

# The Autonomous Workers and the Needed Responses of Social Protection Systems to Overcome Transitions

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## Abstract

The contribution investigates the need to provide an efficient system of active labour market policies for the autonomous workers too, and despite their heterogeneity, in order to give them the adequate support to stay and to overcome transitions in the labour market.

**Keyword:** Autonomous Workers; Social Protection; Active Labour Market Policies; Labour Market Intermediaries (LMIs); Labour Market Transitions.

## 1. Introduction.

The heterogeneity of the autonomous workers is reflected also in the protections they need. It is not a mere descriptive exercise to explain the disparate typologies which animate the area of non-subordination, since many factors - the greater or lesser economic dependence, the belonging or not to a professional association, the adhesion to a tax system rather than another - have an impact on the need to guarantee protections, but with different nuances.<sup>1</sup>

For most of the 20th century, the subordinate employment contract was the archetype of labour law and the almost exclusive object of studies. But at the end of the century, self-employment, with different methods and numbers and through different regulations,<sup>2</sup> regained its share, questioning the classic model of work and labour law which opened up to an expansive trend.<sup>3</sup> This trend has developed in two ways<sup>4</sup>: through a redefinition of the

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<sup>1</sup> Semenza R., Pichault F., *The Challenges of Self-Employment in Europe. Status, Social Protection and Collective Representation*, Edward Elgar, 2019, 2; see also Baker M., Egert B., Fulop G., Mourougane A., *To what extent do policies contribute to self-employment?*, OECD Economics Department Working Papers, November 2018, 8.

<sup>2</sup> See Shulze Bushoff K., Schmidt C., *Adapting labour law and social security to the needs of the 'new self-employed' – comparing the UK, Germany and the Netherlands*, in *Journal of European Social Policy*, 19, 2, 2009.

<sup>3</sup> Perulli A., *Il lungo viaggio del lavoro autonomo dal diritto dei contratti al diritto del lavoro e ritorno*, in *Lavoro e Diritto*, 2, 2017, 256.

<sup>4</sup> Davidov G., *Setting labour law's coverage: between universalism and selectivity*, in *Oxford Journal of Legal Studies*, 34, 3, Autumn 2014, p. 543; also Davidov G., *The goals of regulating work: between universalism and selectivity*, in *The University of Toronto Law Journal*, 64, 1, Winter 2014, 1.

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outlines of subordinate work;<sup>5</sup> or through a selective extension of the protections usually provided for subordinate work.<sup>6</sup>

The world of self-employment is varied, the blurred boundary between self-employment and subordination is increasing and the potential deriving from the globalized and digital economy has made it even more dynamic and constantly growing. The range extends from traditional intellectual professions, to new app workers, getting to other figures, even unregulated but with high level of professionalism, such as trainers, interpreters, consultants, managers.<sup>7</sup>

This diversity is reflected in the relationship between the autonomous workers and the labour market and requires certain categories greater support in their work and status transitions during professional life, compared to the others that enjoy greater autonomy.

In a global and digital market in which competition is also reflected on the capacity to adapt and develop, the main risk is represented by the rapid obsolescence of skills and the need to constantly update them. These critical issues also concern the need to provide support for the transitions in the labour market that affect self-employed workers more and more frequently during their professional paths. This support cannot and must not be reduced to a mere financial aid to support periods of non-work. States have to guarantee an effective right to transitions in order to provide the tools to know how to stay updated and how overcome a period of non-work. Therefore, a stable and updated system of lifelong training, career counselling, validation of skills and intermediation are needed.

The paper aims to analyse the recent measures adopted so far by the Italian legislator to support autonomous workers in the labour market transitions, highlighting their lights and shadows, in order to verify whether they can constitute an effective basis for an integrated system of active labour market policies addressed to them. Finally, the paper aims to suggest some proposals for an effective implementation of these provisions, on the basis on the European experiences, in particular on the services provided by the labour market intermediaries (LMIs).

## 2. Transitions and autonomous workers at European and supranational level.

If it is undeniable that many workers are self-employed because they are forced, since they do not find safer and more stable alternatives, it is also true that for many others it is a free and conscious choice.<sup>8</sup> This is an aspect that cannot be underestimated by legislators who very often have looked at a part of self-employment only as a tool abused by employers in order to outsource services and avoid the conclusion of subordinate employment

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<sup>5</sup> From the extension of the French *lien juridique de subordination* to the substantial redefinitions of the purposive approach, up to the creation of a presumption of "employee status".

<sup>6</sup> This is the case of the Loi Travail in France which has extended to the platforms' workers some protections typical of employees such as social insurance for illness and accidents but also the right to training and certification of skills.

<sup>7</sup> Semenza R., Pichault F., nt. (1); also *Independent Workers and Industrial Relations in Europe, Synthesis Report*, European Commission DG Employment, Social Affairs & Inclusion.

