

CALL FOR PAPERS AND PANELS

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| <p>BEYOND EMPLOYMENT: PROTECTING AUTONOMOUS WORK</p> |
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EIGHTEENTH INTERNATIONAL CONFERENCE IN COMMEMORATION OF PROF MARCO BIAGI

Modena (Italy), 19-20 March 2020

**Marco Biagi Foundation
University of Modena and Reggio Emilia**

Autonomy is becoming a central and crosscutting pattern of labour, in at least three ways.

I. Autonomy in Employment.

First, this is true within the employment relationship. Remote communication, fast data processing, automation, digital work tools and other enabling technologies prompt new organizational arrangements and new functional relationships at the workplace, that apparently allow, or even demand, the average workers to take autonomous decisions about the behavior to adopt in a number of specific circumstances. Such decisions may concern what solution to provide to an unexpected problem in the production process, the kind of interaction to establish with the artificial intelligence as well as the choice of the time and place for the execution of the work performance.

The breadth of the operational freedom granted to the workers may vary from the power to choose within a predetermined set of rules and options to the capacity to introduce new and self-determined rules. On the other hand, autonomy in the performance of work, meant as the absence of detailed and frequent managerial directives, is not necessarily coupled with a complete removal of any organizational control on the way tasks are executed. Such controls can indeed become easier and more far-reaching because of the introduction of remote and digital work devices.

Such “autonomisation” presents relevant implications of a theoretical as well as a practical nature, affecting the legal characterization of the employment relationship, influencing rights and obligations of the parties and the effectiveness of the legal machineries meant to implement the coordination between the worker and the organization. “Autonomisation” also interact with the interests at stake in the employment relationship, challenging the established balance and the compromise-seeking role of regulation. In fact, in some cases, granting more discretion or autonomy to the employee entails a win-

win outcome, since it intertwines higher productivity, more flexibility and increased wellbeing, as a consequence of workers' capacity to develop more sophisticated skills, unleash own capabilities and, in the end, link the work experience to a broad-encompassing idea of self-fulfillment. In other cases, autonomy can bring about negative side-effects for the employees, like an increased risk-shifting from the company to them as far as the achievement of the organizational targets without an adequate compensation, and with negative impact on the loss of the boundaries between working life and private life and worsening of health conditions.

Thus, this kind of autonomy needs to find its place into contractual schemes of “protected” work relationships, in order to respond to the new technical and organizational requirements without losing sight of the underlying structure of power relations and of the persisting need to establish fair and healthy employment conditions.

II. The Very Notion of Autonomous Work.

In a different characterization, autonomy represents the distinctive feature of formal contractual schemes, like self-employment and independent provision of services that are embedded into work procedures thus implying a strong functional coordination between the individual worker and the organization. In the extreme circumstances, these ambiguities remain open to abusive behaviors like the intentional circumvention of Labour Law and the deprivation of workers from their legitimate protections.

These phenomena testify the obsolescence of well-established legal frameworks and the need to rethink the link between protections and work patterns. New criteria have been proposed by scholars, and even tested in certain legislative experiences, to seek a more appropriate justification and allocation of protections besides the traditional classification methods. To name but a few, the functional coordination, the economic dependency, the unilateral determination of the organizational coordinates of the work performance by the managers. The elaboration is still ongoing and other options will be elaborated and discussed. The issue cross-cuts the higher debate on the future of employment regulation, since what is at stake is the alternative between an overall revision of the interpretative and normative toolkit that oversees the relationship between those who execute the work performance and those who benefit from it, and a selective and tailored reconfiguration of the rules and protections attached to certain typologies of work.

III. Social Protection and Collective Self-Regulation of Autonomous Work.

In a third characterization of autonomy, professional practitioners and small entrepreneurs, traditionally considered as alien to the archetypical worker, therefore falling outside the boundaries of Labour Law, experience a need for protection as a consequence of a progressively weakened position,

both in the labour market and within the contractual relationships with their clients. This phenomenon can be brought back to manifold causes, such as the growth in the labour market ratio of independent contractors, the entailed sharpened competition among self-employed workers, and the economic and contractual imbalance with powerful clients.

