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**Covid-19 and the world of work:
Where we are and where we should go**

Covid-19 and the world of work: Where we are and where we should go*

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Abstract

Il presente contributo intende offrire, a quasi due anni dall'inizio della pandemia, una panoramica dell'impatto del Covid-19 sul mondo del lavoro, con l'intento non solo di fotografare la situazione attuale, ma anche, in una prospettiva *de iure condendo*, di mettere in luce gli ambiti a cui sia l'Organizzazione Internazionale del lavoro (OIL), sia i singoli Paesi dovrebbero prestare maggiore attenzione.

Il lavoro – che si apre con un paragrafo introduttivo volto ad illustrare intento e struttura del contributo – è diviso sia idealmente che fisicamente in due parti.

Nella prima (§§ 2-3) gli autori, avvalendosi in particolare dei tre documenti più aggiornati sul punto (e cioè: il “World Employment and Social Outlook. Trends 2021”, il “Global Call to Action for a Human-centred Recovery from the Covid-19 Crisis that is Inclusive, Sustainable and Resilient”, nonché l'ultima edizione dell’“ILO Monitor: Covid-19 and the World of Work. Updated Estimates and Analysis”), danno conto, a livello macro, sia dei dati riguardanti l'impatto del Covid sul mercato del lavoro, sia delle soluzioni che l'OIL suggerisce per fronteggiare la crisi. Il primo dato di rilievo è che la crescita occupazionale prevista per il 2021 – trainata sia dai progressi delle campagne vaccinali che dai pacchetti fiscali adottati da molti paesi –, sembra

insufficiente a colmare i vuoti aperti dalla crisi, soprattutto considerato che le nuove opportunità di lavoro create dalla pandemia (come il c.d. “lavoro su piattaforma”), non offrono spesso condizioni di lavoro dignitose. Come se non bastasse dai dati emerge, da un lato, che la crisi sta colpendo più duramente i territori, i settori, le categorie di lavoratori e le imprese più deboli (e, cioè rispettivamente: i paesi in via di sviluppo, i settori produttivi ad alta intensità di lavoro, le donne, i giovani, i lavoratori informali e poco qualificati, i lavoratori migranti, nonché le piccole imprese); dall’altro lato, che chi ha perso il lavoro durante questa crisi è andato ad ingrossare più spesso la categoria degli inattivi che quella dei disoccupati (tendenza, questa, drammaticamente pericolosa se è vero che, a causa dell'obsolescenza delle competenze, rioccupare le persone inattive è molto più difficile che rioccupare chi è disoccupato). Per tentare di porre rimedio a questa crisi, che appare la più profonda mai sperimentata dalla seconda guerra mondiale, l’OIL pare fare leva su due strumenti tra loro complementari. Il primo è il cosiddetto "ILO's four-pillar policy framework" basato su quattro aree di azione: i) stimolare l'economia e l'occupazione (attraverso specifiche politiche fiscali e monetarie, prestiti e sostegno finanziario); ii) sostenere le imprese, i posti di lavoro e i redditi (attraverso un'estensione della protezione sociale, il varo di misure volte al mantenimento dell'occupazione, la fornitura di agevolazioni finanziarie/fiscali) ; iii) proteggere i lavoratori sul posto di lavoro (attraverso il rafforzamento delle misure di sicurezza e salute sul lavoro, la prevenzione della discriminazione, l'espansione sia dei servizi sanitari nazionali, sia dell'ambito di applicazione dell'istituto del congedo retribuito); iv) implementare il dialogo sociale (attraverso tutti i tipi di negoziazione, consultazione e scambio di informazioni tra i rappresentanti dei governi, dei lavoratori e dei datori di lavoro). E proprio nell’ambito di questo ultimo pilastro può essere annoverata la proposta (contenuta nel documento "Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient", adottato durante l'ultima Conferenza Internazionale del Lavoro del giugno 2021) di convocazione di un forum politico finalizzato a individuare strategie di ripresa su scala globale.