<sup>8</sup> Leighton P., Brown D., *The rise of Europe's Independent Professionals (iPros)*, EFIP, 2013.

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relationships. But this represents an extremely partial photograph of a phenomenon that, above all thanks to new technologies, has created new works and a different conception of work, dematerialized in place and time.<sup>9</sup>

This legal and cultural dynamism is also the result of decisive work by the European Union institutions of the last decades in promoting the paradigm of flexicurity.<sup>10</sup> By replacing job stability with security in the labour market, more and more attention has been placed to supporting transitions along the professional path of the worker and to his proactive attitude. There have been many recommendations to Member States to implement active labour market policies (ALMP) to stimulate people to be prepared for job flexibility.

Traditionally, in the model built on flexicurity, self-employment has been considered as an active labour market policy. The employment services to the unemployed (who therefore had a subordinate employment contract) who begin a re-allocation process, also offer advice on the possibility of undertaking an independent activity, with courses on self-entrepreneurship and support to starting a new business activity.<sup>11</sup>

From 2008 onwards, with the outbreak of the economic crisis and the simultaneous increase in unemployment - especially youth and long-term unemployment - the incentives for self-entrepreneurship increased significantly as self-employment was seen as the key to increasing the rate of employment<sup>12</sup>. This is because if an unemployed person undertakes an entrepreneurial activity, this causes a double benefit in terms of overall employment: on the one hand the person finds a new job, on the other, if the new business activity works, he could hire other people.<sup>13</sup>

Over the past decade, self-employment has also taken on an autonomous dimension within the European institutions, not just ancillary to subordination. In particular, it was not considered only as a tool to raise employment rates in the absence of subordinate employment relationships, but also to create good jobs and therefore it needs targeted strategies.

In the European 2020 strategy, entrepreneurship and self-employment are considered two essential elements for achieving smart, sustainable and inclusive growth. Even the Commission, in the absolute priorities for the five-year period 2019-2024, reiterated that in

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<sup>9</sup> About the impact of technology on the labour market see the study of Dachs B. for the European Parliament, *The impact of new technologies on the labour market and the social economy*, March 2018.

<sup>10</sup> Schmid G., *Sharing Risks of Labour Market Transitions: Towards a System of Employment Insurance*, in *British Journal of Industrial Relations*, 53, 1, 2015, 70.

<sup>11</sup> Bradley J., *Self-employment in an equilibrium model of the labor market*, in *Journal of Labor Economics*, 2016, 2.

<sup>12</sup> Some authors say that the *erga omnes* subsidies, paid not selectively, have increased the number of self-employed workers with little chance of creating a strong positive impact. There are basically three types of self-employed workers as a consequence of these incentives for self-entrepreneurship: those who see a new possibility of making profit; those who become self-employed due to lack of subordinate employment opportunities; those who receive a job offer but who are obliged to become self-employed to accept it (economic dependence); Romàn C., Congregado E., Millan J.M., *Start-up incentives: Entrepreneurship policy or active labour market programme?*, in *Journal of Business Venturing*, 28, 2013, 153.

<sup>13</sup> Dvoulety O., Lukes M., *Review of Empirical Studies on Self-Employment out of Unemployment: Do Self-Employment Policies Make a Positive Impact?*, in *International Review of Entrepreneurship*, 3, 2016.

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order to boost growth in Europe it is essential to provide the right support to entrepreneurs and self-employed workers, to develop their knowledge and skills.<sup>14</sup>

The European pillar of social rights, approved by the European Parliament, the Council and the European Commission at the Social Summit for fair employment and growth in Gothenburg in November 2017, enshrines the need to provide protections and social security for all forms of work, not only subordinate, including self-employment as a relationship that requires fundamental rights. The objective of the institutions, through the Pillar, is to support "fair and well-functioning labour markets and social protection systems" in order to "offer citizens new and more effective rights, addressing the emerging social challenges and changes in the world of work, in particular in light of the new forms of employment deriving from technological developments and the digital revolution".<sup>15</sup>

Thus, in the Chapter I ("Equal opportunities and access to the labour market") it is reaffirmed the right of every person to training, education and lifelong learning in order to maintain and at the same time expand skills. This principle invites the member States to increase the quality and awareness of life-long learning also among adults; it also encourages flexible formal and non-formal training opportunities and professional retraining in order to manage transitions in the labour market<sup>16</sup>. These transitions could be changes in employment or employer status, interruptions or the return to work after a period of interruption "and the transition from dependent work to self-employment"<sup>17</sup>. To implement this principle, the institutions invite States to involve the social partners through collective bargaining and the development of national and local level policies to improve and increase opportunities for training, life-long learning and professional retraining.