Against this background, it could be necessary to reconsider the abstentionist role traditionally played by rule-makers and give way to some form of regulatory mediation between the market forces.

On the one hand, labour market services could play a role by facilitating inclusion, supporting the transitions and preventing the “unemployment” risks faced by the self-employed.

On the other hand, such mediation may be targeted to the contractual relationships, taking the shape of more balanced contractual schemes, capable of providing the self-employed with a number of basic protections and a shelter against abusive behaviors by the clients.

The picture includes the issue of collective representation, which could become a crucial asset for self-employed workers to regain the substantive contractual position they once enjoyed. While a number of interesting and innovative experiences of mobilization (quasi-unions and the like) are being tested in different regions of the world, it would be necessary to deepen the understanding on which organizational forms and operational tools can best meet the peculiar characters of this sector of the working population, which remains largely not comparable to the traditional workforce as long as the construction of a collective identity and the related representational structures and strategies are concerned.

Furthermore, the legal barriers raised by certain regulatory systems, like (EU) Competition Law to the exercise of collective rights of the self-employed regarded as service providers, mainly in the most advanced forms such as collective bargaining, need to be reconsidered on the grounds of the transformations affecting the economic, social and functional status of this category of workers.

Social security institutions too should be called to play a stronger role in protecting autonomous workers in case of temporary or permanent loss of working capacity and old age.

In order to move the discussion forward, encourage the exchange of views, and promote an interdisciplinary debate, contributions are invited from the international scholarly community on topics concerning the transformation of autonomous work, divided into the following tracks:

Track 1: Autonomy in Employment

Papers under this track should deal with the changes in workplace organization that affect the traditional top-down, formalized and standardized work procedures. The establishment of more horizontal relations based on the concession of broader spaces of discretionary or autonomous decisions

to the employee, along with the fading role of basic categories and coordinates of the performance such as time and space, may be expected to produce win-win contractual outcomes and subvert the very foundation of the employment relationship. However, one may argue that the conditions that make this outcome possible are not inherent in the introduction of new technologies and employment patterns but are rather the result of choices. The point is then to understand whether these choices are possible, also in the light of the actual reconfiguration of power relations prompted by organizational and technological innovations. Therefore, an analytical approach aimed at shedding light on the substantive organizational and functional patterns that lay behind formal workplace rules and procedures is necessary. Furthermore, it is clear that new organizational patterns, often summarized with the phrase “working by objectives”, imply a reconfiguration of the contents of the work obligation.

Against such background, papers may address in particular the following (but not exhaustive) questions and issues:

- What is the meaning of workers’ operational autonomy in the new workplace organizational patterns, and to what extent does such autonomy impact on the content and on the breadth of the obligation to work.
- How does the role of professional skills change in a workplace characterized by more autonomy in the work performance.
- How does vocational training enter into the scheme of the employment contract under a model based on workers’ autonomous decision-making and problem solving capacity? Is it to be conceived as a duty, as a right or both?
- Is it possible for work arrangements to combine autonomy and wellbeing, granting the worker the possibility to express and fulfill his capabilities and protecting him from self-exploitation at once?
- How are the outcomes related to the individual workers belonging to particular groups of the population?
- Are there inequalities amongst employees according to their individual characteristics (gender, age, and education level) and regarding their job and firm characteristics that can be related to the type of autonomy and its implication on working conditions?
- On which grounds and according to which procedures should the assessment of a work performance based on the autonomous or discretionary decision making and on the achievement of a given objective be carried out?
- How and to what extent should the objectives of the performance be previously formalized to avoid information asymmetries to the detriment of the worker?

- How does the concept of fair remuneration react to the enlargement of the obligation entailed in a “working by objective” pattern, in terms of proportionality and linkage to the achievement of a given result?

Track 2: The Very Notion of Autonomous Work.

