

Social Dialogue for the Sustainability of European Professional Practices

Conceptual framework of Bilateralism as a future of social dialogue

This document aims to justify the project's assumption that sees Bilateralism as a new dawn of social dialogue. Two factors convey to this assumption.

First one refers to the digital economy's threaten against Liberal Professionals Firms.

Second assumption reflects the common interest of both Liberal Professionals and Employees of the Liberal Professions Firms in facing change.

Against this background, described in project documents prepared in the Work Package 2, Bilateralism, as intrinsic part of Social Dialogue Mechanism and rooted into Collective Bargaining Agreement, represents the response to the vulnerability of the Liberal Professions sector. Vulnerability is understood as the exposure to the risks of digital economy while risk is traditionally meant in term of impact and likelihood of change derived from digitalisation.

Bilateralism is taken as the new generation of Social Dialogue in the new Millennium.

Current Bilateralism Mechanism in force in Italy stems from the historical tradition of mutual aid and Guilds and is interpreted to provide Social Protection benefits.

Guild was an association of craftsmen or merchants formed for mutual aid and protection and for the furtherance of their professional interests. Guilds flourished in Europe between the 11th and 16th centuries and formed an important part of the economic and social fabric in that era.

Social Protection is defined as any of the measures established by legislation to maintain individual or family income or to provide income when some or all sources of income are disrupted or terminated or when exceptionally heavy expenditures have to be incurred (e.g., in bringing up children or paying for health care) . Thus social protection may provide cash benefits to persons faced with sickness and disability, unemployment, crop failure, loss of the marital partner, maternity, responsibility for the care of young children, or retirement from work. Social protection benefits may be provided in cash or kind for medical need, rehabilitation, domestic help during illness at home, legal aid, or funeral expenses.

An alternative but wider term for social protection in the countries that are members of the European Union is social security, which includes voluntary schemes not set up under legislation. In some countries the term social security is used in a narrower sense.

The future of social dialogue

Before discussing the role of Bilateralism in enhancing the social dialogue mechanism in the liberal professionals sector, it is worth recalling current changes in "governance at work" as pointed out in the ILO report for the Global Commission on the future of work ¹ starting from the trade union and employers associations membership.

i) Between 2005 and 2015, trade union density, which measures trade union membership as a proportion of all employees, has fallen steadily in many parts of the world. According to the ILO, there are questions regarding whether the current model of trade unionism which emerged during the Ford assembly line production era of the early twentieth century is fit for purpose in the context of the gig or platform economy.

¹ ILO, Inception Report for the Global Commission on the Future of Work, Geneva 2017.

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ii) Employers' and business organizations face a number of other challenges. The heterogeneity of enterprises, including small, medium-sized and multinational enterprises, makes it challenging to articulate a cohesive business voice. In some regions, SMEs remain the weakest associational representation. Consider the case of the most important Italian Multinational Fiat which is not part of Italian Employers association anymore, which is in its turn not part of the ILO anymore since it did not pay its membership fee from ages.

iii) A further issue raised by the ILO is the profound changes in the role of collective agreements. Bargaining coverage, in fact (it measures the proportion of workers whose working conditions are governed by collective agreements) has declined in many countries, especially since the global financial and economic crisis.

iv) This is why the future of governance of work requires significant efforts to shape a new global consensus with a view to ensuring policy coherence towards the 2030 Agenda for Sustainable Development.

v) There is a growing consensus on the need for an innovation of the governance of work. The ILO points out that the future of the governance of work will also be determined by the future of industrial relations, social dialogue and tripartism. However, employers' and workers' organizations have been under growing pressure at a time when governance requires ever-stronger participation and regulatory innovation. However, new ways of organizing workers are emerging in a range of employment contexts, including the gig and informal economies.

vi) At the same time new organisational forms are emerging at social level. Workers' centres in the United States are local NGOs which organize low-wage vulnerable workers (e.g. migrant workers) largely in communities and not primarily at the workplace. These established institutions offer a mix of advocacy and services.

vii) In addition, experimentation with different organizational forms is prevalent in the gig economy. A range of organizational strategies and types of collective action are emerging, including the formation of new unions for gig workers that rely on community-based organizing strategies.