The first principle is linked to the fourth, namely the right to active support for employment. It states that "everyone has the right to timely and tailor-made assistance" as well as that every person has the right "to transfer social protection and training entitlements during professional transitions" in order "to improve employment or self-employment prospects".

Nonetheless, like employees, self-employed workers need an effective social protection system which also translates into economic support for income. This is dealt with by the third and last head of the Social Pillar no. 12, which states that, regardless of the type and duration of the employment relationship, self-employed workers have the right to adequate social protection. Subsequently, a recent Council Recommendation also came back on the point, proposing the aim of providing subordinate and self-employed workers with minimum standards in the social protection sector, in accordance with the fundamental principles of national systems<sup>18</sup>.

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<sup>14</sup> European Commission and OECD, *Policy Brief on Sustaining Self-employment. Entrepreneurial Activities in Europe*, 2015.

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, *Establishing a European Pillar of Social Rights*, SWD (2017) 201, 3.

<sup>16</sup> See also *New Skills Agenda for Europe*, adopted by the Commission on 10 June 2016 and the Council Recommendation of 19 December 2016 on Upskilling Pathways: New Opportunities for Adults.

<sup>17</sup> Document of Commission, SWD (2017) 201, 8.

<sup>18</sup> Council Recommendation of 8 November 2019 on access to social protection for workers and self-employed (2019/C 387/01).

The need to include autonomous workers in the social protection system has been taken into account by the International Labour Organization, which in the recent report "Working for a better future"<sup>19</sup>, reiterates this goal. Governments are also urged to increase investment and the effectiveness of public employment services - also by strengthening cooperation with private partners - to support transitions, through the adoption of tailor-made active policies that increase employability, including training for self-employment.

The European and international institutions are therefore well aware of the fluidity that characterizes the labour market and of the need that self-employment, should not be considered only as a bridge to pass from one subordinate job to another but as a form of work, that, precisely as being multi-faceted, requires targeted protections and rights, such as that of continuous training, access to employment services and forms of social protection.

### 3. Transitions and autonomous workers at national level: the Italian case.

To complete the reformist season of labour law that began with the so-called Jobs Act in 2014, the Italian legislator issued the Legge 22 maggio 2017, n. 81, in order to guarantee some forms of protection also for autonomous workers.<sup>20</sup> The law, is primarily concerned with extending to self-employed workers, with the exclusion of entrepreneurs and small-scale entrepreneurs,<sup>21</sup> both social rights as well as contractual rights. The legislator therefore, referring to "self-employed non-entrepreneurial work", includes all types and nuances of self-employment.

In addition to the provisions related to welfare, significant are also the rules that deal with the deductibility of training costs and access to life-long learning (art. 9) and access to information on labour market and personalized orientation, requalification and placement services (art.10).

This is an important novelty for the Italian legal system, given that, for the first time, rights and protections usually linked to a subordinate employment relationship are extended also to independent employment relationships, even if in a generalized way. On a theoretical level, what is important is that the Italian legislator has opened the boundaries of labour - and labour market - regulation, which usually marks the perimeter of subordinate work, even to what is not subordinate.

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<sup>19</sup> Global Commission on the future of work, *Work for a brighter future*, ILO, 2019.

<sup>20</sup> For a more thorough analysis see, Perulli A., *Il Jobs Act degli autonomi: nuove (e vecchie) tutele per il lavoro autonomo non imprenditoriale*, in *Rivista italiana di Diritto del lavoro*, I, 2017, 173 ff.; see also Santoro Passarelli G., *Il lavoro autonomo non imprenditoriale, il lavoro agile e il telelavoro*, in *Rivista italiana di diritto del lavoro*, I, 2017, 376 ff.; Giubboni S., *Il Jobs Act del lavoro autonomo: commento al capo I della legge n. 81/2017*, in *Giornale di Diritto del lavoro e Relazioni industriali*, 2017, 471 ff.; Razzolini O., *Jobs Act degli autonomi e lavoro esclusivamente personale. L'ambito di applicazione della legge n. 81/2017*, in Perulli A., Fiorillo L. (eds.), *Il Jobs Act del lavoro autonomo e del lavoro agile*, Torino, 2018, 24 ff..

<sup>21</sup> Disagree with this provision, Perulli A., nt. (3) 269; Razzolini O., *Piccolo imprenditore e lavoro prevalentemente personale*, Giappichelli, 2012.

The article 9 extends the amount and the number of deductible expenses<sup>22</sup>: i) costs for enrolling in masters, training courses or continuing professional courses, at conferences and congresses, fully deductible up to a maximum of 10,000 euros per year<sup>23</sup>; ii) expenses for personalized skills certification services, guidance, research and support for self-entrepreneurship, linked to actually existing and appropriate employment opportunities in relation to the conditions of the labour market, within the annual limit of 5000 euros; iii) expenses for insurance against non-payment of self-employment services, fully deductible.