Il secondo strumento su cui fa leva l'OIL al fine di fronteggiare la crisi è il sistema dei c.d. “International labour standards”. Questi ultimi vengono affrontati nella seconda parte del contributo (§§ 4-4.2). Nel § 4 gli autori insistono sulla importanza di valorizzare gli International Labour Standard esistenti (come base indispensabile per garantire a livello globale sia condizioni di lavoro dignitose, sia livelli di protezione sociale adeguati) per soffermarsi, poi, sulle tutele sinora presenti in due ambiti particolari: il lavoro precario – compreso quello dei lavoratori autonomi – (v. § 4.1) e il lavoro a distanza (v. § 4.2). Dalla breve analisi della regolamentazione di entrambi il quadro che emerge è chiaro: nonostante la loro diffusione crescente all'interno del mercato del lavoro globale, ambedue appaiono ambiti ancora troppo poco “coperti” dalle convenzioni e raccomandazioni OIL; ecco perché, secondo gli autori, è necessario non solo insistere sulla applicazione degli International Labour Standard già esistenti, ma anche, procedere verso una loro implementazione.

COVID-19 AND THE WORLD OF WORK: WHERE WE ARE AND WHERE WE SHOULD GO*

Summary: 1. Premises. – 2. The ILO’s data. – 3. The ILO recommendations for a quick recovery. – 4. The need for a sustainable protection. – 4.1. Focus on: precarious work (including among self-employed workers). – 4.2. ...and distant work.

1. Premises

Even if the vaccine campaigns have been started worldwide¹, COVID-19 is still a huge threat not only to public health² (suffice it to say that globally by May 2021 Covid-19 had infected upwards of 150 million individuals, killing over 3 million³), but also to the world of work. In fact, although there has been evidence of an economic rebound starting from the second half of 2020⁴, the workplace closures necessary to contain the virus, which during 2020 have gradually become the norm, and still in place in some forms pretty much everywhere, have pushed the world of work into a crisis of unprecedented scale that so far seems very difficult to handle⁵.

* Although the paper is the result of a joint effort of both the Authors, only § 1 has been written jointly by Jean-Michel Servais and Francesca Marinelli; Francesca Marinelli is the Author of §§ 2 and 3; Jean-Michel Servais is the Author of §§ 4-4.2.

¹ See ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, 27 October 2021, p. 2 (in https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_824092.pdf).

² It is important to remember that, on the one hand, in early October 2021 the share of fully vaccinated people globally reached only 34.5 % (ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit., p. 2 and, on the other hand, nearly 40% of the world’s population lack effective health coverage (ILO, *A Policy Framework for Tackling the Economic and Social Impact of the COVID-19 Crisis*, May 2020, in https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_745337.pdf, pp. 12-13).

³ See ILO, *World Employment and Social Outlook. Trends 2021*, Geneva, 2021, p. 86, in https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_795453.pdf.

⁴ See ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit. p. 1.

⁵ As noted by ILO, *ILO, Monitor: Covid-19 and the World of Work. Seventh edition. Updated Estimates and Analysis*, 25 January 2021, p. 1 (in https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_767028.pdf), the COVID-19 shock on global working hours has been approximately four times greater than the one during the global financial crisis in 2009.

In this awful scenario the International Labour Organization (ILO) has played an important role quickly putting all its knowledge and expertise at the service of its Members and helping them to cope, on a sustainable basis, with the social consequences of the pandemic. Concretely two main tools have been emphasized to help mitigate damage: on the one hand, to collect and analyse data and to issue recommendations of short time measures to overcome the socio-economic crisis; the reference, on the other hand, to international legal instruments which protect the workers on a lasting basis.

In particular the Institution has, first of all, investigated the available data and published economic analyses on the disastrous consequences of the scourge on employment and, therefore, on individual income and made proposals for a quick recovery. Amongst the numerous documents it is worth mentioning the following: the “World Employment and Social Outlook. Trends 2021”⁶, the “Global Call to Action for a Human-centred Recovery from the Covid-19 Crisis that is Inclusive, Sustainable and Resilient”⁷ and the last edition of the “ILO Monitor: Covid-19 and the World of Work. Updated Estimates and Analysis”⁸. Referring especially to these documents the first part (§§ 2 and 3) of the present contribution sums up briefly the current data and the solutions suggested for the hoped labour market recovery.

Secondly, the Organization has also published in 2021 a general survey of its Committee of Experts for the application of conventions and recommendations entitled “Promoting Employment and Decent Work in a Changing Landscape”⁹. Based on that, § 4 will be focused on the situations which have been emerged during the crisis (in particular the ones connected to precarious work – including the one of the self-employed – and distant work). That section calls particularly for strengthened the regulation at both the national level (to do so we think that the States should find

⁶ See above, footnote no. 3.

