical point for the social scientist and the jurist is to understand to what extent these trends are the result of systemic dynamics, which have global communication networks as their primary vector, and for this reason are capable of affecting the framework of advantages for the business system.

In this perspective, the moment of consumption itself can become a key factor in sustainability, the more consumers are encouraged to turn to products and services coming from the virtuous part of the production system. Of course, this is not a question of simplistically opposing an

ethical approach to sustainability (sustainability is a must) with a realistic one (sustainability is convenient). Each of the two visions must play its part, while the legislator must know how to enter this dialogue with appropriate mechanisms, especially of an incentive nature.

Labour law and capitalism

In conclusion, labour law culture must know how to fully insert itself in these new dynamics, keeping its guard up but without thinking that they only conceal deceptions with which capitalism, considered holistically, tries, for the umpteenth time, to shift the balance of power in its favour.

The economic dimension is, moreover, an ontological dimension of human existence: while it is necessary to go beyond the reductionism of the homo oeconomicus, one cannot take refuge in a homo juridicus constructed regardless of material living conditions, including that of consumption, above all if sustainable in the sense just illustrated. This is also bearing in mind that an anthropological or ethical contrast between work and consumption, which emerges in some Frankfurt-style or more simply moralising approaches, overlooks the fact that consumption is also the result of the human aspiration of everyone to improve their material living conditions, when not to achieve important existential aspirations. We need only think of the importance of low-cost flights, the future of which is currently uncertain, for family reunions, as well as for sacrosanct mass recreation.

To be even more precise, the alternative to neoliberalism must not be a vision in which the future of work is conceived independently from the dynamics of the company and the market. This often entails a sort of elimination of the economic dimension and is accompanied by a vague, complacent yearning for new models of development - even regressive ones (degrowth) - which, among other things, are typically characterised by their lack of any appreciable concreteness, at least compared to the changes that are already taking place in the traditional model, and avoid confronting the real (and undoubtedly Darwinian) context of global economic relations, in which Hobbesian behaviour prevails by far over cooperative behaviour. The mission of labour law is to protect the employment contract, as far as possible, from this Darwinism. Still, we can

pursue it provided we do not forget that companies are, instead, totally immersed in it, without the possibility of a plan-B.

Capitalism must be subjected to appropriate regulations that force it to consider the people who work as sacred and encourage it to value them as fundamental players in the system, thus making means and ends work together. However, it cannot be supplanted in its hitherto historically unmatched capacity for producing wealth, which is the precondition for its redistribution. In this context, "Third Ways", rather than being the result of political engineering, are the natural outcome of the search for sustainable solutions, hic et nunc, as long as they are always redefined according to the periods and contexts of reference.

For a critical culture imbued with the complexity of knowledge: how not to lose the soul

In an era in which social systems show increasing complexity, and the chasm between the former and the political debate, which, instead, is dominated by simplistic messages, the methods of analysis and research of labour lawyers must evolve accordingly. The interdisciplinary openness, always one of the traditional methods of labour lawyers, must be reaffirmed and renewed through genuine attention to the evolution of social sciences at an international level.

On the other hand, the alleged "autonomy" of labour law, which some advance vis-a-vis the economy, has often been misrepresented. We must not oppose the rationale of labour law with other rationales, economic or otherwise, but instead conceive it as one that benefits from being the endpoint of a wide range of information drawn from the various forms and experiences of social knowledge. Methodological syncretism must therefore be recognised as the most up-to-date characteristic of social science methodologies, including legal science.

At the same time, labour law scholars would make a serious mistake if they were to disregard (or rather, continue to disregard) what is happening in the more general field of legal theory. Legal reflection has also changed its skin, both in relation to general legal theory and the various legal systems.

As for the first aspect, post-positivism, which is so natural to the labour lawyer, remains to be consolidated, with the contribution of everyone, in a

new paradigm of legal theory that adequately accounts for its discursive and polycentric character. As regards the second aspect, we should note that the considerations on specific legal disciplines have often started (this is the case of essential research in civil law) on paths already trodden for decades in a pioneering way by labour law itself. However, this merit has rarely been recognised. The dialogue between labour law and other legal disciplines must therefore be re-established on different terms compared to the era in which labour law had to emphasise its diversity in order to affirm, as was then indispensable, its own rebellious identity. This must happen particularly with scholars of the private law area, where non-dialogue with commercial law stands out.

In reaffirming the traditional dual "soul" of labour law, a direct dialogue with public law disciplines is equally essential. We are thinking, first and foremost, of constitutional law, including European Union law, whose fundamental constitutional principles profoundly permeate the connective tissue of labour law because of the growing legal integration among Member States.

On the other hand, it would be essential to understand better - without falling into the trap of sociologism – how working conditions are changing (workplaces, times and ways of working) and the impact of new technologies on them. This same also applies to companies and entrepreneurs. The latter are market subjects who, like workers, are increasingly diversified: as the literature on the subject shows, they no longer constitute a "homogeneous class" with a single, compact ideology (in the Marxian sense) or even a simple, unique, and undifferentiated area of interest, in the logic (still central though no longer overriding) of the priority of shareholder value. All this without neglecting the reality constituted by the facts as reinterpreted by the labour courts: it is almost obvious to note that judge-made law is deeply linked to the transformation of contemporary law in argumentative and discursive terms.

II. The transformation of work and the frayed category of subordination. The "new" employment contract. Standard basic protections and differentiated workers' statutes. The new interconnections between the employment relationship, the labour market and welfare.

The changing work and employment contract

The transformations in progress are profoundly changing the forms of work performance. They remove the subordinate employment relationship from its "splendid isolation" and insert it in a more fluid, complex context that is increasingly hybridised and interconnected. In the twentieth century, the regulation of the employment relationship was based on holistic and compact concepts, such as subordination and autonomy, which corresponded to precise and non-overlapping connections with the labour market and welfare institutions. Today, however, the traditional boundaries between subordinate and self-employed work find less and less correspondence in the actual reality of work, in terms of both a greater "de facto" autonomy of many subordinate employment relationships and conditions of dependence and weakness of many formally autonomous relationships.

Hybridisation is also evident in the tendency to expand the discipline of employment contract law beyond subordinate employment; it applies to quasi-subordinate or semi-autonomous work relationships in various legal systems, and in the introduction of regulations whose scope of application is independent from the type of employment contract, as in the case of health and safety regulations.

Finally, the connections with the labour market and welfare have escaped from the once exclusive domain of subordinate work following a trend that has since become the prevalent measure to combat the social emergency created by the pandemic.

Nevertheless, the labour lawyer cannot resign himself to merely recording these trends, which destabilise the traditional arrangements. Instead, he must make an additional effort to verify if and how these concepts can be adapted to a new, more fluid context, thus restoring some order to a

regulatory panorama that has undoubtedly become more multifaceted and complex.

The transformations not only concern the employment relationship and its regulation, but also what happens at the heart of the structure of the employment contract, this too as the ultimate consequence of the transformation of organisation and production systems, primarily linked to the growing use of technology. In this regard, our investigation must be grounded on a more classical terrain of legal interpretation and conceptualisation. It is also essential to verify whether what has already "passed" of these changes, in the labour regulations, is sufficient to prefigure an updated, if not innovative, reading of the economic and social function of the employment contract, or whether further regulation is necessary for this purpose. In both cases, it is evident that this type of analysis oscillates between recognising what survives in the legal system and what the authors would deem desirable in the light of the actual transformations. However, it is equally clear that we will assess the opportunity for change not in terms of cultural and political preferences but of the sustainability of the proposal, considering the legal data available and the external context of reference.

The "new" employment contract

Which subordinate employment contract is the most appropriate for the era of sustainable labour law? According to the traditional approach, one that only presupposes a situation of inherent conflict between the parties or one which, without obviously denying opposing interests, emphasises the presence of common interests and consequently encourages the parties to cooperate?

We do not doubt that the latter is the best answer. But the proposed review of the function of the employment contract cannot be the result of an a priori option, but rather, the development of new rights and other institutional devices capable of giving substance, from below, to rethinking the contractual exchange. This is still anchored to the time/work against the person's pay and safety; no longer also to the workplace, at least in the terms considered previously. The rest are mainly "negative" limitations of the entrepreneur's powers, the importance of which, as already noted, we certainly do not deny. How can we try to go further, turning the mission

of the employment relationship more "positively" without going backwards i.e. once again giving power back to the employer?

The guiding concept should be that the employee collaborates in the company's efficient management and participates in achieving its production objectives. In exchange, he receives remuneration and security, but also, and more broadly, full "recognition" of his essential role in the business and the consequent enhancement of his skills and capabilities. Reciprocal recognition, therefore, in the meaningful sense of Axel Honneth: for the company by the worker, and for the worker by the company. Indeed, we think that the goals of the worker and the company are not only compatible, but also that this compatibility is the ultimate condition for their pursuit. That does not exclude the possibility of friction or even conflict; indeed, in this vision they would become accidents along the way to be managed and if possible, overcome.

On the employee's side, in particular, we would confirm traditional rights and even recognise new ones: for example, the urgently needed right to training, mostly in new technologies; the right to be involved, at least for information purposes, in the development of organisational models; the right of transparency; the right of criticism aimed at safeguarding the moral independence of individuals against attempts to colonise vital areas of personality; work-life balance institutions and therefore the right to disconnect in remote working arrangements, etc. They would also involve new rules for corporate governance: a redefinition of the rights of workers' representatives to adapt union rights to the IT age; regulations to incentivise the adoption of organisational models devoted to the assignment of objectives and the consequent accountability of teams or individuals; more robust participatory models of safety management, etc. It is also clear that some elements of these future scenarios would also be incentive-based remuneration plans (and, in turn, incentivised by the state through de-taxation) and corporate welfare development policies.

In sum, the new "collaborative and participatory" function of the employment contract would result from the conceptualisation of a new regulatory framework to enhance the worker and promote a new vision of the relationship. The conflict does not disappear but only becomes the ultimate last resort.

Moreover, this should not take place in the face of an indefinite expansion of the worker's availability to perform work, but rather, of his reasonable cooperation in the pursuit of the company's production and productivity goals, based on reasonable practices already adopted by the most innovative organisational models and by technologically advanced factories.

III. How to regulate changing work. Times, places, and ways of working.

Digitalisation and the labour law paradigm: regulatory implications. Everything changes/nothing changes?

The digital revolution - a widespread and transversal phenomenon - will be the backdrop to the labour law of the future. There is hardly any area of labour law, managerial or even union practice, that will not be affected by it. We do not believe that algorithms and big data merely constitute a different technological method of organisation, control and/or replacement of human work. But neither are we sure that they will give rise, in the long run, to a new social and economic system that transcends capitalism as we have known it until now.

In any case, if this second hypothesis were to occur, we should probably expect a more radical re-foundation of the labour law paradigm. However, there is a widespread opinion that the impact of new digital technologies on work and on new methods of managing workers, based on collaborative involvement, will have repercussions on the identification and selection of the interests to be protected by regulators and on regulatory techniques. In particular, the fluid nature of the economic and production contexts of reference makes it challenging to identify stable substantive rules that can provide appropriate solutions.

This will probably lead to typically procedural rules which, through the collaboration of the trade unions and the institutional actors involved, would contribute to the adoption of good practices of consensual and collaborative management on the most crucial issues.