viii) Within a new work context characterised by gig and platform economy, there is evidence of union renewal, and of unions reaching out beyond their core constituencies to organize and represent the economically and socially marginalized. This new "repositioning strategy of trade unions emphasizes the need for trade unions to gain inspiration from a "sword of justice" viewpoint, turning (or returning) to a conception of organizations campaigning for rights and contesting inequality and insecurity. There is clearly a need to reconstruct social solidarities – in the plural – if governance is to be effective in addressing inequality through inclusive regulatory strategies.

ix) Turning to employers' organisations, in Europe, employers' organizations and business associations are adapting their organizational structure as well as their activities to the changing needs of business, providing new services. Following the ILO report, a similar adaptation is under way in other parts of the world. This includes the rationalization of membership through mergers with trade associations and the creation of "dual associations", and functional adaptations, reorienting from narrow labour market governance to broader policy advocacy for an enabling business environment and offering a range of business services.

Faced with declining membership, German employers' organizations began to offer Ohne Tarifbindung (OT) membership (not bound by collective agreements) to maintain their strength.

x) Aforementioned changes and trends strengthen the need for a new social dialogue model where the Tripartism is confirmed within a different role of social partners in designing new social protection schemes capable of:

- a) cover budgetary deficit of public fund and State regimes;
- b) offer new schemes for emerging needs.



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xi) The ILO's founding instruments recognize the need for social dialogue between governments, workers' and employers' organizations as key to the governance of work, as well as to the process of rethinking governance to meet current and future challenges.

Sometimes, this has been criticized for allowing the vested interests of employers' and workers' organizations to dominate policy debates, to the exclusion of other important interests (for example, those in the informal economy) and the common good. Other criticism to tripartism is raised in the ILO report where some see an inherent paradox in corporatist policy-making: workers' organizations are required to make concessions and are inevitably co-opted into governance, rendering them unable to effectively represent the interests of the working class. Still, detractors claim that, while tripartism is certainly the most participatory form of labour market governance, it is time-consuming and not well-suited to times of abrupt change or economic crisis.

xii) Undoubtedly, the future of work will be very different from the one which has characterized the world during the ILO's almost 100 years. When governments, employers and workers come together at the ILO to seek consensus on the many work-related challenges that will face them in the future, they are guided by a fundamental desire for social justice. Since the social justice goal is the common good for governments, employers association and trade union, Tripartism remains the model which will be strengthened and enlarged by the participation of the new emerging civil society organisation as stated during the 2012 United Nations Conference on Sustainable Development in Rio de Janeiro.

The Bilateralism tradition in Italy

1. In Italy, bilateralism started in the micro enterprise thanks to the agreement between Trade Union and representatives of artisans in the Veneto Region in 1980s with the aim to provide training services to workers of the micro entrepreneurship.

Subsequently, it has developed as a form of protection of workers by means of the joint administration and governance of the entire labour market, becoming the paradigm of a new system of cooperative and collaborative industrial relations in 1980s.

Bilateral bodies were the organisational tool to achieve the common interest of both small entrepreneurs and their workers.

2. As joint bodies, they perform their duties on a cooperative and participative basis. They *per definitionem* constitute the manifestation of the **contractual intent** of the parties setting up a purpose built common structure, laid down in **collective agreements**.

Therefore, using Tiraboschi's words ² bilateralism is seen as an instrument to create more participatory labour-management relations in Italy, also taking account recent developments concerning legislative issues and contractual arrangements.

3. Different from the participatory model developed in Germany, the distinctive trait of the Italian case lies in collective agreements as the source of bilateral bodies.

Different from the relationship between Capital and Labour, based on productivity and economic growth, the relationship between small entrepreneurs and workers are based first and foremost on trust and cooperation that goes beyond economic issues to be extended to social justice at large.

² M. Tiraboschi, Bilateralism and Bilateral Bodies, E-Journal of International and Comparative Labour Studies, N.1, 2013



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Bilateral Bodies in the Liberal Professions

This section uses studies of prof Michele Tiraboschi on Bilateralism.