⁷ In <https://www.ilo.org/infostories/en-GB/Campaigns/covid19/globalcall>.

⁸ Above, footnote no. 1.

⁹ In https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_736873.pdf.

guidance in the international labour standards) and the international one (because we think that also the ILO law should be revised and completed).

In brief, this article aims at examining, through the analysis of the actual scenario drawn by ILO, where the world of work stands after close to two years of pandemic and where it should go.

2. The ILO's data

Although since early April 2020, thanks to the vaccine campaigns, the entire world has gradually relaxed the strict measures required to suppress the transmission of the virus (such as the prolongation of lockdown, quarantine, physical distancing and other isolation measures)¹⁰, most part of the countries are still experiencing some kinds of closures¹¹. Despite the adoption by a lot of Governments of fiscal packages in response to the crisis¹², the aforesaid restrictive measures are causing a global, massive economic and social shock. This is quite clear looking at the data which show not only a huge increase in the global shortfall of employment¹³ (that means worldwide for the workers an important reduction of the labour incomes¹⁴), but also a very troubling phenomenon: during this crisis who has lost the job, being unable to work owing to the pandemic, has become “inactive” (id est without a job and not looking for it) rather than unemployed (id est without a job but actively searching for it). This dangerous trend has huge implications because of the fact, as ILO has noted,

¹⁰ In October 2021 the strictest forms of closure were affecting less than 1% of the employed globally, compared to a peak of 41% in April 2020 (ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit., p. 2).

¹¹ This is not surprising, if we consider that, according to ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit., p. 2 the share of fully vaccinated people is incommensurably different among the countries.

¹² On the importance of the fiscal packages as a key tool to support the recovery see ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit., p. 13 ff.

¹³ The data show that the global hours worked during the third quarter of 2021 were still 4.7% below the level of the fourth quarter of 2019, equivalent to the loss of 137 million full-time jobs (ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit., p. 4).

¹⁴ ILO estimates a labour income loss by 5.3% in the first two quarters of 2021 relative to a no-pandemic scenario (ILO, *World Employment and Social Outlook. Trends 2021*, cit. p. 27).

experience from earlier crises shows that activating inactive people is much harder than re-employing who is unemployed because of the obsolescence of the skills¹⁵.

This situation is serious if we only think that, on the one hand, the projected employment growth expected in 2021 driven by both the progress in the vaccine campaigns and the national measures seems insufficient to fill the gaps opened up by the crisis¹⁶ and, on the other hand, the new employment opportunities created by the pandemic (such as platform-based services and teleworking), do not always seem to offer decent working conditions.

As if that wasn't enough the data show another serious aspect, it means that the crisis is uneven, having the highest impact on the weakest territories (namely the developing countries)¹⁷; the weakest sectors of production (it means the labor-intensive ones)¹⁸; the weakest groups of workers (in particular: women¹⁹, young

¹⁵ ILO, *ILO, Monitor: Covid-19 and the World of Work. Sixth edition. Updated Estimates and Analysis*, 23 September 2020, p. 9, in https://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/documents/briefingnote/wcms_755910.pdf.

¹⁶ See: ILO, *World Employment and Social Outlook. Trends 2021*, cit., p. 12; ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit., p. 4.

¹⁷ Especially but not only because of the scarcity of resources for the vaccination campaigns and the lack of fiscal stimulus policies (ILO, *ILO, Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit., p. 13).

¹⁸ In fact, the data show that the most affected sectors are the following: accommodation and food services, real estate, business and administrative activities, manufacturing and wholesale and retail trade (see ILO, *Monitor: Covid-19 and the World of Work. Seventh edition. Updated Estimates and Analysis*, 25 January 2021, p. 13, cit).

¹⁹ Women's employment has declined by 5% as a result of the crisis, compared with 3.9% for men (ILO, *World Employment and Social Outlook. Trends 2021*, cit., p. 23) because of many reasons: i) the sectors most affected by the pandemic seem to be those in which women are most employed; ii) the female workforce perform non-standard jobs (or even undeclared work) much more than the male workforce (so it is clear that women are more likely than men to end up losing their jobs); iii) the measures to contain the virus (such as the closure of schools and kindergartens and the reduction of public services for the disabled and the elderly) has placed on the shoulders of families – id est, especially on the shoulders of female workers – not only additional care activities but, because of distance learning also part of the educational activity (see in particular ILO, *ILO Monitor: Covid-19 and the World of Work. Fifth edition. Updated Estimates and Analysis*, 30 June 2020, 8 ff., in https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_749399.pdf).

workers²⁰ informal workers and low-skilled workers²¹, migrant workers²²); and the weakest enterprises (*id est*, the small ones)²³.