This is also because the results of the impact, undoubtedly epochal, of new digital technologies and artificial intelligence on production, can be multiple, different, and even opposing. This is occurring along an axis at the extremes of which there are the odious phenomena of the restoration of forms, this time depersonalised, of "digital Taylorism", nineteenth-century subjugation and commodification of work with devastating social effects, if not analogous or comparable to those of the first and the second industrial revolutions. Here we mean the great aspiration of employers to be able to pay the worker only for the fraction, even minimal, of time worked, without additional burdens, risks or managerial responsibilities, or to use a machine in his place. At the other extreme are forms of real emancipation of labour from the "constraints of capital", through the full valorisation of the worker as a conscious producer in a community enterprise that places at its centre the person and the intelligence of those who work and their psychophysical well-being rather than profit. The consequence will be the institutional and legal modification of the company, also to make room, at the top of governance, for the actual, and not merely formal, voice of the community of producers, organised labour, and its representatives.

These contradictory trends, although sometimes difficult to decipher, are already emerging, albeit still at an embryonic stage, in the evolution of the legal system.

Below we give a few examples concerning working time, duties and functional mobility, health and safety, protection of privacy and dismissals.

Labour lawyers cannot ignore these new contradictions and multifaceted conflicts, which are different from the tendentially dichotomous and sociologically more readable ones they lived with, trying to rationalise them, in the 20th century; nor should they pretend that everything is black and white, observing only what conveniently fits with their ideological assumptions. It is necessary to live with the contradictions and misunderstandings related to a social reality in constant flux, equipping oneself with analysis tools equal to the complexity and contradictory nature of the phenomena.

Working time as a cultural, social, and productive resource

The dimension of working time takes on a paradigmatic connotation, posing existential questions and requiring regulatory innovation of considerable scope compared to the era of standardised work, but also to its phase of flexible specialisation. The need to reconcile work and care activities, but not only; the porosity of different types and qualities of time (care, study, work, leisure) made possible by new technologies; the difficulty, in specific contexts and for certain types of work, of measuring remuneration with the parameter of rigid, actual and accounted-for working hours; hence the need to rethink remuneration itself not only as a consideration proportionate to the time spent in the workplace, but as a reward for projects completed, and soft skills used and not just formalised knowledge. Some have tried to answer these qualitative issues with remote working arrangements and practices such as occupational welfare, which require research and regulatory proposals that focus on a legal reconsideration of working time. In short, as André Gorz writes, "work is no longer measurable according to established criteria and standards ... The idea of time as the basis of value no longer works. What matters is the quality of coordination".

The abovementioned examples describe a dimension of work in which there are growing expectations of non-material demands and consequently regulatory models that were unimaginable in the Fordist era. They imply demands for freedom, psychological well-being, quality of life in work and not in opposition to work: the homo faber as opposed to animal laborans in Hannah Arendt's active life; certainly not in line, however, with the controversial Marxian prediction of such a high development of the forces of production as to allow a society based on the income produced and distributed regardless of the emancipatory importance of human labour. These issues were foreseen by the Italian entrepreneur and thinker Adriano Olivetti and by trade unionist and intellectual Bruno Trentin last century.

The demands for well-being and quality of work require more sophisticated and complex regulatory responses (such as those found in more recent anti-discrimination law), which stand alongside and do not replace traditional legal protection at work: for example, the regulation of working hours as a limit of work performance; the spaces of private life strictly reserved only for recovery, leisure, culture, and care. They also presuppose the intervention of apparently traditional sources of regulation (the law and the collective agreement), but renewed, since they bear the mark of a profound rethinking in content and techniques: in addition to the regulation

of remote working mentioned above and the recognition of new rights such as disconnection, the fiscal lever has been successfully used in Italy as a support tool in experiments and occupational welfare schemes to mediate between quality and well-being at work and incremental rates of productivity and business efficiency.

Regulatory fallout

Therefore, normative regulation models are being established that presuppose individual contractual autonomy and models based on rewards and incentives instead of constraints and sanctions. In Italy, as concerns corporate welfare, new legislative mechanisms have been tested to support the action of trade unions to protect interests that cannot traditionally be defined as collective but do not entirely belong to the private sphere of the individual or his freedom. They could be described as a sphere of interests belonging to the person - and his capabilities – and not only to that of the worker; a person who is indeed inserted in a work community but who also intends to relate to it, in some ways also transcending it.

As an example of what we mean, it is interesting to mention some innovative collective bargaining experiences in large Italian companies. In the case of car manufacturer FCA, following technological innovation, organisational solutions have been experimented that personalise and combine manual activities with intellectual skills leading to hybrid collective agreements. These agreements envisage that part of the remuneration is the same for all workers, and a variable part that is personalised.

The collective agreement applied by major bank Intesa S. Paolo regulates a hybrid or mixed individual contract. It envisages the coexistence of two different parallel, distinct, and contextual working relationships between company and worker: an employment relationship, part-time, with an open-end contract, and a self-employment relationship as a financial consultant regulated by an agency contract.

The Luxottica company's collective agreement (2019-2022) is another key example of the innovation we are referring to. It is a sort of manifesto of the company's social responsibility in the era of sustainability. The company's ethical code concentrates on the universal principles of labour

with an explicit mention of the essential ILO conventions and European anti-discrimination law. A chapter is devoted to the Luxottica community and the individual dimension of work (well-being, personal relations, disability, work-life balance, etc.). Both institutional participation of trade union representatives and the direct involvement of workers are envisaged at different levels, with competence on a broad spectrum of issues (hours, equal opportunities, professional grade, training, etc.). The technological innovation process is continuous, but bilaterally managed. The strategical innovation regards three areas: time flexibility, company welfare, and performance bonus.

These experiences describe the growing complexity of labour law, which needs not only to regulate, but also to promote, support, and facilitate regulation of work activity that considers the person as a protagonist and not just the collective organisation. These work activities are not only decent and dignified but also subjectively satisfying.

The contribution of labour law doctrine to these regulatory models must certainly be broadened and strengthened. In this case, the labour lawyer must also be a social and institutional engineer whose contribution should concern the repercussions on the theoretical re-foundation of the individual employment contract and on the collective agreement and its contents, as well as its relationship with the employment contract; we must see collective agreements as a social protection network that allows for autonomous development of personal capabilities.

Another example is remote working, chosen bilaterally or promoted by the company, which is able to change its organisation and re-shape the collaborative relationship with employees for production purposes and overall improvement of employee engagement. In this sense, not only does remote working become another way to perform the contract, but it also becomes a possibility (not the only, nor necessarily, the most important) of re-establishing the employment relation on the basis of trust (see II above).

Therefore, remote working has a different de facto and legal structure from the compulsory homeworking induced by Covid-19, which is more similar to traditional teleworking, recently revisited by the most advanced digital technologies. However, it should be noted, as scholars of organisational

sciences point out, that remote working, which has spread in the pandemic, could also act as a lever for change in places where corporate and production innovation traditionally germinates least, such as small businesses and public administrations.

Changes in the way of working

The problem of tasks and skills is central to this scenario. The most likely prospect is that of a massive transformation of work. If this happens, many production workers will either be replaced or - more probably - flanked by new intelligent machines. In this optimistic scenario, the human being must govern and program these machines, which will hopefully allow more free time and energy for further human input not previously possible. If, on the other hand, the techno-pessimists' predictions come true, there will be a dramatic technological destruction of jobs not compensated by the creation of new posts or by the upgrading of existing ones; however, accredited research by international agencies and institutes seems to belie this gloomy scenario.

At a more immediate level, the professional skills and grades of jobs are being questioned. In particular, tasks and duties are tending to lose some of their relevance, and defending their rigidity becomes less and less a reliable platform for individual worker protection and collective action and demands. Indeed, they are less objectively definable. We can no longer evaluate the results of the work looking at the latter, since work directly involves the whole person and his motivation. The repercussions on the employment contract are obvious: it increasingly refers to a personal relationship, with extensive emotional and psychological involvement, rather than to a static (reduced to the bone) contractual exchange i.e. material performance vs. remuneration, strictly related to its actual time. It will be increasingly difficult to formalise, and therefore prescribe the way duties are to be carried out. As a result, duties, tasks and functions will be increasingly embedded in relational, proactive, and self-organised contractual dynamics, and above all, become dematerialised.

The car manufacturer FCA again provides the most interesting example in Italy: under a deal renewing the national level collective agreement, all

employees, and without repercussions on the remuneration level, starting from 2020, will be divided into just three classes (blue-collar workers, team leaders and employees, and middle managers) instead of the previous eight categories thereby flattening the hierarchy; the modified classification system makes reference to a detailed procedural management shared between the company and the trade unions to ensure that the technological transformations, now almost continuous, also generate rewards for the workers (factory, individual and team bonuses with verifiable and transparent criteria, linked not only to increased productivity, but also to increased skills).

Training as a universal social right

In the same vein, but from the more specific perspective of the employment relation, full recognition of the individual right to training is necessary. The pandemic has made this right even more urgent if we look at the technological and, above all, cognitive digital divide (widespread digital illiteracy).

The right to lifelong learning must be recognised not only by collective agreements but directly by the law and be based on the most advanced national model (such as the French one) and following the indications at the European level (European Social Pillar, principle no. 1: " Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and successfully manage transitions in the labour market").

On the one hand, there is the guiding idea of a full-scale system of training and lifelong learning of the entire population; however, training to promote adaptation and renewal of digital skills is particularly urgent, particularly for the unemployed in technological and non-technological sectors. On the other hand, there is a significant lack of public policies in this area: little is invested in this field, and vocational training is often divorced from the real needs of job seekers.

Training must become a strategic development resource in order to:

- overcome the skills mismatch, and not leave companies alone to adapt to the man/machine relationship that the new technologies require;

- increase productivity and competitiveness, which increasingly depend on the quality of human resources, by investing public resources in the system of training, including skills audits and certification, and encouraging companies to invest in training.

However, the right to training concretely demonstrates how it is possible to think of labour law as a law based on rewards, rather than a law based on constraints and obligations. We are thinking of public financial support to self-employed workers who invest in their training; the possibility of promotional interventions for a transition from a fixed-term contract to an open-ended contract, through incentive mechanisms that consider the possibility of full reimbursement of the capital invested in the training of the fixed-term worker, as happens in countries where the apprenticeship contract is valued much more than in Italy.

IV. Work environment and worker well-being

Deaths in the workplace during the age of digitalisation?

The transformations of the working environments connected to digitalisation and in particular the spread of new ways of working, but also, unfortunately, persistent problems such as that of the still high number of accidents, also fatal ones, at work, only serve to relaunch the need to review the health and safety management model for workers enacted in Italy by Legislative Decree no. 81/2008. This is certainly not, of course, to replace it but rather, to identify, with the participation of all institutional actors, the areas where it has not worked and in general, the critical issues it presented crucially in terms of prevention, the centrality of which must obviously be reaffirmed. As is well known, it was a tremendous legislative achievement, for which every European country owes a lot to the European Union and the Scandinavian model, on which it is based.

The Covid-19 emergency and beyond

The reorganisation necessary to workplace safety during the Covid-19 emergency is a crucial test bed which will probably continue until mass vaccination produces the effect of herd immunity.

In Italy, this emergency management has produced a cascade system of agreements among the social partners, resulting from an ad hoc negotiation process. It is a tendentially shared model of safety management, which could be encouraged and consolidated, also in the future, through adequate institutional support. It is a typically "reflexive" law, in the sense described by Ralf Rogowski.

For example, experts propose a more significant enhancement of organisational and management models of participatory security. Insofar as these are linked to real and practical participatory experiences, through joint bodies, they could become the parameter for compliance by employers of the safety obligations incumbent on them, thus remedying the current uncertainty on the matter and with possible (but monitored) repercussions on the level of employer liability.