The expenses of the second group represent an absolute novelty since they link the training and professional updating of the self-employed to the professional outlets, to facilitate their placement. The novelty is the incentive (from a fiscal point of view) to stimulate professionals to keep up to date, and by the link expressed between active policies for self-employed workers and the labour market, something usually unknown to workers excluded from the field of the subordination.

The legislative provision expressly recalls accredited bodies to the provision of these services, in the awareness of the difficulty of public employment services in organizing and effectively providing measures of this type. This difficulty surely increases in the case of measures reserved for self-employed workers, as they represent a completely new target for public services.

The article 10 of L. 81/2017<sup>24</sup> extends the accessibility of public employment services also to the area of self-employment<sup>25</sup>. This is operationally translated into the provision of services and free ALMP also for self-employed, who can request and obtain qualified assistance in the labour market, which will facilitate them in professional transitions and in training and in vocational retraining courses.

The provision represents, in more general terms, the definitive awareness of the legislator of the need to provide self-employed workers, especially those who have relationships characterized by economic dependence with the client, of the tools that allow them to be supported in the labour market. In this sense, the Italian legislator responded to the recommendations from the European institutions and implemented the provisions adopted by supra-national sources (see the second paragraph), in particular from the Charter of Fundamental Rights of the European Union, from the European Social Pillar recently adopted and the recommendation of the ILO.

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<sup>22</sup> For an analysis of art. 9, see Passalacqua P., *Gli incentivi alla formazione e al collocamento del lavoratore autonomo*, in Zilio Grandi G., Biasi M. (eds.), *Commentario breve allo Statuto del lavoro autonomo e del lavoro agile*, Wolters Kluwer Cedam, 2018, 369; Viotto A., *Le disposizioni fiscali, la deducibilità delle spese e l'accesso del lavoratore autonomo alla formazione permanente*, in Perulli A., Fiorillo L. (eds.), *Il Jobs Act del lavoro autonomo e del lavoro agile*, Torino, 2018, 73.

<sup>23</sup> Before the new provision, there was no ceiling but a deduction equal to 50 percent of the expenditure.

<sup>24</sup> Olivieri A., *Quali politiche attive per i lavoratori autonomi?*, in *Massimario di giurisprudenza del lavoro*, 13 dicembre 2017, 12, 864.

<sup>25</sup> Perulli A., *Il jobs act degli autonomi*, in *Rivista italiana di Diritto del lavoro*. About art. 10 of the Law 81/2017; see also, Cagnin V., *Art. 10, l. 22 maggio 2017, n. 81 ed il nuovo sportello di servizi al lavoro per i lavoratori autonomi: funzioni, soggetti coinvolti e criticità contestuali*, in Perulli A., Fiorillo L. (eds.), *Il Jobs Act del lavoro autonomo e del lavoro agile*, Torino, 2018; Montanari A., *I servizi per l'impiego per il lavoratore autonomo*, in Zilio Grandi G., Biasi M. (eds.), *Commentario breve allo Statuto del lavoro autonomo e del lavoro agile*, Wolters Kluwer Cedam, 2018, 379.

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The legislator takes into consideration the generality of employment services (public employment centers, private operators and the authorized one), but the number of actors involved can be extended through the instrument of the agreements to the representative or aggregative subjects of the self-employed.<sup>26</sup> Employment offices can stipulate (not costly) agreements in order to delegate the provision of services to professional orders, to professional associations of a private nature which bring together professionals who are not organized into orders and the associations that aggregate them.<sup>27</sup>

The public or private subjects identified by the standard provide personalized services such as intermediation, and information, *id est* consultancy relating to the procedures in order to start autonomous work activities.

With the new provisions, that bring self-employment for the first time into the dynamics of the labour market,<sup>28</sup> the importance of ALPM acquires autonomous meaning and value, as being decisive tools for transitions, regardless of the provision of passive policies, which are usually unrelated to the world of self-employed workers.

The Italian legislator therefore took up the call of the supranational recommendations by widening the user area of the employment services as much as possible, thus giving substance to art. 4 of the Italian Constitution, which sees in the possibility of accessing to the labour market the fundamental core of the right to work.<sup>29</sup>

In addition to expanding the area of beneficiaries, the provisions have the advantage of expanding the subjects involved in the provision of services. This depends primarily on the fact that public employment services are currently unprepared to offer special assistance to self-employed workers, but also on the fact that the legislator, for the usual austerity policies, has not planned to finance these services. Therefore, the instrument of the agreement in order to involve other actors in the provision of the ALMP referred to in article 10 has the advantage of relieving public services; another advantage is that these policies are provided by subjects that users perceive as close to them, for example the professional orders for those who are registered or the associations that represent self-employed workers, even those not enrolled in professional registers. It also involves private bodies, according to supranational indications, trying to create a complex system to meet the diversified needs of users.