All that considered it is clear that the crisis we are living in is not only the deepest we have ever experienced since World War II, but it is also exacerbating the pre-existing social inequalities, thus jeopardizing the social cohesion for years to come.

3. The ILO recommendations for a quick recovery

While all the countries worldwide are trying to face the recession caused by Covid-19 through measures (quite different from country to country²⁴) designed to support both the national economies and their citizens, the ILO has developed the so called “ILO’s four-pillar policy framework” which is – together with the International labour standards – the “ILO’s recipe” to exit the crisis.

The aforesaid policy has been developed taking into consideration the past crises and, as the name suggests, it is divided into four actions addressed in particular to all the ILO constituents (it means: governments, employers and workers)²⁵.

²⁰ Obviously entering the labour market during a recession usually reduces longer-term employment probabilities, wages and career developments. In addition this crisis seems more dangerous than the past ones because it usually encourages young workers to invest more in formal education and training – because of the lower opportunity costs of not being in the labour force – with positive long-term effects on their knowledge and skills, during the current crisis, because of the school closures, this phenomenon hasn’t happened, on the contrary, the share of young people not in employment, education or training has increased during the last year (ILO, *World Employment and Social Outlook. Trends 2021*, cit., p. 14).

²¹ Especially but not only because of the fact they can’t usually work from home (ILO, *World Employment and Social Outlook. Trends 2021*, cit., p. 96).

²² It is quite clear if we think that migrant workers are more likely to be in temporary employment, to earn lower wages, to have jobs less suited to working from home and with a limited access to social protections (ILO, *World Employment and Social Outlook. Trends 2021*, cit., p. 102).

²³ ILO, *World Employment and Social Outlook. Trends 2021*, cit., p. 91 has highlighted that, according to the COVID-19 Business Impact Survey conducted across 132 countries between April and June 2020, two thirds of micro and small enterprises reported that the COVID-19 crisis was strongly affecting their business operations, compared with around 40% of large firms. See also ILO, *ILO Monitor: Covid-19 and the World of Work. Eighth edition. Updated Estimates and Analysis*, cit., p. 6 ff.

²⁴ See the ILO’s data-base called “Country policy responses”, in <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm>.

²⁵ They have been developed in particular in the ILO, *ILO Monitor: Covid-19 and the World of Work. Second edition. Updated Estimates and Analysis*, 7 April 2020, p. 7 ff. in https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf; ILO, *ILO Monitor: Covid-19 and the World of Work. Third edition. Updated Estimates and Analysis*, 29 April 2020, p. 10 ff., in

The four complementary key areas of policy actions are the following:

i) stimulating the economy and employment (through: specific fiscal and monetary policies; lending and financial support) in order to protect households and businesses and to boost aggregate demand;

ii) supporting enterprises, jobs and incomes (through: an extension of the social protection; the implementation of the employment retention measures; the provision of financial/tax and other relief for enterprises) in order to, on the one hand, prevent business closures and, on the other hand, mitigate a fall in consumption;

iii) protecting workers in the workplace (through: the strength of the occupational, safety and health measures; the adaptation of work arrangements; the prevention of discrimination and exclusion; the provision of health access for all, regardless of their employment status; the expansion of paid leaves) in order to improve the labour market resilience;

iv) relying on social dialogue for solutions (through all types of negotiation, consultation and exchange of information between or among representatives of governments, workers and employers, on issues of common interest in the areas of economic, labour and social policy, at any levels) in order to build confidence and therefore make the policy measures effective.

In addition the ILO adopted during the last International Labour Conference (ILC) in June 2021 a document called “Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient” in which the Organisation assumes a leadership role in the recovery from the pandemic, in particular proposing to convene a major policy forum with other multilateral institutions aimed at mobilizing a strong and coherent global response in support of Member States’ human-centred recovery strategies²⁶.