Well-being at work

However, this issue must have as its regulatory goal a horizon that goes beyond the traditional protection of health and safety. It must open up to a broader concept of worker (not only subordinate) well-being ; this legislation is the forerunner of a vision that goes beyond traditional subordination, and takes accounts of various aspects of possible mental discomfort (need for work-life balance; special personal situations, such as that related to cancer or general chronic illnesses, which not by chance are coming under the scrutiny of anti-discrimination legislation; provision for counselling if the worker ends up the victim of moral or sexual harassment, drawing on the generally balanced contributions of case law on workplace bullying).

Environmental sustainability

The fact the protection of the working environment is part of the macro-theme of environmental protection has been true since the origin of labour law. This forced the legislator to adopt, albeit circumscribed, ante litteram ecological measures. Moreover, in the case of carcinogens, the impact on workers is not dissimilar to, or distinguishable from, that of the surrounding population. However, the difference is that only workers and their families also have another interest - that of employment which can come into

conflict with that of the health of the rest of the population and of workers and their respective families. But this is a conflict that has usually been ignored, with few exceptions, both in the literature and in legislation, the scope of which is still limited by the company's physical boundaries.

However, there is no doubt that the growing awareness of environmental issues is changing this type of approach and leading the distinction between the work environment and the surrounding territory to disappear. This only reaffirms the appropriateness of an integrated approach to the three types of sustainability, which we have already discussed (see I above). Moreover, the integrated and broad concept of the work environment, including the surrounding environment, has historically been one of the first beneficial influences of "regulatory harmonisation" that the Italian legal system received from the European Union, and Northern Europe Member States in particular, in the first phase of legal integration.

In terms of regulation, it is probably too early (due to the risk of an uncontrolled expansion of the safety liability borne by the employer), although worthy of consideration, to propose a new interpretation of the safety obligation under art. 2087 of the Italian Civil Code and Legislative Decree no. 81/2008 with regard to environmental sustainability, so as to include all the situations relating to the prevention of significant disasters and accidents that can have an impact on communities and the external environment. However, there remains ample room for management policies with positive environmental effects (albeit in the medium and long term), on which decentralised collective bargaining can have a major impact (and in many cases is already having an impact). These include, by way of example, the implementation of environmental management plans, the provision of performance bonuses linked to energy saving and efficiency objectives, the implementation of corporate welfare programs for sustainable mobility, the promotion of remote working, the involvement of trade union organisations and the local community in drawing up environmental strategies, etc. These examples show how regulation must be fostered by models of a participatory nature, which overcome both the populist scenarios of the alliance between work and the environment against capital and the industrialist ones of the partnership between labour and capital against the 'environment'. As mentioned, this trend has received a boost that could be consolidated through joint protocols for managing the work environment at risk of contagion.

The adoption of this perspective does not, of course, exclude - as already noted - the emergence of tragic conflicts between the value of health and that of employment, as in the case of the Arcelor Mittal steelworks in Taranto (Puglia) and, on a large scale, in the acute phase of the Covid-19 pandemic. However, the technological resources of today are such as to avert, at least in most cases, the inevitability of these conflicts and envisage reasonable safety measures for hitherto harmful plants in the interests of workers and the community.

In these cases, as the experience of other countries indicates, only a strong and clear united strategic governance of the transition to environmental sustainability can reassure local communities and instil the awareness that environmental conversion can be a real win-win process protecting the environment and the health of citizens, increasing technological knowledge, making communities more cohesive, as well as increasing suitable employment, and diversifying economic and entrepreneurial activities. In this respect, investing in environmental conversion is vital to generate social capital.

But all this implies trusting science: regardless of any economistic calculation, the restructuring of the plants, which avoids their closure, as opposed to environmental conversion, which involves their closure, can only take place on the condition that technology can ensure the highest reasonably possible safety with regard to the health risks of those who work and live in the area surrounding the site; otherwise, it is better to focus on environmental reconversion. In the countries mentioned above (the case of the Ruhr in Germany is exemplary), it is no coincidence that astonishing reconversions of territorial areas with industrial sites, which were obsolete and polluting, took place without any major social tensions, and without conflicts among the various political, administrative and judicial decision-makers, precisely because these processes were strategically and consciously governed.

What has so far been lacking in all the actors involved, including the institutional ones, has been precisely a long-term, strategic awareness of the environmental policies and their effects, also on employment.

This has been clear in the management of the former ILVA steelworks and other striking situations of work/environment conflict in Italy, such as the

paradox of chemical sites built on the edge of archaeological and tourist areas in Sicily.

The political and administrative ability to plan and spend the financial aid of the European Recovery Fund will surely be a tremendous and historic opportunity to reconcile work, beauty, and the environment.

It is vital that this objective be pursued within a framework of clear commitments and collaboration among all the actors involved, including public authorities, which play a fundamental role, with an investigating magistracy which should reserve for itself only the role of controller of last resort. Moreover, it must be noted that in these difficult situations the various protagonists often fail to prove themselves, preferring rhetorical strategies that do not help them to tread the often-narrow paths of compatibility between work and the environment. And yet, unless we take refuge in the unrealistic dream of happy degrowth, there is no alternative to the search for such compatibility.

V. Privacy in the workplace, controls, and social media

Big Brother and work

The massive and widespread use of information technologies requires that we put the problem of protecting the privacy of workers on a new footing, starting from underlining the importance of the European approach embodied in the GDPR.

In this context, the fundamental message launched by art. 4 of the Italian Workers' Statute reformed in 2015 - namely that of using the legislation on the protection of personal data as the main barrier against excessive employee surveillance by the employer, so as to banish the spectre of "Big brothers" installed in companies - is to be welcomed and relaunched. All this, starting from the awareness that the rationale of the original version of the law, which clearly distinguished between work tools and surveillance tools, is irretrievably outdated.

The 2015 reform's basic idea is that the Statute's original premise, which distinguished between the means of monitoring from the means to perform work, has become obsolete.

The new regulation still allows the intervention of collective agreements and/or administrative authorizations required under the previous Art. 4 as a condition to using remote monitoring systems on workers. But it no longer gives this kind of intervention a central role.

Instead, it requires that all actors involved, namely the national authority on data protection, the social partners and the courts, collaborate to shape a new culture on how to use information technologies in the monitoring of work to balance business needs with the protection of the worker's privacy.

This approach implies recognizing the employer's right to monitor workers, mainly when there is a suspicion of crimes committed by workers, as stated by the European Court of Human Rights and ensuring that such surveillance complies with the principle of proportionality and minimizes the sacrificing of the workers' privacy.

From a broader perspective, the new Italian law reaffirms a preference for the European model, which guarantees the protection of personal data within the workplace vis a vis the North American system which still bases itself (albeit with exceptions concerning some States) on the principle of "no expectation of privacy in the workplace". However, to work, the European model requires great expertise and regulatory measures.

The new frontiers of the protection of personal dignity

The pervasive presence of the web in our lives exposes workers to new types of risks. In particular, the greater use of social media puts at the disposal of employers, private employment agencies and professional intermediaries, an impressive amount of information provided spontaneously by workers, which is proliferated and processed indiscriminately. This new reality blurs or cancels the boundary between professional and personal information and annuls provisions suche as that established by the Italian Workers' Statute, which prohibited investigation of workers' personal opinions.

Cases have been reported, particularly in the Anglo-Saxon legal systems, where the public expression of opinions have given rise to disciplinary sanctions, including dismissal, motivated by the risk of damage to the company reputation.

Anti-discrimination law can help, but may not be sufficient, in protecting workers in all such cases. We can only ensure complete protection by invoking and enforcing the fundamental right to freedom of speech, provided that this freedom is exercised within the legal limits (e.g. forms of hate speech are not protected).

The worker of XXI century cannot be considered a disciplined soldier of the firm, but rather, a subject with full rights (within the legal limits). For this reason, the traditional opinion that the employment relationship is based on trust - often used to justify dismissal for just cause - must be revised in accordance with these principles and consequently cannot be used to impose a duty of loyalty on the worker.

VI. New protection techniques: anti-discrimination law

Mandatory norms and the anti-discrimination shield, two complementary functions

While mandatory regulations shaped the law of last century in granting universal protection to workers and rebalancing the distribution of social powers, the current phase could see the rise of anti-discriminatory protection.

According to some, this latter approach could dilute the system of protection of workers granted by the Italian constitution, to the extent that it gives prevalence to a different model of North American and also European origin, which replaces universal and collective protection with more selective and individual prohibitions on discrimination.

The oppositional conception between the two forms of protection is belied by the increasingly widespread use of anti-discriminatory techniques in Italy (albeit less than in other countries) and their positive impact on anti-discrimination protection.

These techniques have proved their ability to help cases of horizontal inequalities emerge that traditional labour law has not been able to address, even though these inequalities have been growing as a result of the increasing segmentation of the labour market and the presence of new types of workers that are little represented by the traditional labour unions.

Anti-discrimination protection also operates in areas which are void of rights as a form of control of otherwise discretionary powers. It can intercept all kinds of social relations and give voice to demands and interests that are not supported by the political and collective representation systems.

For this reason, some of the most disadvantaged and vulnerable groups of workers have managed to assert their cases through the use of anti-discrimination strategies.

Under the influence of European regulations, the scope of anti-discrimination law has widened and reached areas unexplored by labour law, i.e. protection from discriminations occurring outside the sphere of employment on the grounds of sexual orientation, disability, and race.

The anti-discrimination clause of the European Directive on fixed-term contracts has allowed thousands of Italian workers unlawfully hired by public administrations to apply to the European Court of Justice and to national judges, also based on European anti-discrimination principles that have inspired the Italian legal system.

Similarly, the European Court of Justice's decisions on indirect discrimination have been decisive in affirming the right to equal treatment of women working part-time.

In a case brought by a union (FIOM-CGIL) against FCA, accused of not hiring members of this union, the judge decided in favour of the workers and the union finding that there had been discrimination on the ground of belief.

In short, the two forms of protection, one based on mandatory norms of law and collective agreements which is still a significant part of our legal system, and the other derived from the principles of anti-discrimination, must be seen as complementary and not self-excluding instruments, which while differing in their rationale and tools, also procedural, still share the same remedial character.

Their combination can ensure protection that is not only more widespread, but also more specific and compelling because it is more in tune with the new demands and interests generated by social complexity and new horizons of equality, to which protection based on mandatory regulations alone cannot provide answers.

However, to pursue this line of policy, the anti-discrimination principles must in the first place be taken seriously by scholars and practitioners, judges, and lawyers, as is beginning to be the case in Italy.

The legislature should strengthen the institutions in charge of supporting the equality principle and practice, which in Italy are weak, fragmented and not autonomous from the government. It should also follow up on the commitments made to the European Union to implement action plans aimed at fighting all kinds of discrimination.

To date, the successes of anti-discrimination law have been largely due to strategic use of the law by civil society organizations, which have been able to exploit the wide range of legal instruments available to take legal action and obtain remedies.

The gender gap: an issue which must become central in the public debate

The issue of gender equality in employment is present in any public policy program but in a way that risks making it marginal.

There is no clear perception that gender equality is not just one among many social problems, but that instead, it has significant relevance in public policymaking because the enhancement of women's talents is essential for promoting the welfare and competitiveness of our society as well as its ability to adjust to the future.

For this reason, it is not sufficient to reiterate or improve some of the piecemeal measures in favour of women adopted over recent years by the Italian government.

Indeed, Italian legislation on gender equality is aligned with the European standards. The innovations needed are not so much in the law but in its enforcement. Effective enforcement requires more effective initiatives by the institutions in charge of promoting equality, and more significant involvement on the part of the social partners.

We advocate that there should be a significant policy commitment of the whole country to bridge the gender gap, otherwise the international comparisons will continue to stigmatize the Italian inertia on this issue, and

said inertia will cause a depletion of the immense resources of intelligence and know-how indispensable to our nation.