The most critical problem, however, consists in being able to provide these services to a very heterogeneous set of professional figures. From a theoretical point of view, therefore, it seems an appropriate choice that the legislator has opened to collaboration with the other public and private bodies, through the instrument of the convention; from an operational point of view, it is decisive to cooperate with subjects capable of calibrating the services

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<sup>26</sup> Montanari A, nt. (26), 384.

<sup>27</sup> On this point the provision is imprecise and has given rise to interpretative doubts both as regards the administrative authorization regimes for the exercise of these activities, and on the qualification of the private bodies that may be involved.

<sup>28</sup> Canavesi G., *Mercato del lavoro, Servizi per l'impiego e lavoro autonomo. Un gap culturale difficile da colmare*, in *Argomenti di diritto del lavoro*, 3, 2018, 689.

<sup>29</sup> *Ibidem*.

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according to the needs of the user, in order not to frustrate such opening and the legislative reasoning behind.<sup>30</sup>

#### **4. The subjects supporting transitions: old and new responses to autonomous workers needs.**

The fact that the Italian legislator has inserted autonomous workers into the labour market dynamics is a positive aspect; equally positive is to have opened the way to collaborations with other subjects who can effectively provide intermediation services and information.

These two activities presuppose an accurate knowledge of the territory and the reference labour market, as well as of the specific characteristics and needs that concern self-employed workers, which are very different from those to which the operators of the job centers are used to. Even more so because, as mentioned, the legislator refers in an undifferentiated way to all self-employed workers, including regulated professions as well as new digital freelancers.

With particular regard to the professionals - those who in order to carry out their activity must be enrolled in a register -, the legislator opens up the express possibility of entering into agreements with professional orders and chambers. The latter,<sup>31</sup> in addition to administrative and self-government activities, represent a point of reference for members about training and updating; the orders organize seminars and conferences and update the skills of the professionals that are essential for carrying out their activities (for example digital skills). They also carry out intermediation activities, publishing collaboration proposals on their platforms or website pages, in order to connect the professionals that offer them with those interested in benefitting from them.<sup>32</sup>

Partially similar is the case of non-regulated professions, to which the legislator has dedicated a specific discipline with L. 14 gennaio 2013, n. 4,<sup>33</sup> also referred to in art. 10 of the Italian Statute. These are professions that do not require enrollment in a register to be exercised; however, independent professionals can voluntarily decide to join to offer greater transparency to their customers on the skills and quality of the services provided. The law promotes, through associations, the qualification of activities carried out by independent professionals (which is based on their compliance with technical standards); the certification issued by an accredited body of compliance with the technical standard; the constant professional training.

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<sup>30</sup> This is the aim of the memorandum of understanding signed on February 21, 2019 by *Anpal Servizi e Confprofessioni*. The parties undertake to share the initiative with each Region, involving the different territorial actors and making their own information assets available.

<sup>31</sup> In Italy, professional orders are autonomous public bodies supervised by the Ministry, they have a structure defined by laws.

<sup>32</sup> The most frequent case is the compulsory internship period with a self-employment worker in order to enroll in a professional order, but also the independent professional who is looking for a collaborator or wants to outsource a service.

<sup>33</sup> Legge 14 gennaio 2013, n. 4, on organization on independent workers.



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The merit of orders and associations is primarily that of being perceived as close by its members and enrolled associates. This perception has undoubted advantages both for professionals who feel protected, represented and supported where necessary, and for the professional order or associations in general, which can supervise on minimum standards of conduct and professionalism and encourage continuous and vocational training.

However, it is more complex to try to aggregate and offer support to those figures, although being characterized by high professionalism, who cannot recognize themselves within precise defining schemes and for this reason remain without a guide. They are characterized, in fact, by a marked heterogeneity and professionalism and by geographical dispersion<sup>34</sup> (also due to the digital platforms and tools), but they also have very disparate needs and requirements.

On the one hand, these reasons justified the inability of the classic trade union model to understand the phenomenon and to have enough strength, if not representative, at least aggregative; on the other hand, they have pushed some subjects, traditional or completely new organizations, to respond to the needs of independent professionals<sup>35</sup>.

Thus, next to the traditional unions, that have tried to include new workers by setting up specific structures or by incorporating them into the existing ones, two different types of organizations have appeared. These organizations, that perform collective representation actions, are the so-called quasi-union and the labour market intermediaries (LMIs).

The quasi-union are associations that have taken different forms but are all self-organized and have a bottom-up government<sup>36</sup>; they have taken on some of the representative functions of the unions to represent the requests of the new independent professionals. Unlike traditional unions considering autonomy at most as a way to cover a subordinate employment relationship, these organizations, created very often thanks to the workers' activism, speak the same language of their associates, using the web and digital platforms to a global network.

