

THIRD SECTION

CONCLUSIONS

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1. NEW INDEPENDENT PROFESSIONALS (NIPs) AS EMBLEMATIC OF A CHANGING LABOUR MARKET

As already noted, despite the distortion caused by the self-selection in the sample group of the I-Wire survey, its distinguishing features were still consistent with the reference population, as shown by the Eurostat data.

The profile of the respondents, as described in the previous chapters, is characterised by: (i) as high level of education; (ii) a high degree of operational-professional independence; (iii) a noteworthy level of flexibility and personal engagement. At the same time, their employment situation is characterised by: (iv) individual exposure to risk²; (v) unstable ties with labour organisations.

In other words, NIPs possess the characteristics that today's labour market is looking for (skills and flexibility), and which represent key ingredients in the competitive strength of businesses and the economy as a whole, but they are also subject to "uncertain" and "individualised" working conditions³, and without the support of adequate social safeguards or union representation.

If these constituent elements of the NIP "identity" (as well as that of the IPs, as shown by the Eurostat data) is viewed within a broader context, it can be observed that this professional group expresses the same tensions to be found all types of employment (whether independent or salaried) since the business model that had guaranteed life-long employment and protection from the risk of unemployment for thirty years following the post-war period after the Second World War began to lose its validity.

A number of considerations in support of our reflection can be summarised as follows.

In industrial societies, two categories found at the opposite ends of the social hierarchy are exposed to risk: (i) at the top, business owner; (ii) at the bottom, marginalised groups that live outside of institutionalised rules. Salaried employees are exempt from risk, being safeguarded by a labour market designed according to the model of a large-scale company that ensures virtually full employment on a permanent basis and at an adequate salary. This type of labour market works in combination with a social security system based on the figure of the adult, male head of the family, or the so-called male breadwinner. In other words, the system of social protection safeguards the head of the family by protecting his job.

The advent of the post-industrial model brought on a crisis for the two pillars that upheld security in the previous society (the labour market and the welfare state). Under the new approach to organising production, flexibility become the key element in working relations: types of employment gradually strayed from the standard "mould" of salaried employment (as a full-time,

¹ This chapter was written by Anna Soru, Cristina Zanni and Elena Sinibaldi.

² Specifically, there are three main categories of risk: (i) risk tied to economic stability; (ii) risk tied to maintaining professional capabilities by updating skills and know-how; (iii) risk resulting from exclusion from the system of social protection.

³ Bauman, Z. (2001), *Liquid Modernity*, London, Polity Press.

permanent salaried worker). With the spread of atypical forms of employment, situations of insecurity also became more common, as the risk began to climb up the social ladder, from the bottom to the top, with significant repercussions for those found “in the middle” (the middle class), as insecurity became the new “norm” for certain sectors of salaried employees as well⁴.

To deal with the transformations on the labour market, the northern European countries tried out the “flexicurity” approach⁵, which has been imitated in the rest of Europe in the years since, though in the form of less all-encompassing initiatives. Under this approach, the welfare system includes non-standard workers, but only those with contracts of salaried employment. The self-employed, being considered on the same footing as businesses, generally remain outside guarantees regarding income (minimum salaries set under law and collective bargaining), as well as social safeguards, and in particular protection against unemployment. An in-depth examination of the case of Sweden⁶ shows that the self-employed lack protection against unemployment, once again provided only to salaried workers, and that not all of them are able to pay for pension coverage.

During the last decade, the economic crisis has exerted a downward pressure on pay, bringing light, on the one hand, the lack of bargaining power of the self-employed when dealing with client enterprises, and on the other hand, the obsolete nature of the old “Fordism” model that saw independent workers as being able to cope with times of difficulty on their own, thanks to their savings. The problem being that independent workers, whose numbers have grown at a very rapid pace in the meantime, now have incomes that, on the average, are lower than those of salaried employees, meaning that they are no longer able to set aside sufficient resources.

In light of the above considerations, we hold that the NIPs, as a professional group, pose problems of relevance to (i) work as a whole and, even more to the point, (ii) the work-citizen equilibrium. These issues amount to “wicked problems”, or complex, multi-dimensional, stratified questions that cannot be dealt with under an exclusively “technical” approach, seeing that the political sphere must take responsibility for whatever arise as well.

Specifically, the primary problems posed by IPs are:

- The transformation of social welfare;
- Regulation of the market in terms of pay and income.