Innovative public and social measures directed towards gender equality have become even more necessary. Under the impact of the pandemic, the employment crisis is hitting sectors more heavily where there is a higher concentration of women.

Promoting strategies of diversity and inclusion

The other, no less important face of the fight against discrimination is the promotion of diversity and inclusion strategies.

The enhancement of diversity, i.e. the possibility that anyone can express his identity and capacities, is a social and productive value strategy whose potential has yet to be fully exploited.

VII. Flexicurity: inside and outside the enterprise. Protection in the employment relation and the labour market: convergent objectives, integration of legal techniques. Regulation of dismissals

Good flexicurity

The original version of flexicurity, originally endorsed by the leading economic international institutions, was inspired by neoclassical economic theories which called for more flexibility and less security.

In the nineties, experts and international institutions criticised this version of flexicurity. They elaborated more nuanced theories according to which labour market regulation, or some forms of regulation, are not necessarily an impediment to efficiency. On the contrary, they may be necessary to protect workers and ensure the proper functioning of the market, as well as ensure the stability and productivity of the system through worker participation and consensus-building.

The authors of this Manifesto are also inspired by this vision and are convinced that it is necessary to go beyond the narrow confines of the

opposition between regulation vs. deregulation and flexibility vs. security to instead affirm the possibility of simultaneously pursuing acceptable levels of market flexibility and employment security.

The European institutions have also considered flexicurity the most effective philosophy and practice to fight the effects of the insider-outsider economic theory, operating as a form of neo-institutional economic intervention and an instrument of social inclusion policies.

The Danish model of regulation is seen as ideal, since it is able to combine numerical flexibility and protection on the labour market with active labour policies. The possibility of reconciling flexibility and security depends on a well-balanced regulation and promotion and effective coordination among the institutions implementing the two approaches and active involvement on the part of the trade unions.

After the 2008 crisis some countries have successfully experimented with, following indications from the European Council, examples of flexicurity based on various measures of internal flexibility (wages, working time, etc.) combined with retention policies aimed at promoting job transitions within the company in place of dismissals with the involvement of the labour unions.

The various forms of flexicurity have been implemented in Italy relatively late and with quite varied measures depending on the different governments in office.

One criticised measure is the introduction of many different types of non-standard employment contracts. This kind of flexibility at the margins has contributed to increasing the precariousness of work and has not been compensated by adequate support services and active policies on the labour market.

The Italian 2015 reform (so-called Jobs Act) has extended and reinforced the forms of income support to workers who are unemployed or suspended from work during lay off, to cover much of the workforce. But it has not been effective in remedying the traditional weakness of Italian employment services and of active labour policies.

Indeed, this is the most critical aspect of the Italian practice of flexicurity. The value of the flexicurity theory emphasises the need to extend

regulation beyond the individual employment contract to the functioning of the labour market.

The two forms and rationales of regulation should not be conceived as opposed, but as complementary: one that aims to protect the employee during the employment contract, the other that supports him after the end of the contract with measures that facilitate the transition to other jobs.

The two forms of policy are put to the test in relation to their purpose: one, to defend the employee's rights vis-a-vis the enterprise's interests, the other to promote re-employment through active labour policies. The effectiveness of flexicurity rests not so much on the functioning of one or the other policy, but rather, on between protecting existing jobs and reallocating workers away from those that are not economically sustainable.

In Italy, the ratio of flexibility to protection present in the regulations of the employment contract has been in line with the European average according to the OECD indicators (EPL). Conversely, the effectiveness of the employment services, training, and activation policies, is far below the European standards and is inadequate to promote sufficient opportunities of re-employment of displaced workers.

The imbalance between flexibility and security has been aggravated in some areas of the country (like the South) where the labour market conditions are fragile, as well as during the periods of economic slack such as the years following the 2008 crisis and even more so, after the explosion of the Covid-19 emergency.

Indeed, this balance has also deteriorated in other European countries, mainly due to the worsening of labour market conditions. In addition, the European authorities have been shifting the emphasis from flexibility to the need to reinforce economic policies capable of improving employment opportunities, particularly for young people.

As far as the activities of the employment services is concerned, there is growing consensus that these cannot be the exclusive competence of public institutions, but that they could perform better if organised in collaboration between public service and private organisations, according to the principle of subsidiarity.

In some Italian regions (Lombardy, Emilia), this collaboration has been experimented in different forms and combinations, with good results.

However, it remains true that public institutions should maintain the responsibility to provide essential services in this area to all citizens. To live up to this responsibility these public institutions must have adequate human and financial resources and they must adopt a management philosophy which seeks to provide personalised services to workers, particularly those who need help to seize job opportunities.

In the currently uncertain economic climate, the role of public institutions is more than ever necessary in the traditional task of matching labour demand and supply and guiding the reallocation of displaced workers from declining to growth sectors and jobs.

Active labour policies and vocational training in Italy have been organised on a regional basis. Since the constitutional reform of 2001, the regions have been entrusted with the primary responsibility of administering and regulating these services.

Even those who, like us, believed that this constitutional set up, inspired by the principle of vertical subsidiarity, would stimulate virtuous competition among the various territories and the diffusion of best practices, now have to admit that after twenty years of application this model has not functioned well.

Instead of the dissemination of best practices, it has caused frequent overlapping of skills, obstacles to joint decisions, and disputes between the state and the regions.

One of the negative consequences of this set up is that Italy still lacks a uniform national database and computer network containing preliminary information on the labour market. Coordination of the policies in this matter is entrusted to the national agency for active labour policies (ANPAL), which has no decision-making powers and must proceed by way of challenging and continuous compromising with the regions.

The vocational training services, which also fall within the remit of the regions, have shown much the same limits in their functioning with quite varied levels of performance, which has only contributed to increasing the divergences among the diverse territories, to the detriment of those which are less developed and most in need.

Indeed, the importance of education and training in the present state of economic and social development has become so decisive for the employees' professional and personal lives that it should be recognised as a fundamental individual right of each worker. The employee's right to continuing education and training was sanctioned in 2016 by the metalworking industry's collective agreement.

This shift in emphasis of vocational training from the area of general labour policy to individual rights might give new legitimacy to the state to regulate the forms and instruments necessary to implement this right to the benefit of all workers.

On the other hand, the negative experience of the last decades in both employment services and vocational training, should prompt a revision of the regional set up, with a view to re-assigning some regulatory powers to the national legislator, even if it means finding a new balance in the distribution of powers regarding the labour market.

The regulation of dismissals

The regulation of dismissals, in particular the sanctions for unfair dismissals, has been the subject of long debates in Italy, with strong ideological overtones. Even though we do not consider this to be a central theme, it still bears some importance because it is an essential component of the flexicurity policy.

The two legislative reforms of 2012 and 2015 have produced a plurality of different legal regimes, beginning with the distinction between workers hired before and after March 2015. Despite having been considered lawful by the Italian Constitutional Court, some doubts remain, due to the many, often very subtle distinctions existing within the various regimes regulating dismissals.

For these reasons, we believe that appropriate consolidation of the law on dismissals is necessary. This should not imply a return to the original Art. 18 of the workers' statute (reinstatement as the primary sanction), not only for the high costs it would impose on enterprises, but also because it would imply identical sanctions for cases of wrongful dismissals of different gravity. On the other hand, it should take into account certain general trends of our legal system and decision no. 194/2018 of the Constitutional

Court, which found the criterion for compensation for unjust dismissal, linked exclusively to workers' seniority, to be unlawful.

Consolidation of the legal protection against unjust dismissals

In the light of the above, the significant traits of a possible reform might be the following.

- The reaffirming, in compliance with Art. 30 of the European Charter of fundamental social rights, of the necessary judicial scrutiny of the justification of dismissals, and consequent exclusion of any proposal of severance costs fixed in advance for (economic) layoffs.
- Implicit delegation to the courts to continue their interpretative definitions of the notions of justified reason and just cause, in particular, the objective justified reason.
- Reconfirmation of full reinstatement protection for discriminatory dismissals and for other dismissal cases considered null for an unlawful reason.
- Application to all enterprise-units with more than 15 employees of the sanctions for unjustified dismissals pursuant to Art. 18 as amended in 2012: i.e., with the alternative between reinstatement in case of non-existence of the fact indicated as the reason for the dismissal, or when collective agreements consider the fact as grounds for a disciplinary sanction other than dismissal; and indemnity determined by the judge of between 12 and 24 months' salary (as suggested by the Constitutional Court).
- The provision, in cases of unjustified economic dismissals, of only a monetary sanction ranging between 12 and 24 months' salary, or another to be established, for all economic layoffs. Moreover, a preliminary conciliation procedure could be reintroduced before the labour offices, which has proved effective, with the possibility for the employer to offer the employee a tax-exempt sum pursuant to Art. 6 of Decree 23/2015; here reinstatement should only be envisaged when the economic dismissal is proved to be specious or retaliatory.
- The specification that reinstatement applies in case of dismissals of disabled workers justified by the fact that they are deemed unfit for their job duties, but with the possibility to judge this dismissal as discriminatory.

- Extension of the same monetary sanction applicable to economic dismissals to collective dismissals deemed unjustified for procedural or substantial reasons, with the aim of unifying the regime of sanctions for all economic layoffs.
- Redefinition and clarification, in the light of case-law decisions, of the type of monetary sanctions applicable to dismissals ruled unjustified because of errors of law or of procedure.

VIII. How to revitalise collective actors and activities. Collective bargaining and workers' participation. Proposals for legislation on collective bargaining

Disintermediation and reintermediation of social representation

The disintermediation processes caused by globalisation and the new technologies affect particular social formations, putting a strain on traditional social representation systems and generating new social fragmentations. These phenomena exacerbate the representative crisis of labour unions, already weakened by the neoliberal policies adopted by most governments in recent decades.

In the face of the combined pressures of these two factors, the labour unions, and the employers' associations must respond and innovate their strategies to avoid their decline.

Looking at the other side, the same factors may trigger, particularly in the countries most affected by the negative wealth distribution, new social aggregation processes.

According to research conducted by international organisations like the OECD, the ILO, and the ETUC, this is happening among gig economy workers and impoverished middle-class members (including some self-employed workers and small entrepreneurs).

The changes provoked by globalisation and digital technologies may have a dual outcome, either accentuating the traditional decline of trade unions, or stimulating innovation strategies and organisations.

A new challenge to the organisations representing collective interests, particularly labour unions, derives from the process of individualisation, which has affected many aspects of our society, including the world of work.

This process has not only altered the balance between individual and collective interests, but has also opened up conflicts and fractures within the organisations themselves, between old and young, stable and precarious, Italian and non-European workers.

Resolving these conflicts is challenging when the necessary mediation is between opposing conflicts: for instance, between the defence of employment and environmental protection, or in the case of the Covid-19 pandemic, between work and personal safety.

This pandemic's implications are uncertain; they may accentuate the tendencies to individualism or contribute instead to discovering new forms of collective solidarity.

The labour unions are confronted with new choices because the interests to be represented differ from those faced in the past, and pose a problem not only for traditional bargaining but also for the very identity of collective representative bodies.

Labour unions, decline or change?

We propose a strategy of change for the labour unions based on the following six points of reflection:

- A unitary labour movement organised at a confederal level but capable of differentiating and adapting its forms of representation, strategies of action, participation and conflict, to the diversified workplace generated by the above technological transformations. Hence a unitary but functionally plural labour movement.
- Labour unions that can return to being a persuasive wage authority, capable of tackling the new economic inequalities and the working poor, without avoiding the discussion about legislative measures complementing collective bargaining on matters such as minimum wages, recognition of the legally binding effects of the wage levels set by collective agreements, with a reduction of taxes on wages.