The Labour market intermediaries (LMIs) are another organizational response to the needs of new independent professionals. The LMIs mainly perform intermediation functions, putting individual workers in contact with the clients who benefit from their services. Their functions and activities have developed and expanded over time, also including support in the administrative practices that professionals must perform, sometimes acting as quasi-employers.<sup>37</sup>

For the purposes of our research, the most interesting aspect, in addition to the matching activity between job supply and demand, is that the LMIs have developed organizational schemes and systems to support self-employed workers in transitions, providing access to social rights that can be activated regardless of the professional status of the subjects. Transition support takes place through multiple instruments, both of an economic nature (insurance and benefits tools, financial support for the development of new business

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<sup>34</sup> Mori A., Semenza R., *Il lavoro autonomo e professionale, le sfide e le risposte istituzionali in Europa*, in Perulli A. (ed.) *Lavoro autonomo e capitalismo delle piattaforme*, Wolters Kluwer Cedam, 100.

<sup>35</sup> These initially voluntarily kept themselves away from the institutions, preferring to negotiate individually with the clients; see Mori A., Semenza R., *ibidem*.

<sup>36</sup> See Mori A., Semenza R., nt. (35)

<sup>37</sup> Independent Workers and Industrial Relations in Europe, nt. (8).

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activities); and, above all, through training, information and opportunities to create contacts and network among independent professionals. They therefore provide activities which, in addition to making workers more autonomous in their individual paths, also increase their sense of belonging to a community of people who share the same practical issues.<sup>38</sup>

LMI's<sup>39</sup> are created to provide concrete help to the discontinuous paths of independent professionals who, passing from one job to another, risk losing income, skills and training. If for high professional profiles this risk is not a problem, for most self-employed workers, especially digital workers, this could represent an evident risk to which intermediaries try to respond. Intermediation is not only positive for workers, but for the same clients who in a period of hyper-specialization of the tasks and competences are helped to find the most appropriate professional to carry out a certain activity.<sup>40</sup>

The LMI take different legal forms and different organizational methods: there are public intermediaries such as job centers or private ones such as employment agencies; professional associations and trade unions often work as LMI's too. Traditionally, they are characterized by a triangular pattern whereby to the specific request of a client (company), they respond by providing the right human resource; but there are others, constantly growing, characterized by a mutualistic logic in which the same workers join together in order to share information and good practices, develop training courses or useful services for the same professional community.<sup>41</sup> These are the LMI's that have developed most with the growth of digital work and Independent Professionals (I-Pros).

Regarding the type of support in transitions, the more traditional models of LMI, such as private employment agencies, can be considered as an internalized model of the labour market, since between one mission and another, the agency helps the worker to find a new job offer, possibly providing to training and competences certification. In the new forms of LMIs, information on vacancies or on training and information to access services are made available; in this way the sense of belonging to the professional community is stimulated but workers are required to have greater individual proactivity.

The potential of LMIs in the professionals labour market is enormous and in the case of LMIs born thanks to the aggregation of the workers themselves (bottom-up organization), the aim is to maintain the individual status of the professional - that is, without the intermediary becoming an employer - but improving his condition. This means not as much

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<sup>38</sup> *Ibidem*.

<sup>39</sup> In the light of their role and functions, LMI's can be divided into three categories. The first category collects information on job vacancies, skills and profiles of jobseekers, such as online platforms; the second category brings together LMIs that deal with matching; in the third category there are the LMIs that carry out their activity for the entire period of the worker-user relationship, such as the temp agencies; see Bonet R., Cappelli P., Hamori M., *Labour market intermediaries and the new paradigm for human resources*, in *Academy of Management Journal*, 57, 4, 1035.

<sup>40</sup> Lorquet N., Oriane J-F., Pichault F., *How Can New Players Establish Themselves in Highly Institutionalized Labour Market? A Belgian Case Study in the Area of Project-Based Work*, in *British Journal of Industrial Relations*, 56, 2, 2018, 370; also Lorquet N., Oriane J-F., Pichault F., *Who takes care of non-standards career paths? The role of labour market intermediaries*, in *European Journal of Industrial Relations*, 24, 3, 2017, 279.

<sup>41</sup> Lorquet N., Oriane J-F., Pichault F., *ibidem*, 378.

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strengthening the employment relationship, as to smooth out the access<sup>42</sup> to rights and protections that effectively support transitions, such as the right to effective ALMP.