The experience of the Bilateral Bodies in the Liberal Professions sector falls within above mentioned tradition of Italian social partnership where informal relation prevail on formal relations.

4. As a result, in the context of the Italian system of industrial relations, the expression “bilateral bodies” is used to refer to entities that are set up by collective bargaining agreement, characterised by features below:

- 1) they consist of representatives from social partners who conclude collective agreements through which such bodies are governed;
- 2) provide social protection to both workers and employers, in accordance to what is laid down by collective agreements and by statutory laws. Funds to such activities are collected by means of contributions paid by employers and by workers;
- 3) are autonomous legal entities.

5. As entities stemmed from collective agreement they take the form of voluntary associations with legal personality. By signing the accord, Liberal Professions Associations and trade unions, express their willingness to constitute the joint body. Therefore, it is the collective agreement that lays down the obligation to establish the joint body while the private collective autonomy comply with related contractual obligation.

In other words, the willingness to constitute the bilateral body is regarded as resulting from private autonomy which is manifested through the collective agreement. The law only allows for some tasks and functions to be fulfilled by bilateral bodies, with the establishment of the body itself that is left to private and collective autonomy.

6. The main characteristic of bilateral bodies is their joint and balance nature at managerial level, a typical feature of collective bargaining, from which they originate. This bilateral nature permeates the entire organisational structure of Bilateral Bodies from decision making level, which is elected to managerial staff, which is appointed by both parties.

7. Decisions follow the social dialogue mechanism so that cleavage among unions and professionals association is avoided Their legal autonomy is extended to financial issues, since resources are collected through membership fees and they are entitled to tax incentives and contribution relief. According to Tiraboschi, services provided by these entities to workers (e.g. supplementary health services, supplementary retirement schemes, income supports, and the co-funding of public income support, pursuant to Art. 19 of Legislative Decree No. 185/2008 as subsequently converted into Law No. 2/2009) are forms of protection that in some cases are deemed to be contractual rights, provided that some conditions are met.

Funding Bilateral Bodies

8. According to Art. 39 of Italian Constitution, individuals have the right to refuse to associate with others in collective organizations. as in the case of bilateral bodies. In addition, Italian legislation does not provide for the erga omnes effect of collective agreements, that are treated as private agreements and therefore cannot apply to a third party (non-signatory trade unions and companies). Aforementioned legal framework relating to the negative freedom of association, raises the issues whether liberal professionals and their employees should be under the obligation to join bilateral bodies. As a result, there is no requirement on the part of employers in terms of funding and membership.



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9. Tiraboschi points out that as the section containing obligations in collective agreements only refers to the set of provisions regulating the relationship between unions that are signatories to the accord, without any consequences for the workers. It is therefore apparent that workers are affected – yet in an indirect manner – from such non-payment. On the basis of these considerations, it might be argued that the provision of services offered by bilateral bodies, both at national and local level, should be regarded as contractual rights whereas expressly laid down by the collective agreement, a type of “deferred earnings” that workers should also be granted if operating under employers who have not joined the body.

10. Circular No. 43/2010 by the Italian Ministry of Labour specifies that membership is not mandatory. However, workers working for employers who did not sign the collective agreement setting up the body, should be entitled to the same rights of those working for the signatories. In the former case, employers should fulfil their obligation by adhering to these committees, or by paying an amount of money in accordance to what is laid down in the collective agreement or providing them with equivalent benefits.

11. Following Tiraboschi view, this only happens if the applicable collective agreement states that a certain benefit provided by the bilateral body represents contractual rights, on the assumption that such benefit is regarded as a “fringe benefit” or “additional remuneration”. Circular No. 43/2010 points out that workers performing for employers who did not join the body are entitled to contractual rights that take the form of additional remuneration.

12. Therefore – and in accordance to what is set by collective bargaining – these rights can be fulfilled by paying a sum of money or granting a service that amounts to that provided by the bilateral bodies. There is no doubt about the constitutional legitimacy of this financing system, as it is up to the employers to choose whether to join the bilateral body or not, by paying the amount due.