- Labour unions capable of adapting their bargaining policies to respond to the new needs of workers, including their demands for individual freedom, and of redefining the relations between the two levels of bargaining, with the role of national agreements for coordinating the entire system, and that of decentralised agreements to specify and innovate the contents. Said agreements can promote new issues such as the right to continuing training, models of remote working and work-life balance, welfare benefits, productivity wages, participation in joint production projects, and new forms of hybridisation between collective regulation and individual employment contracts.
- Labour unions willing to take charge of the company's objectives and involve themselves in its governance by promoting the employees' cognitive participation in the smart factory, where human work is dematerialised, flanked and governed by robots, assuming a strategic role in the production and strategy decisions of the enterprise. Labour unions can be fully involved in the new mode of production of the 4.0 industry, rediscovering their function of representation and participation, both autonomous and original, in the organisation of work.
- Labour unions capable of proposing new models of organisation and action to non-standard and vulnerable workers, also outside the enterprise in the local communities and on the web, with new forms of aggregation at the local level, and beyond the traditional economic sectors, new associations of independent professional workers which pursue not only bargaining strategies but also forms of mutuality to promote shared interests: examples include the various experiences of the online forum ("We are Dynamo", "Fair crowd website"), of the work centres (Coalition of Immokalee Workers CIW, the coordination of riders of Bologna, the National Day Labourers Organising Network NDLON), and the new cooperatives of gig and freelance workers (SMART).
- Labour unions which do not refuse minor legislative intervention aimed at transposing the rules agreed upon by the major confederations of the social partners on the criteria for measuring their representativeness and the efficacy of collective agreements; labour unions which promote reforms on their internal democracy and the regulation of pluralism.

Proposals for legislation on collective bargaining

Italy is the only major European country with no legislation on the main aspects of industrial relations: criteria for the representativeness of the social partners, and the rules and efficacy of collective agreements. While this anomaly may have contributed to the free development of labour unions and collective bargaining, it is proving increasingly detrimental to the functioning and very resilience of the system.

Attempts by the main confederations of the social partners to remedy the lack of legislation with rules established by central agreements have not been sufficient to ensure compliance by dissident enterprises and workers (in Italy these agreements are only binding for the signatory parties.)

This lack of regulation has favoured the fragmentation of representative organisations, particularly on the side of employers, and the proliferation of collective agreements. The Italian economic and social council now estimates more than 700 national agreements, many of which are signed by parties lacking any significant representativeness and which establish wages and working conditions often far below the standards set by the agreements signed by the most representative parties.

This distortion of the system has convinced even the most diffident unions, such as the CISL, that some legislative intervention is necessary, with priority given to defining the criteria of representativeness of the social partners.

Regarding the labour unions, a central agreement with variations signed by the majority of social partners have indicated a set of quantitative criteria based on a combination of the number of members (50%) and the votes received in the elections of workers' representatives at the company level. This choice, which reproduces criteria like those adopted in 1998 for deciding the unions' representativeness in the public services, has the advantage of being more objective than other "qualitative" standards traditionally followed by the Italian courts and by the labour inspectorates. Indeed, it allows for a clearer selection of the agreements, the wages of which must be considered when calculating social security contributions (Act no. 389/1989).

The problem of the representativeness of employers' associations has only recently been raised following the fragmentation process that has affected

these associations. No consensus has been reached so far for identifying commonly acceptable criteria.

We believe that further urgent legislative intervention is needed to recognise the generally binding effects of collective agreements. Art. 39 of the Italian Constitution establishes a particular procedure for this purpose, which has always been held to be unacceptable by most social partners and never pursued by governments. A more limited intervention could generally recognise binding effects only for the basic wages set by national collective agreements, a solution which has been endorsed by the Italian Constitutional Court and recently proposed by the major union confederations.

The social partners, in particular the unions, are instead opposed to a legal definition of a minimum wage. They argue that such a provision would undermine the role of collective bargaining and encourage small and marginal enterprises to pay only the minimum wage to their employees, thereby avoiding the need for bargaining with the unions. The unions are sticking to their argument even though it does not seem to be supported by international evidence.

The ongoing debate has clarified that the two instruments, i.e., erga omnes bargaining and legal minimum wages, are not incompatible and may be complementary, as indicated by international experience. The recognition of generally binding effects for collective agreements would widen their coverage and reduce wage evasion, limiting the application of legal minimum wages to marginal cases, and thus reducing the unions' concerns about possible interference with collective bargaining.

Moreover, we suggest that initial application of these minima be experimental and limited to areas and sectors where the effective rate of coverage of collective agreements concluded by representative parties is lower than a given level and causes widespread diffusion of sub-minimum wages. Labour inspectors and the social partners should jointly verify these conditions.

A further issue is the definition of the scope of application of collective agreements and the relevant area for measuring the representativeness of the signatory parties. This definition has become uncertain and is often disputed by the parties because the boundaries between the various

sectoral categories, once well defined, have been blurred by technological innovation.

The law should not establish the new perimeters as they would be too rigid and probably be considered unconstitutional as they infringe the principle of the parties' autonomy. A procedural approach would be preferable, starting with identifying the perimeters set by the existing collective agreements and adapting them, with the parties' involvement, in line with the changing production structures. A general guiding principle should be to safeguard the very close relationship between collective agreements and the actual business activity.

These procedures might not be conclusive, significantly so when the scope of application of two or more agreements overlap, in which case mediation procedures should be put in place, including impartial third-party arbitration, as happens in countries like Germany. We prefer this solution to the present Italian situation in which the decision regarding these cases is made by the labour inspectorate and finally by the court.

Labour disputes and collective autonomy

The persistent and excessive length of labour disputes brought before the Italian courts amounts to a substantial injustice for the litigating parties, workers, and companies alike, as well as proving an obstacle that penalises foreign investment.

Hence, we believe that some alternative dispute resolutions (ADRs) should be experimented with in Italy, while awaiting the reform of the code of civil procedure.

Experts and parliamentary bills have advanced many proposals to apply mediation and arbitration procedures in labour disputes, but they have never been accepted. The social partners, particularly the unions, have always opposed the delegating to third parties to decide on labour disputes with binding effects, even when arbitration is voluntary, and even if the dispute concerns the interpretation and application, not of legal norms, but of clauses in collective agreements. At present, the limits set by law for the arbitrator's decisions in these cases are so tight that they make it practically useless to resort to them.

This position is deeply rooted in the idea that the administration of justice is an exclusive prerogative of the state. Only public tribunals can guarantee full respect for labour rights.

We question this opposition to arbitration because the Italian legislator has often delegated many issues concerning labour rights and interests to the social partners. It would be consistent with this legislation to grant to said social partners the power to review the application of the rules that they have agreed upon, not only through conciliation, but also by delegating to third parties the authority to arbitrate with binding effects.

IX Beyond insurance-based public welfare? Cases of universal welfare supported by taxes. Forms and limits of private contractual welfare

Welfare innovations

Like all labour legislation, the welfare system has been shaped on the assumption of last century's stable employment relations in the industrial sectors.

Many welfare institutions reflect this approach in their structure, from old age pensions to income support instruments during unemployment, shaped along the lines of the different production sectors.

Many legislative changes, introduced following sectoral and corporatist pressures, have altered the rationality and equity of these welfare institutions. Even after the reform of the income support instruments approved by Legislative Decree no.148/2015, many inequalities and discrepancies remain among different types of atypical and subordinate workers. These instruments are also ineffective because they very often only provide financial support to workers, without promoting unemployed workers' re-employment due to the traditional inefficiency of Italian active labour policies.

In addition, there is the weakness of the Italian economy, which has not yet recovered from the 2008 crisis and is now hit by the effects of the

Covid-19 emergency, opening up new loopholes in social protection and fractures in the very social fabric of the country.

Despite the introduction of a kind of minimum income (Act no. 147/2017), the crisis has shown that many workers are deprived of adequate income support and not helped with any training or by the employment services.

During the emergency, the provisions approved by the Italian government have mainly extended the existing welfare measures to meet the most urgent needs: subsidies to firms forced into inactivity by the lockdown and income support to workers suspended from work or unemployed.

The prolongation of these measures beyond the emergency would be unsustainable and distortive. As a result, in the post-epidemic recovery, it will be necessary to revise these aspects of our public welfare with regard to the remedies available, since the post-pandemic economic scenario will have changed and will require new measures.

Old-age pensions, unemployment benefits and income support to workers suspended from work due to the economic crisis: the need for a change

The significant lines of reform adopted by many European states, including Italy, since the 1990s have pursued, albeit with different methods and results, the primary objective of guaranteeing financial sustainability for public pensions. To this end, various techniques have been implemented, from restricting the conditions of access to old-age pensions and mechanisms for adjusting their amount over time, to raising the retirement age.

Once sustainability gains were achieved, it was gradually recognised that these changes had to be accompanied by the necessary safeguarding of pension adequacy.

The reforms implemented in recent years have contributed to an already visible decline in the retirement income of future pensioners. In particular, the stringent connection between contributions and benefits required by the contributory system (NDC) adopted by some legislations - Italy and Sweden being among the first - has reduced the respective amounts of pensions and exposed future pensioners to the harmful effects of labour

market flexibility and the various forms of atypical and precarious employment.

Many workers, particularly those who have had intermittent work careers, will receive insufficient pensions and other welfare benefits.

Two significant innovations will be necessary to deal with the impact of industrial and production restructuring which will be recurrent in the future: improving the income support measures, particularly during these restructuring operations, and improving the efficiency of employment services as well as of training and retraining programs for workers.

As regards old-age pensions, since the contributory insurance-based system will not guarantee adequate pensions for atypical workers and today's young workers, it is necessary to revise the present legislation. We must move away from the current method of calculating pensions and adopt a selective universalism system, which in other European countries has proved to be more equitable and prosperous than the Italian welfare system.

We must introduce a similar approach with the necessary adaptations in income support for workers.

Some corrections to the insurance-based schemes traditionally used have already been introduced in the regulation of old-age pensions and income support for unemployed workers and those suspended from work during the economic crisis.

Various periods of worker inactivity due to personal reasons (maternity leave, illness, work accidents) and to economic difficulties of firms, have been covered by fiscal resources instead of the contributions paid by the parties, to make these periods count for pension purposes and to guarantee coverage of income support systems. This kind of financial support has been extended to other periods of inactivity for personal reasons like parental leave, leave for participating in training and retraining, and political and union activities.

These corrections to the insurance-based schemes have contributed to disconnect the benefits of both pensions and income support systems from the actual performance of work.

Some experts and parliamentary bills have proposed more radical changes to the old-age pension system, aimed at introducing a basic pension financed by taxes, guaranteed to all citizens of a certain age. The plan would be to attribute a pension calculated on the basis of the parties' contributions to wages received during the periods of actual work.

Act no. 147/2017, which has also introduced a form of minimum income in Italy, has extended the same amount of income to poor pensioners not covered by any contributory pension.

A similar institutional setup has also been proposed for regulating unemployment benefits. In both cases, the proposals need to be carefully designed to protect those in need and avoid the negative effect of discouraging the payment of contributions by the parties, which are necessary to finance these measures.

A primary strategy followed by many European countries for maintaining adequate income for pensioners has been to augment the statutory pensions with supplementary retirement income. The forms of supplementary pensions vary considerably; in a few countries, this second pillar of the pension system has been made mandatory or quasi mandatory.

In Italy, this has been promoted by collective agreements and supported by fiscal incentives.

The main problem, however, is that supplementary pensions, which in Italy are not mandatory, are not equally distributed among social groups and generations. The most under-represented groups in pension funds are those most in need of increasing their pension: non-standard workers, part-timers, and in general the younger generation.