Papers under this track should present data, insights and proposals on the working conditions of the self-employed workforce. This topic encompasses the status of workers hired as self-employed with the only purpose of circumventing labour law and collective agreement provisions, but also the workers who stand in the “grey zone” between protected and under-protected work and those in the category commonly considered as “self-protecting”, such as professionals and small entrepreneurs, who are experiencing a significant deterioration of their working and labour market conditions, including incomes. Matters for discussion include the solution of the mismatch between the scope of protective regulations and the established criteria for the classification of workers, the repression of abusive behaviors and the guarantee of fundamental rights to the self-employed. In this regard, it may be interesting to shed light on the way in which the common indicators of self-employment, such as the autonomous organization of the worker’s performance, the aim to an expected result and the absence of external monitoring, come to interact with enabling technologies that enhance remote communication, formalization of work procedures and control. Other issues to be addressed include the available options to substitute the criteria for the allocation of labour law protections based on the way a job is organized and performed to a more substantive appreciation of the working person’s needs and interests.

Against such background, papers may address in particular the following (but not exhaustive) questions and issues:

- Drawing from the comparative experience, what are the existing criteria to classify an employment relationship, and which are the most effective in terms of meeting the actual needs for protection of workers placed in the “grey zone” between dependent employment and self-employment? Which indications are offered by the Courts in this respect?
- Is the autonomy-subordination dichotomy still a suitable distinctive criterion to modulate the different levels of protection granted to workers by labour law? What concurrent criteria can be laid down to ensure a fair and more effective allocation of rights to all workers?
- Do (or can) enabling technologies such as digital devices and artificial intelligence produce more autonomy or more control on formally self-employed workers? To what extent the outcomes are related to the individual belonging to a certain group of the population.

- Which contractual arrangements should be laid down to re-balance the conditions of self-employed workers and ensure that they enjoy their fundamental rights in the framework of the contractual relationship (e.g. minimum compensation, termination of contract, protection of health and safety, work-life balance etc.). What is the role that legislation can play to promote and drive such arrangements?
- What kinds of instruments can be activated by public authorities to protect the social rights of the self-employed and reinforce their position in the labour market?

Track 3: Social Protection and Collective Self-Regulation of Autonomous Work

Paper in this track should address the problem of how to lay down appropriate measures and policies of social and labour market protection for self-employed workers. The inclusion of independent contractors and service providers in the welfare system can not be further postponed, as it increasingly acknowledged by policymakers at the national and transnational levels. For instance, the issue is expressly mentioned in the European Pillar of Social Rights. In a similar vein, the ILO's Global Commission on the Future of Work, in the recent report *Work for a brighter future*, advocated the establishment of a "Universal Labour Guarantee that provides a labour protection floor for all workers, which includes fundamental workers' rights, an 'adequate living wage', limits on hours of work and safe and healthy workplaces".

However, this poses challenges that concern, on the one hand, the sustainability of the public welfare systems in the light of the enlargement of the group of beneficiaries, and on the other hand the appropriateness of traditional welfare and labour market instruments to meet the needs of this peculiar category of workers. Therefore, while specific public-private partnerships could be studied for regulating and managing the social protection of the self-employed, a reflection is also needed on which instruments should be prioritized to ensure an efficient fulfillment of their needs: examples encompass the provision of a minimum income, event-related benefits to cover sickness, professional illness, insurgence of family care duties and ageing, and employment services aimed at guiding independent contractors in the labour market, matching supply and demand, providing training and sustaining professional upgrade and entrepreneurship. Both the issues outlined above entail a possible regulatory role of collective bargaining. Thus, a specific matter for discussion in this respect is represented by the restrictions that competition and antitrust law create in many systems, including the EU, to the exercise of collective representation, bargaining and action rights of independent contractors. It is reasonable to ask, in fact, whether the traditional relationship between antitrust law and labour law, whereby crucial collective practices that the latter recognizes as fundamental rights are interpreted in the realm of the former as unlawful price-fixing

actions, trade cartels and other forms of restriction to competition, should be reframed under different assumptions and with different aims, taking into consideration the changed social and economic characterization of self-employed workers.