2. SOCIAL WELFARE FOR A CHANGING WORKING WORLD

The topic of the changing working world, and the resulting inadequacy of its systems of social welfare, have been a focus of public debate throughout Europe and the United States for at least

⁴ Negri, N. (2003), *Attrezzi per la sociologia economica (“Tools of Economic Sociology”)*, Turin, Trauben.

⁵ «A policy strategy that attempts, synchronically and in a deliberate way, to enhance the flexibility of labour markets, work organization and labour relations – on the one hand – and to enhance security (employment security and social security) notably for weaker groups in and outside the labour market – on the other hand» (Wilthagen and Tros, 2004).

⁶ I-WIRE, Country Case Sweden, Maria Norbäck, Lars Walter, Elena Raviola. 2017.

two reasons: (i) the growing percentage of workers excluded from social safeguards, or included only marginally; (ii) the increasingly fluid nature of work, along with the growing practice of holding multiple jobs, has led to cracks in systems of social protection designed for the standard model of salaried employment. The topic, though it has entered the realm of public, has only been dealt with in part by decision-makers, seeing that, as is the case with all “wicked problems”, it casts doubt on the validity of the very architecture of the current welfare systems. What is called for is a well thought-out political consensus, given that, at least over the short term, someone must “lose” something.

The measures tried out to date, as confirmed by the national case studies and the survey, present a number of distinguishing characteristics: (i) they maintain the social welfare model of insurance for salaried employment; (ii) they contemplate “market-based” solutions; (iii) they regard only a portion of the self-employed. In practical terms, the solutions identified are:

1. Efforts to eliminate misclassification;
2. Establishment of a “tertium genus”, or third category;
3. Assimilation of the self-employed into the category of salaried employment, regardless of their effective degree of subordination, as in the case of entertainment-industry workers in Belgium and France;
4. Classification of independent workers on the same footing as salaried employees through an intermediate structure that acts as a liaison with the client, referred to with the generic term of umbrella company (UC). It should be noted that in certain countries this mode of intermediation is subject to strict regulations, being allowed only if the organisation of intermediation presents specific features that ensure participation of the workers in the governance of the enterprise (Belgium and France).

The following are more thorough descriptions of the four possible solutions cited above.

1. In the majority of the countries involved in the survey, criteria have been established for identifying “bogus” self-employed workers and being them back under the category of salaried workers. The underlying concept is that only the “fake” self-employed should be protected. As was noted in the multi-sector report⁷: «Sometimes the qualification of the working relationships remains mainly based on court judgements; in others there is prevalence of the law on judgments, with strict predetermined criteria». In this last case, however, the effectiveness of the criteria employed under legal doctrine (and by the survey) appear increasingly unable to keep pace with technological transformations, seeing that the development of the technology of the Internet of Things (IoT) has led to the creation of new monitoring systems that eliminate the need to define space and time. Such transformations make it more difficult to identify “bogus self-employed” workers. Nor is it a simple matter to take action without damaging the interests of the workers themselves, in terms of relations with their clients. Many companies could deem it advantageous to

⁷ Transversal Analysis of the Institutional Framework, Laura Beuker, Frederic Naedenoen, François Pichault (January 2018)

deal with service enterprises, so as to avoid the risk of taking upon themselves the expense and obligations of a salaried employee.

2. The establishment of a “third category”, meaning a hybrid of a salaried employee and an independent worker. This would ensure that independent workers who are economically dependent benefit from certain safeguards for which the client is responsible, though without the workers being subject to contracts of full-fledged subordination. This approach has been taken in some countries and in an emblematic way in Spain, which has introduced the contractual figure of the TRADE in its legal system, and a similar proposal by Harris and Krueger⁸ has reached an advanced stage of development for the United States, in addition to receiving subsequent mention in Taylor’s report⁹ for the United Kingdom and in the Ichino legislative proposal in Italy¹⁰. Still, this remains a decidedly low-cost approach, lending itself, as such, to widespread use in situations where workers possess little bargaining power. As shown by the experience in Spain, while there are those who hold that TRADE has helped reduce the divergence between salaried employees and independent workers, others¹¹ see it simply as a way to legalise the figure of the bogus self-employed worker, opening the way for further abuses.
3. The assimilation of workers in the entertainment sector under the category of salaried employment is a measure that has proven effective, due to the fact that the social security expenses are the responsibility of the client enterprise and that the service acquired is inseparable from the workers themselves, but such an approach would be difficult to enact for other types of professional activities.
4. Intermediation by LMI/UCs. According to the Eurofound definition (Eurofound, 2016), UC’s provide an ‘umbrella’ for the self-employed or freelancers, under which they can do their business. While they retain the main characteristics of entrepreneurial activity (risks, independence, autonomy and control), the umbrella organisation provides them with support for their administrative obligations. It is still up to the self-employed worker or freelancer to negotiate with customers and provide services with full autonomy. In some cases, membership in an umbrella organisation qualifies the member for specific benefits, such as improved social protection standards compared to standard self-employed conditions. This solution reprises the salaried employee approach, though the insurance cost, plus a charge for the intermediation under which the administrative services are provided, is the responsibility of the worker. As such, it proves to be an especially beneficial