The recent economic crisis has made it even more urgent to solve this problem and, generally, to find a more effective balance between public and private forms of social security, including pensions. The most straightforward solution would be to make participation in supplementary pension funds mandatory. Nevertheless, to make it functional and acceptable, the vulnerable groups indicated above should be helped to participate, e.g., by providing lower contributions to the system, possibly supported by fiscal measures.

Another aspect of the welfare systems which has become critical in recent years is that of identifying the appropriate duration and level of the benefits

to be provided to workers who are unemployed and suspended from work due to economic crises.

The solutions adopted by the various countries vary considerably, depending not only on the national economic conditions but also on the different views on balancing the degree and extent of social protection with economic efficiency.

Here too, the 2008 crisis and the Covid-19 emergency have contributed to put pressure on these welfare provisions, highlighting the need to strengthen their capacity to protect workers, especially by raising the level of benefits and prolonging the periods of protection.

Italy is a case in point. To respond to this crisis, the governments in office have extended income support periods to workers whose activities have been suspended for several years.

These decisions have been criticised and questioned because they keep currently unemployed people fictitiously in force within the firms. The negative side of such a solution is that it amounts to financing forms of disguised unemployment with wasted resources and prevents the implementation of activation measures to promote re-employment of these workers.

This suboptimal result is compounded by a vicious circle whereby the Italian employment services and active labour policies are sadly inadequate (also due to lack of resources). On the other hand, prolonged income support practices to workers suspended from work do not encourage them to improve their active engagement.

A more recent challenge to our social protection systems has come from the increasing number of self-employed people and autonomous workers who have been hit by the economic crisis and suffered a severe loss of income. To respond to these workers' needs which, despite their autonomy, are defenceless against market risks, legislators, including the Italian one, have introduced several new forms of protection and income support.

That is an area for research and policy innovation that needs to be developed because the solutions adopted for dependent workers cannot be applied directly. To identify appropriate conditions for access to an adequate number of economic benefits (also to avoid forms of elusion and moral hazard), we must carefully analyse the characteristics of their

activities and market positions. In addition to temporary economic help, these workers may need consultancy services aimed at supporting their role on the market and exploiting all its opportunities.

We also need similar forms of economic and professional help for small entrepreneurs. A kind of "supply-side social insurance" has been proposed to protect these entrepreneurs from the risk of forced reduction of their activity.

The second pillar

Various kinds of supplementary welfare benefits have been introduced in Italy thanks to collective bargaining supported by fiscal incentives.

The most significant are pension funds and various forms of collective health insurance, covering over 7 and 12 million people, respectively.

Collective agreements, mainly at a decentralised company level, have introduced different kinds of flexible benefits for workers and their families, including support for education and workers' mobility, subsidised loans, systems of flexible work time, and work-life balance.

The growing use of these flexible benefits poses two significant problems: how to promote a better balance of benefits, particularly among small enterprises, and how to evaluate the quality of the various benefits granted to workers, as well as make the existing fiscal incentives (which are relatively undifferentiated) more selective.

Indeed, the amount and quality of the resources needed to finance public welfare have always raised difficult policy choices that have become even more critical due to the recent crisis. Here we shall only make two specific remarks about this wide-ranging issue.

One concerns the necessity to revise the distribution of resources among the different areas of welfare. This is particularly urgent in Italy to correct the historic imbalance between expenditure on pensions and that on other welfare areas (first and foremost active employment policies and education).

However, the transformations that have affected our societies require fundamental changes to all traditional welfare systems.

A most evident need is that of reinforcing and better defining investments in prevention and healthcare services. The demographic challenge we will discuss further on is bound to pose contradictory pressures, those of the increasing older population and those of the younger generations, too often neglected and under-protected.

A further general question whether it is justified and sustainable to continue to base most of the financing of public welfare on labour costs. This issue is present in the international debate, and some proposals have been advanced with initial experiments in transferring part of the funding to VAT. Another proposal advanced in the past was to base financing on a quota of the business profits.

The various possible solutions require specific studies and must be explored in depth, mainly in view of the new technologies that have favoured the growth of large, wealthy companies with a limited number of employees.

The challenge of the Covid-19 emergency to the national health services

The Italian national health service, which has universal coverage and is financed by taxes, always worked rather well in the past. However, it has recently been weakened by a shortage of personnel and resources, which has contributed to reducing its capacity to manage the Covid-19 emergency.

That is another area of welfare that will need profound restructuring in the light of this experience, probably through both national and common European strategies. World interdependence has been tangible in economic relations and all aspects of our lives, including individual and collective health.

The pandemic crisis, which has proved to be systemic, teaches us that every human being's destiny is linked to that of others and connected with the health of the environment. That is why tackling this new threat to our common welfare should be a matter of international concern. We have also seen the European Union take direct initiatives in this area, which has traditionally been outside its competences so far.

A suggestion arising from the crisis experience is that public health services will have to be strengthened and revised according to different priorities. The new kind of systemic risks revealed by the pandemic will require a new approach, particularly in the following directions: reinforcement of the healthcare instruments and institutions, but also of the prevention and monitoring facilities with a greater dissemination of their presence and an adequate distribution of resources in the various parts of each country, with special care for the weakest sections of the population, including the elderly, who have been significantly affected by the pandemic.

Forms and challenges of the minimum income

The innovations introduced in Italy and in other European countries, and analysed above, have not proved sufficient to protect workers and citizens from the old and new risks, which have become more evident with the Covid-19 emergency.

An extremely serious deficiency is that our social protection systems have not been able to prevent the growth in inequalities and poverty, which has affected even the wealthier countries, albeit to a different degree.

In response to this challenge, many countries, including lately Italy, have introduced various forms of minimum income for the purpose of providing monetary support to needy citizens and their families, usually accompanied with personal assistance services to the beneficiaries with particular emphasis on childcare.

Usually, these national schemes maintain the approach common to most welfare measures whereby people able to work are required to accept employment offers and training aimed at activating the beneficiaries of the income support.

The possibility of introducing necessary income measures unconditionally - i.e., granted regardless of whether the beneficiaries work or are willing to accept work offers - has been widely discussed in Europe, but only applied in practice in a few limited experiments.

It has been deemed unfeasible not only due to the costs involved, but also to objections on principle: firstly, because disconnecting social security institutions entirely from people's participation in the labour market would

obscure or minimise the value of work and contradict the concept of social security as contributing to activation by citizens; secondly, because it might reduce the prior commitment of public economic policies to promote employment opportunities.

The costs of basic income depend not only on its coverage and level but also on its relationship with other social security benefits. The present measures have been introduced in addition to pre-existing forms of income support, although with some specific targeting. The introduction of a general form of basic income would make coordination among social security measures and the need for financial sustainability urgent.

According to some estimates referring to the Austrian case that Prof. Marhold presented to the ISLSS congress in Prague in 2018, a non-conditional income of 800 euro granted on top of other social security benefits would raise state social expenditure to a level (70%) which would be hard for the active population to accept.

On the other hand, granting basic income as a substitute for all other welfare benefits, following a neoliberal approach to social security, would not promote equality. Indeed, it might increase the gap between the poorer and the wealthier because the latter profit more than the former from the existing social security benefits and their redistributive effects.

The loss of income for many people as a result of the lockdown has led the Italian government to approve a so-called emergency income (Act no. 34/2020) targeting people not covered by any other form of income support, including those working in the informal economy and immigrants not protected by the minimum income measures. This has been kept distinct from the minimum income provision and is financed for a limited time to stress its exceptional character.

The discussion on, and controversy over the prospects of these forms of minimum income are bound to continue and be influenced by a possible recurrence of emergencies like the pandemic and by digital technologies; these technologies will see policymakers and social partners confronted with far more drastic choices than in the past.

We need to devise economic and labour policies capable of sustaining employment for all workers expelled from the labour market by technological innovation. As an alternative, we can promote some

redistribution of jobs by reducing working time, as the German metalworkers have begun to do, and/or by increasing part-time work even more than in the Dutch system.

The impact of digital technologies might also increase the pressure to introduce new forms of basic income, assuming that it is impossible to implement viable economic policies to fight the future decline of work. But this assumption should not be taken for granted.

In any case, future choices will require essential changes in welfare and labour policies and better coordination between these two spheres which are necessary to meet the challenges of supporting people in employment transitions, which will become more frequent in future labour markets. Both welfare and labour policies will have to find innovative instruments for fighting work precariousness and promoting quality employment.

We must demand that social security continue to balance the two guiding principles of sustainability, both financial and social.

X. Demographic challenges. How to revise the intergenerational pact. Social ageing policies

Demography has not been traditionally considered by labour law or social policies because the past lifecycles were stable. Relations between different generations were well balanced with young people entering into adult life and the labour market. They replaced the adults who retired with pensions supported by a public welfare system that could count on a regular generational turnover.

The significant transformations of recent years have changed the economy's main characteristics and the relations among different age groups, altering the living conditions of both the old and new generations in such a way as to put the stability of the intergenerational pact, which has sustained social cohesion for centuries, at risk.

The two structural trends, namely, prolonged life expectancy and a reduction in the birth rate, are determined by biological components, but may be significantly influenced by social policies, as demonstrated by the differences in the same trends in the various countries.

Italy is an extreme case because its birth rate is among the lowest in Europe. Unless this trend is corrected, it will dramatically reduce the population in general and even more so, the working population, in the next few years. The combined impact of the two trends will negatively influence many aspects of our society, beginning with the sustainability of the old-age pension system, because the growing age dependency ratio will place an unbearable burden on the younger generations.

The alteration of the relations among generations is even more severe if we consider youth employment and income conditions. The wages of young workers are almost 40% lower than those of adults and their unemployment rate is triple the national average.

The employment imbalance between the young and old has increased lately as a result of recent Italian legislation lengthening the retirement age, thus keeping a growing number of older adults on the labour market, with no significant increase in youth employment.

Promoting the autonomy of young generations

A new balance needs to be found, one that is different from the past. The recent economic, cultural and even anthropological transformations have brought about radical alterations in the traditional relations between generations.

We should mobilise all labour and social policies to reverse the two trends, low birth rate and low growth, which have adverse effects on the country's future and on the younger generations.

The correction of the first trend calls for family-friendly public policies combining tax breaks, healthcare, and educational services for children along the lines followed by countries like France, which have proved to be effective.

We can reverse the second trend by promoting economic policies that stimulate sustainable growth and quality work, combined with specific provisions to favour employment for the younger generations.

The best International experiences show that only by increasing employment opportunities for all is it possible to reconcile working life with youth employment promotion. It is illusory to try to favour the latter by

bringing forward the retirement age. The application of the Italian legislation which reduced retirement age (Act no. 26/2019), has confirmed that it does not produce any direct effects on the employment of young people.

The promotion of employment has been entrusted to different financial incentives including new recruitments, particularly of youngsters. The effectiveness of these measures has been questioned and has produced varying results, positive only when the incentives have been of short and uncertain duration.

Indeed, to achieve significant results, a combination of consistent economic and social policies prolonged in the medium-long term is required including, in addition to sustainable and stable growth, convergent measures aimed at favouring the entry of youngsters into the labour market, from early counselling on job opportunities and necessary skill requirements, to providing job experience during school years, to providing traineeship and well-defined periods of apprenticeship.

The future evolution of the economy and society will require more investments in education from early childhood to adult life and a reorientation of its contents and techniques. As suggested by the best practices, the value of primary human-centred education should be combined with the acquisition and updating of new skills, both technical and relational.

A significant commitment on the part of families and institutions alike should be that of creating the conditions for favouring the development of young people's personal autonomy, with the promotion of early housing autonomy of young people and couples, facilitating access to loans and capital for initiating economic activities, and the availability of personal funds to be freely used at the beginning of adult life.