Against such background, papers may address in particular the following (but not exhaustive) questions and issues:

- Is a minimum income, or other universal guarantees, a feasible measure to protect self-employed workers from contractual imbalances and labour market constraints? What relationship should be established between such measure and other social protections instruments, taking into account also the social and demographic changes affecting the self-employed and the workforce in broader terms?
- Should public-private partnerships be established to provide adequate social protections to independent contractors? Or should the whole welfare systems be reframed, and on which grounds, to embrace different categories of workers and ensure equality and sustainability? Are there significant experiences that can be taken as an example in this respect?
- Is the establishment of a transnational system of social protection, encompassing for instance pension funds and unemployment benefits, a feasible tool to address the labour market conditions of contemporary self-employed workers, with a particular regard to workers in the European Union?
- How can the constraints currently posed by competition and antitrust law to collective association and bargaining of independent contractors be overcome? What characteristics of the “employment” relationship, and market conditions more broadly, provide more efficient grounds to advocate an exemption of self-employed workers from antitrust law (e.g. the economic dependency, the imbalance of bargaining power, the functional integration between the service provider and the client, etc.). What lessons can be drawn in this respect from the comparison of national and/or international legislations (e.g. US, EU)?
- What arguments can be drawn from international law and human rights law in support of an enlargement of the exemption from antitrust law to independent contractors?
- What may be the most efficient structures, organizational forms and strategies for the collective representation of independent contractors? Are established actors such as trade unions suited to bring under their sphere of influence this peculiar sector of the workforce?
- What are the significant experiences of collective organization of interests of self-employed workers recorded so far, and what outcomes have they achieved?

SUBMISSIONS

1) Papers. Scholars who intend to contribute to one of the conference tracks should submit an expression of interest by **9 September 2019** with:

- the title of the proposed paper;
- an outline of about 500 words (not including the bibliography), specifying the topic and the nature of the paper (theoretical analysis, discussion paper, presentation of empirical data);
- the disciplinary (or inter-disciplinary) domain of the paper (e.g. Labour Law, Organisation Theory, Labour Economics);
- the author's affiliation;
- an indication of the conference track for which the paper is intended, bearing in mind that the Scientific Committee reserves the right to assign papers to the track and session they consider to be most appropriate.

2) Panels. The organizers welcome the submission of proposals for full panel sessions addressing the topics described in this call. Panels should consist of three papers and one discussant. The panel convenor may also serve as the chairperson of the panel. Proposals should be submitted by the panel convenor by **9 September 2019** and should indicate, in one single document:

- the title of the proposed panel and papers;
- the names of the speakers, discussant and chairperson;
- a brief outline of the objective and the rationale of the panel (about 500 words);
- an abstract of each paper (about 1000 words not including the bibliography).

Expressions of interest and panel proposals will be selected by the Scientific Committee by **20 September 2019**.

Only for paper proposals, selected authors will be invited to present an extended abstract (2000 words, bibliography excluded) no later than **1 November 2019** with a brief discussion of the results and conclusions of the paper.

Extended abstracts will be selected by the Scientific Committee by **15 November 2019**.

Selected authors (including panel proposals) will be required to submit a paper of 8000 - 10000 words no later than **14 February 2020**. The papers should take the form of a research article rather than simply the description of work in progress.

In cases in which it is not possible to accommodate all the contributions in the plenary or parallel sessions, the Scientific Committee may offer authors the opportunity to present their work in the poster sessions.

The Scientific Committee reserves the right to reject papers and panel proposals that are not consistent with the conference tracks, or papers that are not consistent with the expression of interest/full abstract previously approved.

The Scientific Committee will select the contributions to be included, after revision, in the Conference Proceedings to be published in 2020/2021 by an international publisher. By submitting their final papers, the authors agree to the publication of their paper in the proceedings in case of acceptance by the Scientific Committee, in compliance with the no-multiple-submissions rule.

The working language of the conference sessions is English, and interpreting services will not be available. Abstracts and papers should be submitted in English.

DEADLINES

- Deadline for submission of expressions of interest (papers and panels): 9 September 2019.
- Deadline for submission of extended abstracts (papers): 1 November 2019.
- Deadline for submission of full papers (papers and panels): 14 February 2020.

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CONTACTS

Expressions of interest, panel proposals, abstracts and full papers, as well as requests for information, should be addressed to the e-mail address: **marcobiagiconference@unimore.it**

The first draft of the conference programme will be distributed by the end of **January 2020**.

Further information will be posted on the Marco Biagi Foundation website: www.fmb.unimore.it