13. However, even though they may opt out of the bilateral bodies, they are still under the obligation to pay the corresponding sum to workers, because of the erga omnes effect of collective agreements, in the sense that they extend to all employers in the industries covered. Art. 36 also allowed the Italian judiciary to determine the remuneration criteria for non-unionized workers or those operating for employers who were not a member of the bodies that signed the collective agreement.

14. Tiraboschi concludes that this functioning seems consistent with collective bargaining practices in the liberal profession sector, that are intended to promote new arrangements to enhance the productive system and safeguard workers’ rights.

Main Functions of Bilateral Bodies

15. Since Bilateral Bodies are a means for protecting workers, bilateralism is regarded as an established instrument to enhance cooperative dialogue among social partners and the full implementation of mechanisms of protection for workers, such as the provision of benefits as laid down in the collective agreement. At the same time, Bilateral Bodies are the outcome of social dialogue.

16. Bilateral Bodies in the Liberal Professions follows the structure of Bilateral Bodies in industries in general even if they are more focused on social protection schemes. In particular, the role played by bilateral bodies in terms of occupational health and safety is relevant. The legislation on health and safety at work (Decree No. 81 of 9 April 2008, subsequently amended by Legislative Decree No. 106 of 3 August 2009: Testo Unico Salute e Sicurezza), view the joint bodies as a channel to promote, steer, and support both employers and employees



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which should lean on a participatory model to develop strategies concerning health and safety (Cfr Tiraboschi, cit). Needless to say, Bilateral Bodies cover marginal issues set out by aforementioned legislation and do not intervene in the preventive strategy through Risk Assessment. However, even if restricted to Health and Occupational Safety providers their role is relevant.

17, As far as training is concerned, the Italian legal provisions allow bilateral bodies to carry out activities with regard to vocational training. In particular, Art 118 of Law 388/2000 sets out the establishment of some special funds for life-long learning, called interprofessional joint funds for life-long training that are to be laid down in interconfederal agreements among the largest employers' associations and trade unions at a national level.

The money allocated amounts to 0.30% of contributions relating to the mandatory insurance against unemployment. The strengthening of the role of the bilateral bodies as training provider also within the company results from the view shared by the parties that training is a common good and can help to promote employability and competitiveness.

18. While the Supply and Demand Matching in the Labour Market is not a function in force in the Liberal Professions Bilateral Bodies, the Certification of Labour Contracts deserves attention. According to Tiraboschi, one of the major developments that has recently taken place in labour legislation – particularly with regard to the employment relationship – is the appointment of bilateral bodies as a subject for certification of a labour contract. Bilateral bodies can certify contractual schemes regarded as atypical and flexible, but also all the others contractual arrangements, in order to determine the rights and obligations deriving from them, as well as the ensuing forms of protection.

19. In legal terms, the involvement of bilateral bodies in the certification of labour contracts is relevant in promoting bilateralism as an instrument to ensure that employers fulfill some duties (e.g. payment of social security contributions, the identification of the employment relationship – whether autonomous work or salaried employment – particularly for tax, social security, and even administrative purposes). The peculiarity of this function lies in that certification also involves an inspection and validation process of employers that join the bilateral bodies that adds to that carried out by public institutions – e.g. the National Social Welfare Institution (INPS) and the National Institution for Insurance against Accidents at Work (INAIL).

As recent development, Liberal Professions Bilateral Bodies provide a decisive contribution in terms of income support measures. With a view to safeguard workers' rights, the function of bilateralism in this area is twofold: experimenting with practices of co-management, yet still referring to forms of welfare (public aid) provided by the government. It is therefore pivotal to devise some innovative welfare schemes that match public measures and non-state sources. To this end, social safety net measures could be supplemented with well-established funds run by bilateral bodies.

20. In the context of this paper, it seems worth pointing out that the increasing attention given to income support measures on the part of actors involved in collective bargaining led to the establishment of bilateral bodies operating at a national level on matters concerning the healthcare system and the system of supplementary pension, regulated by specific legislation.

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New dawn of social dialogue

21. Bilateral Bodies in the Liberal Professions sector, being rooted on collective bargaining agreement, represent a new perspective on social dialogue. Traditionally conceived as a set on information, consultation and negotiation between social partners, the social dialogue mechanism receives new energy from bilateralism which extend both social dialogue meaning and the role of representative actors of social partners. Moreover, Bilateral Bodies change the rule of the game.