## 5. The Belgian and the French cases.

A positive case of organization that was formed thanks to the activism of the professionals is that of SMart, a Belgian LMI with the aim of representing the interests of associated workers and supporting them in professional transitions<sup>43</sup>. SMart, which initially represented only the interests of artists and project workers, was created to overcome the rigidity and extreme institutionalization of the Belgian work system and industrial relations,<sup>44</sup> which prevented non-standard workers from being suitably represented. SMart had to primarily seek the legitimacy of institutional and traditional actors, who feared that the appearance of new and atypical organizations could compromise the functioning of the institutional model.

To the so-called pragmatic legitimacy, SMart also united the organizational one. Since the careers of the artists are particularly discontinuous, this organization has intervened both to support them in administrative and legal activities and to access social benefits, and to manage relations with clients more effectively. More precisely, through the contractual instrument, SMart invoiced directly to the customers and subsequently returned the sum to the worker; in doing so, it also managed to guarantee workers access to the social protections guaranteed by law for subordinate workers. However, maintaining a non-profit structure, it differentiated itself from temporary employment agencies and managed to offer workers the support that traditional unions had not been able to provide. The fact of having provided the administrative and more practical needs has produced a legitimacy in enrolled workers which has transformed into a representative force also before institutions.

SMart's strength has been therefore to fill a gap, defending the status of self-employed workers of its members, but providing those protections that the system was unable to provide to them, so as to urge the social parties to think that a public model that reproduces on a large scale what SMart has been able to do with its members is needed.

The growing number of associated self-employed workers first pushed SMart to embrace not only artists but all self-employed workers who somehow provided creative activities; then, in 2016, confirming its nature as a non-profit association, SMart became a cooperative of self-employed workers and crossed national borders arriving in many European states including Italy, where it took the form of the mutual cooperative company for the specific category of artists.<sup>45</sup>

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<sup>42</sup> Lorquet N., Orianne J-F., Pichault F., *How Can Labour Market Intermediaries Secure Nonstandard Career Paths? An Exploratory Grid*, European Commission Report, 387. Lorquet N., Orianne J-F., Pichault F., *ibidem*, 370.

<sup>43</sup> Drahokoupil J, Piasna A., *Work in the platform economy: Deliveroo riders in Belgium and the Smart arrangement*, Etui, working paper 2019.

<sup>44</sup> Countouris N., De Stefano V., *New trade Union Strategies for New forms of employment*, ETUC, Brussels, 2019.

<sup>45</sup> In the different countries, SMart has diversified its target (not only professional actors and musicians, but also drivers, freelancers and craftsmen), shifting “its focus from work status to work content” (see Vandaele K., *Will trade unions survive in the platform economy? Emerging patterns of platform workers' collective voice and representation in Europe*, ETUI, Working Paper 2018.05, 24.

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In face of a membership fee of 50,00 euros and 8.5 percent of the compensation received by the client, the professional can access the Guarantee Fund which allows him to receive payments directly from SMart, even if the client should not pay them or pay them late. SMart also offers a series of services at discounted prices (for the rental of spaces dedicated to work activities) and promotes training activities by organizing training courses to implement transversal skills, courses on safety at work, free information sessions and meetings among professionals for the exchange of good practices and experiences.

Indeed, the model of mutual cooperatives of self-employed is not new even to the French legal system, where the Business and Employment Co-operatives (*Coopératives d'Activité et d'Emploi*) represent the vehicle for testing new forms of professional relationships and new dynamics between the activity of the individual and collective commitment.<sup>46</sup> The BEC were born in France in the mid-90s with the aim of bringing together entrepreneurs while maintaining their autonomy, while offering collective protection as if they were employees. They were born in response to rising unemployment rates when employment policies change from the logic of mere placement to that of accompaniment to work. In this new logic, which intervenes more on the demand than on the supply of job, the unemployed person is asked to be proactive, which inevitably leads to promoting the figure of the entrepreneur, who as such must renounce the protections of subordinate labour. Therefore, if in the first years two objectives coexisted, that of increasing the employment rate and that of promoting the development of entrepreneurship by offering protections, the objectives subsequently have expanded: therefore, the successive generations of BEC at first looked at cooperatives as a single and global collective enterprise and then, recently, as a mutual enterprise of work.

The subject approaching the BEC brings his own entrepreneurial project which he develops with the help of the cooperative; therefore, it has the status of autonomous but is paid by the structure, which retains a part of its income. The absence of the subordination was one of the winning points of the BEC which, through the current mutualistic phase, try to further develop the autonomy and independence of the members with respect to the clients. If in the cooperative the aim is that of carrying out a common activity, mutualistic organizations have the primary aim of protecting and contributing to the development of their members. Some cooperatives, also in order to cope with the new digital skills and the changes that their appearance has entailed, are opting for the change towards the mutualistic perspective, demonstrating their variable and non-static geometry oriented towards the development of individual activities within the borders of a collective integration and commitment.