Active ageing

More balanced relations between the generations require convergent measures for both young and old. Changes in the pension system and the functioning of the labour market are necessary to meet the consequences of the increased age dependency ratio. Raising the retirement age is a fundamental, albeit insufficient, measure because we must support efforts

capable of promoting employment opportunities during the entire course of life, including old age.

The pursuit of this objective must ensure, contrary to many stereotypes, that people's resources can be useful and improved until late in life; a possibility now possible for many people thanks to the improved quality of life and health conditions of the population.

Many acceptable practices in other European countries show that it is possible to promote active ageing with various measures, which have been recommended by national and European authorities.

The best results can be achieved not through specific and isolated interventions, but instead, by adopting a comprehensive approach that includes measures which affect the various aspects of working and personal life.

These measures usually imply the combined initiative of public institutions and enterprises while also involving the responsibility of individual workers. The quality of ageing depends not only on genetic predisposition but also on personal choices, particularly lifestyles, the conditions and behaviour during the work period, and the quality of interpersonal relations.

International research and experiences indicate various actions that promote active ageing which can be implemented in part by enterprises and in part by public institutions.

The best practices adopted by enterprises include many aspects of working life: continuing and lifelong learning, also in groups of workers of different ages, forms of part-time and flexible working time adapted to the different individual and family conditions of the elderly, types of work organisation, work positions and careers which can optimise the skills and experience of the elderly while avoiding employment in heavy work, frequent health checks and risk prevention measures, forms of gradual transition from a full-time job to retirement, including the so-called "generational relay" which can promote the exchange of experience and knowledge among the generations.

From the generational relay to various forms of gradual retirement, some of these practices should be supported by public institutions, mainly through fiscal incentives and specific retraining initiatives.

Wage policies may also have to be changed to facilitate the employment of older workers. This is particularly necessary for Italy, where wage increases are still linked to seniority - a system that penalises young people's income and contributes to job displacement of the elderly.

The practice of early retirement, which has been widely used in Italy, is another major obstacle to the employment of the elderly. Indeed, it is in strident contrast with active ageing policies and acts as an incentive not to promote them because it usually entails lower costs and economic and organisational advantages for firms, rather than guiding the enterprise organisation towards the objective of active ageing.

The Covid-19 emergency has brought to light an aspect of ageing, namely its physical and psychological fragility, which has been widely obscured or overlooked in the past. The national health services, not only in Italy, have been put under severe stress and are unable to defend the health and often the dignity of older people in particular.

This painful experience is an additional reason for strengthening the general health services and paying special attention to the health risks to which the older population is exposed.

As a final remark on this issue, we want to stress that due to being profoundly rooted in customs, traditions and personal and collective experiences, the relationship between old and young generations may be improved not only by introducing appropriate economic and social measures, but also by reactivating the exchange of experiences and knowledge between young and old.

To this end, new cultural and social research must be undertaken because many traditional channels of communication among the generations have been obscured, if not interrupted, by the current ways of life and interpersonal relations, which are so different from those that prevailed only a few years ago.

It is the responsibility of the adult generation to change how we look at the world of young people and try to understand their new needs and expectations.

XI. Labour law beyond national borders. Transnational public institutions and contractual instruments of international social regulations. How to reach migrant workers and companies

Europe and work

Labour law is a national product, and it will probably remain so, but a growing part of its destiny will be increasingly determined beyond national borders. First and foremost, by the European Union, whose regulations, while covering only limited areas of the law, have become part of the Member States' legal systems.

It is a common opinion that Europe is now facing a crucial moment in its history. The European Union's response to the 2008 crisis was limited and related only to financial aspects with no concern for, or initiatives in, labour matters. Lacking common guidelines, the Member States made different decisions, often diverging one from the other. This may have contributed to increasing the inequalities among the nations and the malaise and uncertainty of many citizens.

Moreover, the European Union's inertia has caused a growing distance between the needs and expectations of citizens and the EU and its responses.

The health emergency that exploded in 2020 has posed an unprecedented challenge to European citizens and institutions, one that is decisive for the accountability and the very existence of the Union.

Financial initiatives for coping with the emergency have been implemented by the European Central Bank and the European Investment Bank, followed by decisions of the central institutions of the EU Commission and Council; the European Stability Mechanism, the SURE (Support to Mitigate Risks in an Emergency), and the Recovery Fund (backed by the European budget) are all signs of unprecedented innovation in the European economic and social policies.

These measures signal a renewed capacity of the Union's initiative for action, even though they are linked to the emergency and therefore await the post-crisis test. The divergences that emerged during the discussions

among the Member States may undermine the continuity in implementing the decisions and show that as yet there is no consensus on the need for real European solidarity.

Another question that remains open is the fact the most of the resources are granted in the form of a debt albeit at favourable conditions, which stresses the need for the States to implement budgetary and investment policies capable of paying back these new debts, particularly in the case of countries like Italy, which are already highly indebted.

This brings us back to the issue of the need to increase the European Union's budget and its financing resources. The present dimensions are inadequate to support a social and economic union; even more so, the European institutions will be called on to tackle the new demands of citizens hit by Covid-19 and the uncertain future scenarios of the crisis.

Since this crisis has affected both the supply and demand sides of the economy, its consequences will require structural interventions on both sides. It is illusory to think it possible to relaunch the national and European economies only by supporting aggregate demand, mainly because the recovery from the crisis in the new scenario will imply a wide-ranging restructuring of our production methods and a parallel reconversion of our workforce.

The measures taken during the emergency, aimed at reinforcing the welfare institutions of many countries to support workers and enterprises, will not be sufficient to fight inequalities, nor will it be sustainable unless accompanied by adequate investment in innovation and training aimed at promoting sustainable development, as indicated by the ambitious programmes of the Recovery Fund.

The new direction announced by the European Commission will face another vital test in its capacity to take direct initiatives in social and labour policies, which means abandoning the soft law approach and allowing effective implementation of the European Pillar of Social Rights.

The inadequacy of the traditional measures to cope with the social demands emerging during the Covid-19 crisis should encourage the search for new policies capable of both protecting the population from the unknown risks and promoting their capabilities.

New regulation techniques may also be necessary, as proposed by some experts, aimed at reinforcing the open method of coordination (OMC) adopted so far by the European institutions with regulatory frameworks setting several basic social standards and rights, possibly allowing for some degree of flexibility in line with the different economic and social conditions of the Member States.

Another proposal advanced some time ago to the Commission by a group of experts suggested supporting European collective agreements with a (light) legal framework. These agreements might be a viable instrument, more flexible than the law, for defining decent employment standards, here again with some adaptations to meet different national contexts.

The recent worsening of the income and living conditions of millions of European citizens calls for new forms of European Union intervention also in the welfare system.

Its first task should be to reorganise and stabilise the various measures taken during the emergency by the European institutions, and by many national states. The interventions guaranteed by the SURE for the purpose of supplementing the national systems of income support to workers unemployed or suspended from work due to the economic crisis, should be duly implemented and completed by introducing European unemployment insurance financed by common funds, according to the proposals advanced years ago also by the Italian government.

The growth of poverty in many European states has received different and often insufficient responses by their governments.

Here too an intervention by the European Union would be necessary, if not to provide a fully-fledged European minimum income, which might not receive the required unanimous consensus, then at least to supplement the existing national minima financed from the European budget, adapting the solution used with the SURE.

The Covid-19 crisis has convinced many observers and the European Economic and Social Council (EESC) of the need to build common institutions responsible for public health, another area that has been traditionally outside the European Union's competences.

Many of the social protection measures mentioned so far have been promoted through the initiative and the support of the social partners,

through collective agreements that have then been translated into European directives or action programs.

The need to revitalise the collective action that we have advocated above is urgent for national industrial relations and collective negotiating systems at the European level. To this end, both labour unions and employers' associations must extend their organisations and strategies beyond national borders where they have been concentrated to date.

If more widely used, the transnational collective agreements experimented at a European level may be a viable instrument to regulate the conditions of workers who work across borders and stimulate the European institutions to adopt social reforms in the neediest areas.

The social partners' right to be present at the European level and to influence the Union institutions, including the EESC, are essential to support the effective implementation of social rights and disseminate the best social practices in the various countries.

New initiatives could also be explored to support the activity of the social partners, the labour unions in particular, if necessary, forcing the limited competences of the European institutions: for example, by supporting the formation and effects of collective agreements, as occurred with the directive on the European Works Councils. Special attention should be directed to extending the presence and action of workers' representatives in SMEs, which, thanks to the new technologies, are now able to operate beyond national borders.

Indeed, at an international level, the European institutions now face the same challenge Member States are confronted with in their territories i.e. to review their social and legal policies to enable them to cope with the impact of the new technologies and globalisation. The European Union cannot avoid this epochal challenge and must respond either with direct initiatives or by helping the Member States to find appropriate policy answers.

Moving toward these objectives requires significant innovation in the basic conception and role of the European Union. It implies revising the Community's original assumption, whereby simple market integration was sufficient to promote efficiency and progress for all Member States. Consequently, it would require abandoning the asymmetry between the

powers of the European institutions in market integration and the Member States' exclusive competences in employment and social matters.

This would lead the Union to concentrate its activity less on legal harmonisation and the distribution of resources to compensate for the damage produced by the markets, and to devote itself more to rebalancing with appropriate policies and investments the structural economic conditions of the various Member States and their territories.

This strategy would better pursue the founding fathers' objective of promoting convergent progress in the European citizens' conditions instead of helplessly standing and watching the growing divergence between countries and social groups, which threatens the social cohesion of our communities.

The conditions necessary to support such a strategic change are not at hand. One of these conditions concerns the governance structure of the European Union and implies moving away from the intergovernmental method which has prevailed to date in major decisions. From a broader perspective, the search to give Europe a more well-defined identity both socially and politically, and to build a federal community supported by shared values and constitutional rights and guided by a democratically legitimised government should not be abandoned.

How to regulate international employment relations

It is not only our economies but also our national legal systems that have long acquired global dimensions. The ever greater movement of goods and people across national borders has brought with it the spread of international rules of various kinds and different sources, defined not only by the States but also by other actors such as public and private international organisations and multinational enterprises.

These new rules regard an increasingly wide range of matters, including some traditionally reserved to national law.

The multilevel nature of these rules has dramatically increased the complexity of our legal systems and requires a new approach to our studies, using above all the comparative method.

But what worries most legal scholars, and particularly labour lawyers, is that the imbalance between the action and scope of national governments and the global dimension of the markets has destabilising effects on the economic and social conditions of individual countries, thereby increasing the inequalities between and within each of them.

The weakness of supranational organisations, beginning with the ILO, deprived of sufficient binding powers and with scarce resources, prevents them from correcting these harmful effects.

The Covid-19 emergency has highlighted another critical aspect of globalisation, namely, the fact that the virus has spread with unprecedented speed due to the intense circulation of people and goods.

According to some, the impact of this emergency may radically change the traditionally positive vision of globalisation and even "return reality within national borders". Even though these prophecies may not occur, the pandemic's spread has demonstrated the extreme fragility of international relations and the possibility that contagion is uncontrollable and affects all national economies. This fragility has not only been limited to financial transactions, as in the past, but has also affected international commerce and the supply chains.

These chains have contributed to expanding the production and distribution of goods at a global level through global networks, transferring entire industrial and service sectors across national borders. The pandemic has now interrupted or undermined these global networks, threatening their very survival. Even though this risk may not materialise, this form of international economic organisation will undoubtedly have to be built on different foundations.

Indeed, the 2008 crisis had already led to signs of a slowing down of globalisation, so much so that the term "slowbalisation" was coined. Now, this process may not only reduce its speed but also change its character and direction.