22. Consider collective bargaining agreement process is taken with Bilateral Bodies at hand. In this case, the aim of negotiations shift from short term perspective to a long term perspective extended to a multidimensional realm. A new social partnership involves a new social model in which social partners are not entrenched in their opposite goals, mainly financially rooted, but involved in identifying modalities achieving the common interest.

23. In this perspective, there are reasons to question the view that regards the set of provisions promoting bilateralism as a “Trojan horse” to be used only to transform the role of trade unions, without considering the function of bilateral bodies as a tool to reflect the interests of those concerned, seeing them simply as service providers.

To this end, Bilateralism provides a new cooperation spirit specially by giving priority to dialogue over the traditional conflictual methods and downplaying the role of collective bargaining. As a result, social partners would no longer be the interpreters of social conflict and the representatives of particular interests, but they would just provide social protection services and those services improving work conditions at Liberal Professionals firm work place.

24. In effect, Bilateralism should be considered as another key activity carried out in the context of social partnership which transform the social partnership itself, beyond traditional modus operandi to achieve works rights.

25. In some cases, they administer mutual assistance funds, dealing with resources financed by social partners on an exclusive basis. In other cases, they carried out general functions assigned by law, without managing financial resources. In some other cases bilateral bodies are legally responsible for the management of public resources. In the case of the latter, it is reasonable on the part of the government to carry out a monitoring function on the basis of agreed upon criteria.

26. The development of bilateralism – which should take place gradually but steadily – also through a range of provisions that promotes the setting up of bilateral bodies, is consistent with a new and practical system of industrial relations based on cooperation, and with ongoing societal and economic changes which result in the need to set new priorities in terms of labour market policies.

27. The downturn of specific liberal profession due to economic transformation and the impact of digital economy of professionals firms and ongoing changes in technology, the widespread use of atypical work and the debacle of the economic system highlighted the need for new social dialogue mechanism where the common interest or the common good is the priority.

28. As a result, a new welfare system that takes account of the shortcomings of financial resources available and promotes the participation of individuals and groups concerned (the notion of horizontal subsidiarity) is at stake.

The aim of bilateralism is to put forward a range of solutions and measures that provides protection in terms of remuneration and social security, the costs of which could not be borne by a system characterized by shortcomings and wastes.

29. Needless, the fact that bilateral bodies reduce the level of conflict and enhance social cohesion represents a surplus value. Indeed, bilateral bodies operate in the context of industrial



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relations on a participatory and cooperative basis. Although performing their duties autonomously, they comply with rules and procedures laid down by the founding parties in the collective agreement.

30. Bilateral Bodies come from a collective bargaining agreement tradition based on "discussion which entails break things up.

According to David Bohm, it emphasises the idea of analysis, where there may be many points of view. Discussion is almost like a Ping-Pong game, where people are batting the ideas back and forth and the object of the game is to win or to get points for yourself.

Contrast with the word 'discussion', which has the same root as 'percussion' an 'concussion', dialogue comes from the Greek word dialogos . Logos means 'the word' or in our case we would think of the 'meaning of the word'. And dia means 'through' - it doesn't mean two. A dialogue can be among any number of people, not just two. Even one person can have a sense of dialogue within himself, if the spirit of the dialogue is present. The picture of image that this derivation suggests is of a stream of meaning flowing among and through us and between us. This will make possible a flow of meaning in the whole group, out of which will emerge some new understanding. It's something new, which may not have been in the starting point at

all. It's something creative. And this shared meaning is the 'glue' or 'cement' that holds liberal professionals and employees together.

Bilateral Bodies strengthen this concept of dialogue where nobody is trying to win. Everybody wins if anybody wins. There is a different sort of spirit to it. In a dialogue, there is no attempt to gain points, or to make your particular view prevail. Rather, whenever any mistake is discovered on the part of anybody, everybody gains. It's a situation called win-win, in which we are not playing a game against each other but with each other. In the dialogue promoted by Bilateralism, everybody wins.