This development was also determined by the issuance of a law in 2014<sup>47</sup> which defined its general operating framework, allowing the professional to join a sort of mutualistic platform that provides to fulfill, in its place, the tax, administrative and accounting costs. The most disparate professionals can join, (from digital managers to riders, from gardeners to IT technicians) except for those who must be enrolled in a register to carry out a business. At

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<sup>46</sup> Ballon J., *De la multifonctionnalité des Coopératives d'activités et d'emploi: des modèles socioproductifs expérimentaux dans les zones grises de l'emploi et du travail*, in *Revue de la régulation*, 30, 1er semestre 2021; Bureau M.-C., Corsani A., *Les coopératives d'activité et d'emploi : pratiques d'innovation institutionnelle*, in *Revue Française de Socio-Économie*, 1/2015, 15.

<sup>47</sup> Loi n° 2014-856 du 31 juillet 2014.

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the same time, the professionals are members and employees of the cooperative, enjoying the protections reserved for employed workers and the (mutualistic) sharing of spaces and services. This develops a sense of collective integration so that each member has his or her own personal activity, but is also committed to the common good of the cooperative, to increase the common fund and guarantee greater services.

## 6. Concluding Remarks.

Self-employment represents a vast and heterogeneous category of professions and workers and this variety has further amplified with the advent of digital platforms.

There is an expansive tendency of labour law to look beyond the boundaries of subordination, but the legislator who wants to try to offer protections to autonomous makes a double leap into the void: first of all, because he/she tries to do it in a field that is traditionally excluded of its scope; secondly, because it is not easy to bring together such a multifaceted world. In fact, this world requires a range of different answers, as many as the categories that are in it. And it asks for graduated rights and protections according to the needs and the (in) dependence of the professionals.

Including self-employed workers into the dynamics of the labour market is an absolute novelty that further breaks the barriers of the classic legal dichotomy. But it is precisely this variety of figures and the increasingly blurred boundaries that have raised the need to provide them with effective support in transitions. Discontinuous careers and rapid obsolescence of skills require constant updating, personalized training and information on the reference market.

Legal systems have recently started to give concrete answers, but the most problematic aspect is the concrete implementation of the provisions.

The measures recently introduced by the Italian legislator to encourage training through the deduction of expenses and to provide active labour market policies to self-employed workers are certainly a positive novelty. On the one hand, self-employment is no longer considered itself only as an active policy measure for the unemployed, on the other, the right to access public employment services for the professionals and the right to be supported in professional transitions through responses calibrated and nuanced on their specific needs are enshrined.

The convention, with which the legislator allows to collaborate with public and private actors, is the key to trying to concretize these rights. Through this instrument the provision of measures is delegated to specialized subjects close to professionals, which can be extremely personalized and specific. In this way many professionals - regulated or not - will enjoy the support of their registers or representative associations, relying on continuous training, intermediation and certification of skills.

For independent professionals who remain excluded from these institutionalized organizations, the matter is different, but recent experiences show us that it is possible to give them concrete answers and that indeed, precisely the appearance and development of aggregative forms of new self-employed workers, can stimulate systems to interpret their

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needs and to find new tools to protect them. The development of LMIs and mutual cooperatives shows us that it is essential for professionals to feel a strong sense of belonging towards the organization that supports and represents them; at the same time, that these new subjects acquire from the legitimacy given to them by the members the moral and juridical force, in order to bring their requests within the institutions and provide them with the right answers. It is no coincidence that where these organizations have opened up to institutional dialogue, their strength has increased, sometimes so much as to overcome national borders and extend internationally.

European documents, as well as the ILO, consider as essential to extend the right to obtain adequate active policies and support to face professional transitions to all -subordinate and self-employed -workers. To implement this right, States are invited to encourage cooperation between public employment services and private operators in order to offer users quick and personalized measures in a synergistic system. Private intermediaries are not only represented by employment private agencies, but by organizations created by will of the same workers they represent, in order to fill those gaps that the legal systems had left.

The task of the legal systems is therefore to facilitate the transparent development of these organizations and to prepare legal instruments to recognize and enhance their activity. Self-employed workers who approach employment services must be informed about bodies, including private ones, who can support them in a targeted manner. In the case of Italian provisions, as the list of bodies with which the agreements can be entered into is not exhaustive, collaboration with the LMI or cooperatives that carry out brokerage and training activities could be guaranteed. At ministerial level, a derogation on the minimum requirements for intermediation could be envisaged, for example for those subjects, such as non-profit mutual associations, which are of unquestionable importance for the independent professionals they represent. Since the number of self-employed workers is destined to grow, it is essential that the right to safe transitions is guaranteed through the activity of the most appropriate subjects. Only if workers feel represented can they be prepared for transitions and stimulated for transitions in which they are active parties.

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