There are already indications of a possible trend of economic exchanges being concentrated on a reduced scale, within regional areas of variable dimensions; a sort of regionalised globalisation or even a new dimension, that of the bioregions, i.e., supranational areas having a common propensity for sustainable forms of production.

The health emergency may not only contribute to accelerating these trends, but will also require the introduction of new regulations, needed to make the international exchanges of goods and people less fragile and safer.

The dangers and adverse effects of globalisation have long provoked protectionist responses on the part of nation states, some of which are traditionally pro-market. Even short of extreme measures, many states have adopted standards to defend their social and economic institutions, which are threatened by global trade.

Following the Covid-19 emergency, these states have reinforced their defence mechanisms, including the closure of borders.

We must see how and when these measures will terminate or be revised. Indeed, some cross-border exchange regulations aimed at controlling health conditions may continue to be necessary, but in such a way as not to endanger the freedom of trade or invade individual privacy.

Here too fully satisfactory solutions will only be possible if the measures are taken and implemented with close coordination among the states concerned and the social partners.

These national defensive reactions to globalisation, and now to the threats posed by the pandemic, are understandable and in part justified. Democratic states, D. Rodrik reminds us, have the right to defend their values and the welfare of their citizens from the negative impact of globalisation and external threats.

The fine line between legitimate responses and protectionist measures may not be easy to define and should be a matter of public discussion and open deliberation.

The principles indicated in the 2008 ILO document on fair globalisation can offer valuable guidelines given that they were agreed upon after a comprehensive consultation process and took into account the various conditions of the states involved in international relations and their different social and economic resources for protectionist measures.

Like many of the principles elaborated by the ILO in its 100-year history, the fair globalisation ones do not represent the mere defence of individual states' social orders. On the contrary, they are inspired by commonly

shared values; furthermore, they call for a shared commitment on the part of states to pursue a more equitable and sustainable regulation of globalisation and to use their powers to enforce these rules within national borders. To be acceptable, particularly by less developed states, the international social regulations must be inclusive, and accompanied by concrete measures capable of promoting sustainable development and equitable distribution of wealth among the nations and social groups.

The dissemination of decent work and fair globalisation principles has been promoted in international relations with various instruments by different international organisations, the ILO and the United Nations, the OECD, and the European Union.

A powerful instrument to connect global trade with social rights has been the so-called Generalised System of Preferences (GSP): a country provides preferential treatment on tariffs or other benefits mainly to developing countries because they respect specific social standards. The social clauses included in international trade and investments agreements have been a primary source of international social regulation.

These social clauses have not only grown in number to become an integral part of these agreements, but they have also acquired great substantive and procedural complexity.

The rationale of these various sources of international social regulations has been interpreted differently. Initially, the promotion of social rights in international trade was seen as an instrument to regulate competition, while, according to a broader vision, it has been considered a means to promote sustainable development.

This broader approach has influenced to varying degrees the content of trade agreements and has contributed to include the social clause in the same chapter as the clauses on environmental protection and sustainable development.

We can observe the same evolution in the terminology used in these clauses, which has changed from a labour standard to human rights at work. The impact of these forms of international social regulation, especially social clauses, has been judged differently.

Evidence is partial also due to the scarce transparency of the existing sources and trade agreement negotiations, and the accredited results on the efficacy of these clauses are at best uneven.

The ILO reports indicate that the most widely implemented parts of the labour chapters concern capacity-building programs, the exchange of good practices, promotional activities, and public communications. More uncertain is the impact of the social clauses on the actual improvement of national labour standards. Despite the importance attributed to the treaties' procedural aspects and the social clauses, these procedures and enforcement instruments are the weakest links in the agreements.

This weakness is procedural, but it reflects the entire enforcement process, which depends on the ' initiative of the negotiating states, and indeed on their bureaucracies.

The experience indicates that nation states can make a decisive contribution to reinforcing international social regulations in more than one direction. First, they can work to make more stringent the commitments to respect the fundamental principles and rights sanctioned by the ILO, and included in most trade agreements, extending them to promote the harmonisation of rights adopted in the various states. Secondly, they could strengthen the enforcement mechanisms of the social regulations, which, in many ways, depend on their initiative: by using their monitoring and control power to ensure application of the agreements, by involving the main stakeholders (labour unions, NGOs and other civil society organisations) in the enforcement procedures, and ultimately, by establishing systems for the resolution of disputes on the application of the agreements, including impartial arbitration and/or specialised courts.

Trade agreements, recently signed by the European Union, have introduced some innovations in this direction, like those with Canada (CETA) and with Japan (EPA).

Other instruments, in addition to those mentioned above, can promote the dissemination of international social standards: on the one hand, the codes of conduct adopted by multinational enterprises, and on the other, collective agreements signed by these enterprises with their works councils or with international labour organisations. The national states could extend these agreements beyond the signatory parties by acknowledging them when signed by organisations representing the social partners, with binding

legal effects on the national bodies that adhere to these organisations to make them applicable within their national territories.

The effectiveness of large companies' codes of conduct, which are currently lack any legally binding effect and rely only on internal monitoring systems, could be reinforced by (at least) foreseeing these monitoring procedures and their results to be publicly audited with the involvement of workers' representatives.

A further reinforcement of these effects would be to ensure that the enterprises receiving support or benefits from the specific state are required to respect the contents of their codes of conduct, particularly those concerning the fundamental principles and standards set by the ILO.

An important national provision along the same lines is the French Act of March 27, 2017, which imposes on the parent company the duty of monitoring the activities of its subsidiaries, contractors and subcontractors, holding the parent company liable for damages produced by violation of human, social and environmental rights, also those occurring outside France.

In this respect, a further initiative on the part of states could be to apply the ILO rule whereby all Member States are obliged to respect the ILO's fundamental principles and rights, even if they have not signed the relative conventions. These states could demand the observance of the same principles and rights by other states with which they trade in order not to be penalised by unfair competition and social dumping.

Another useful instrument to the same end is the due diligence articulated in the UN guidelines on human rights (2001), which require the multinational enterprises to verify the impact of their actions even beyond the national borders of the mother company and to identify the actual and potential risks caused by businesses with which they have commercial relations.

The adoption of this practice of due diligence is voluntary but is rapidly spreading internationally, and proposals are being discussed in Europe to make it obligatory.

The global nature of the pandemic will require the integration of existing regulations governing international relations with new rules and instruments. The social standards to be internationally respected must

include those necessary to prevent the risk of contagion and guarantee the health and safety of people who work beyond national borders.

The experience gained in elaborating and implementing international social standards may also be useful for this new task. Still, it will have to be complemented by the expertise and practice of the World Health Organisation and coordinated with initiatives of the health authorities of the various states.

These standards should be connected and integrated with the vast body of European laws existing in the field of health and safety of workers, and with the measures that many states have implemented to prevent Covid-19 contagion in the workplace, usually on the basis of special protocols agreed among the social partners and then sanctioned by the national authorities.

The questions discussed here concerning the content and effectiveness of international social regulations are part of a broader problem that has to do with the role and strategies of nation states vis-a-vis globalisation, which has always been a contested area, particularly in recent years when recurrent international crises and growing inequalities have revealed the negative side of globalisation. As indicated above, democratic states need to develop clear strategies and answers to help promote the cause of social justice in international relations and not simply to defend their own welfare states.

A most urgent and immediate commitment at the international level should be to defend the practice of multilateral relations against the temptations of unilateralism, and reinforce international organisations, particularly those involved in social and environmental matters.

These are essential conditions necessary to support the historic mission of the ILO in promoting international social progress and creating new institutions and instruments capable of meeting the challenges of the future world of work.

Immigration and sovereignist governments

According to an Italian expert, "immigration is an imaginary enemy" since it is not true that we are under siege, nor is it true that we cannot sustain

the impact of migration, that in recent years we have been invaded, that immigrants are mainly males, Africans and Muslims, that immigration is a direct consequence of poverty and that refugees see Europe as their main destination.

However, according to the estimates of the Toniolo Institute, Italy is the European country where the gap between the perception of non-EU immigrants (25%) and reality (7%) is highest (in Europe 16.2% perception and 7.2% reality).

According to the same estimates, Italy is the country where the index measuring the hostility against migrants and religious minorities is highest. The two sets of data are interrelated because those who are against migrants tend to magnify their number.

Sovereignist propaganda, which feeds on these gaps and data, has spread in Italy in the last few years and risks overriding common sense and becoming a dominant (sub)culture.

On the other hand, data indicate a rise in the number of Italians who emigrate in search of employment, a trend which will probably increase due to the impact of the pandemic.

According to the same expert, immigration is a highly differentiated phenomenon which demands equally diversified measures, although in a midway direction between the two extremes of those who criminalise it for political reasons and those willing to "accept all" due to a guilt complex possibly resulting from the wish to remedy past sins of the West.

Based on real knowledge of the migratory phenomenon, social and labour policies should be tailored differently for the different groups of immigrants.

On the one hand, immigrants who are not only tolerated, but now indispensable for the domestic economy, i.e., the hundreds of thousands of carers and domestic services workers (71% of the total); those employed in jobs which Italians refuse to accept i.e. heavy, dangerous, precarious, underpaid and socially stigmatised jobs; and those who work in professions we are lacking in, namely, nurses, and now probably also doctors.

Recent Italian legislation has differentiated policies; those for refugee asylum seekers, with the risk of increasing informal and clandestine employment, as well as integration policies aimed at second-generation immigrants, and policies to regulate seasonal work and encourage self-employment and enterprise-creation among immigrants.

Two areas of labour law and policies deserve special attention here:

a) the regulation of the labour market and employment services;

b) the rules governing immigrants' employment contracts.

The current rules concerning immigrants' access to the Italian labour market and, consequently, entry into Italy have proved inefficient. They need to be reformed: in particular, we should abolish the need for an employment contract signed at a distance as a precondition of obtaining an entry and residence permit. This is unrealistic, particularly for unskilled jobs; the administrative procedures for obtaining these permits are complex, lengthy and costly, hence they are often eluded; the government decrees which set the maximum number of yearly entries of immigrants are not related, apart from a few cases for seasonal workers, to the actual amount of job vacancies, which limits the possibilities of legal entry into the country.

Changing these rules by opening an appropriate legal channel of entry would significantly reduce not only the number of illegal immigrants, but also the pressure to use international protection channels and increase the number of asylum seekers.

Provided that Member States accept responsibility for determining the number of immigrants allowed into their territories (pursuant to art. 79.5 of the TFUE), coordination among these states in regulating the flow of migrants would be necessary due to the supranational character of the issues involved in this phenomenon.

In this respect, the Italian government's failure to ratify the Migration Global Compact of the United Nations, which advocates a programmed admission of immigrant workers in relation to the receiving country's requirements, was a serious omission.

In addition to changing the present rules on admissions, we should reconsider the very notion of economic immigration. Different factors

coexist in determining the phenomenon, which cannot be reduced to the rigid dichotomy between economic and forced humanitarian migration.

In addition to new regulations on the admission of migrants, another urgent issue is the integration of foreign citizens in the receiving country; creating employment opportunities is an essential condition to promote their integration, given the interdependence between work and social citizenship.

For this reason, new attention should be paid by the legislator, administrators and legal experts to full recognition of social rights for immigrants legally residing in the country.

Italian legislation has already sanctioned the principle of equal treatment for foreign workers legally present in our territory. However, a more robust effort should be made to fight violations of these norms and illegal intermediation in employment disseminated mainly in sectors such as agriculture. To this end, it will be necessary to revise the standards that protect foreign workers' rights and above all, to improve enforcement procedures and the organisation of labour inspections to ensure the enforcement of these norms.