⁸ They propose legal recognition of an intermediate figure between the traditional salaried employee and the self-employed worker, suggesting that the term “independent worker” be used; A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The “Independent Worker”, S.D. Harris and A.B. Krueger, 2015.

⁹ Taylor’s report proposes identifying “an intermediate category covering casual, independent relationships, with a more limited set of key employment rights applying”, under the name of “dependent contractors”. “Good Work: The Taylor Review of Modern Working Practices”, 2017.

¹⁰ The proposal presented by Senator Pietro Ichino in October of 2017 is Legislative Bill no. 2934 <http://www.senato.it/japp/bgt/showdoc/17/DDLPRES/1059435/index.html>.

¹¹ See Antonio Martín Artilles, Óscar Molina and Alejandro Godino, I-WIRE Spain Country Case (2017), which cites Riesco-Sanz, A. (2016) [Trabajo, independencia y subordinación. La regulación del trabajo autónomo en España. Revista Internacional de Sociología, 74(1), e026. Doi: <http://dx.doi.org/10.3989/ris.2016.74.1.026>] to illustrate the first interpretation and Hernández Nieto, J. A. (2010) [La desnaturalización del trabajador autónomo: el autónomo dependiente. Revista universitaria de ciencias del trabajo, (11), 177-194.] for the second.

approach for intermittent workers with low incomes, allowing them to draw on unemployment benefits.

But as shown by the analysis, these are only partial solutions which address no more than a minority of the self-employed, excluding the vast majority. And yet the survey shows that the entire category needs safeguards against the main risks (illness, pensions, unemployment), provided on the basis of citizenship as opposed to employment status.

3. CHOOSING THE “HIGH ROAD” TO COMPETITIVENESS

Collective bargaining is the primary tool for protecting salaried employees who find themselves in an asymmetric employment relationship, but independent workers cannot use it because, being considered on an equal footing with businesses, they are subject to antitrust regulations that exclude any form of collective bargaining or setting of minimum salary or fee levels.

Under this scenario, IPs pay the price for the failure to recognise them as “independent workers”, meaning professional figures employed on a labour market that is no longer polarised between salaried employment and self-employment. So once again, the IPs wind up crushed between two extremes: (i) companies, which stress business considerations at the expense factors of labour; (ii) atypical employment, which classifies IPs as economically dependent workers.

In reality, contractual safeguard and rules amount to an uninterrupted continuum, meaning that no clear-cut distinction can be made between salaried workers who deserve to be protected and independent professionals whose bargaining power is so high as to constitute a threat to competition.

Work is not just another type of merchandise whose price can be left to the forces of the market, regardless of whether the workers is a salaried employee or self-employed. It follows that the implementation of regulation is the course to take.

The survey shows that one problem affecting IPs in all sectors, and in all the countries involved, is low pay, followed by harmful competition. These problems are serious and perceived as such. Furthermore, in a market where the “low road” to competitiveness holds sway (price cutting, scarce quality and innovation) everyone suffers (lose-lose): the poorly paid professionals, clients receiving low-quality services and the countries whose economies are unable to grow.

One tool for contrasting this state of things is the establishment of parameters to define fair compensation for services performed. Similar parameters would be binding on the public administration and provide guidelines for private enterprises and for the professionals as well, especially newcomers, who are not always aware of the need to insist on receiving adequate pay, so as to avoid further encouraging the downward price spiral.

But this measure alone would not be adequate or even fair. In a labour market abundant free labour is available, it would cure the symptoms instead of the illness. This is why it must be accompanied by intensive efforts to counter the illicit growth of contingent work¹² and free work.

¹² See the in-depth analysis of contingent work in Section I of this survey.

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