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_743146.pdf; ILO, *ILO Monitor: Covid-19 and the World of Work. Fourth edition. Updated Estimates and Analysis*, 27 May 2020, p. 12 ff., in https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_745963.pdf; ILO, *ILO Monitor: Covid-19 and the World of Work. Fifth edition. Updated Estimates and Analysis*, 30 June 2020, 13 ff., cit.

²⁶ See the document in particular from p. 9 ff.

In fact, for the ILO without a global concerted policy response based on the aforesaid four pillars (plus the International labour standards), and focused on international solidarity (because, as said, the effects of the pandemic are likely to be unequal) the crisis, impacting not only the supply (namely, the production of goods and services) but also the demand (id est consumption and investment), is going to undermine growth, potentially causing long-term structural damage.

So far we have pointed out, in short, how the Covid 19 has shaken the world of work and which urgent measures have to be taken. The following paragraphs examine the need for an extended sustainable protection in specific areas.

4. The need for a sustainable protection

In June 2019, the International Labour Conference declared in the Centenary Declaration for the Future of Work that “Safe and healthy working conditions are fundamental to decent work” and adopted a resolution requesting the Governing Body “to consider, as soon as possible, proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”²⁷.

COVID-19 has shown how essential are in everyone’s life, the aforesaid rights to health at work and, let us add, that to social security. It has further exacerbated the social protection gap between countries with high and low income levels²⁸.

Furthermore, the pandemic – even if it has not created in the workplace the big bang announced by some – has pointed out the need to a significant change in the organization of work (homeworking in particular has considerably increased and it is expected to continue, at least partially, on a long-lasting basis).

²⁷ Resolution on the ILO Centenary Declaration for the Future of Work (adopted on 21 June 2019), *International Labour Conference*, 108th Session, par. 1.

²⁸ ILO, *World Social Protection Report 2020-22*, in https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_817572.pdf, p. 19 and pp. 63 and ff.

In this regard a great help in tackling these new changes could come from the ILO's international labour standards which cover most situations²⁹ (even if not all) and are generally applicable as such (although there are important exceptions, especially for the two groups that are the object of the following paragraphs *id est*: precarious work – including the one of the self-employed – and distant work).

This is the reason why a more detailed regulation should be adopted by national legislation in line with the ILO conventions. Furthermore the Organization should even complete its corpus of law to adjust more closely to the present evolution.

4.1. Focus on: precarious work (including among self-employed workers³⁰)

For many years contracts without limits of time were the most usual form of employment relationship. New methods of organizing work, often born of the desire to give undertakings more flexible structures, fostered later variations in the forms of employment. The phenomenon has grown during the decades under the pressure of competition, linked to the internationalization of the market economy, and scientific and technical progress. The employers' determination to make their companies more profitable, to lower their costs, has pushed them to explore and use all possible combinations. At the same time, the public authorities often have encouraged varieties of employment in order to absorb an employment crisis they could not solve by other means.

²⁹ The full text of all the instruments mentioned in this contribution and related references can be found on the ILO website <https://www.ilo.org/global/standards>. For example, as said in § 2, the ILO reports and its Global call for action adopted in 2021 point out that the pandemic, like previous labour crisis, has first exacerbated existing inequalities that concern mainly youth, older workers, women, ethnic and racial minorities and (legal or illegal) migrants. For each of those groups, the ILO has adopted international labour standards.

³⁰ As we know, the pandemic has imposed restrictions that have provoked the closure of mini-firms or otherwise seriously impacted the activities of the self-employed workers. The need to react quickly in order to protect their means of subsistence has led many Governments to adopt temporary measures with a view to maintaining the enterprises in life and to compensating the loss of income. The aid however has never been at the level of the financial assistance to the wage-earners.

The result is that nowadays the casual work has become a reality worldwide.

So the question is: to what extent can worker protection be extended to precarious activities, which remain – in a way by definition in the case of what are known as informal economies – relatively impervious to the influence of national or international legal rules?

In fact, first of all, the wording of each convention serves theoretically to determine whether or not it applies to all or some of these workers (and in this regard both the exceptions and flexibility clauses the conventions contain frequently exempt from their field of application all or some of the workers, whether wage-earners or not, in sectors of activity in which precarious employment is the rule³¹).

Secondly, from the technical point of view, is it not easy simply to extend the legal provisions to people such as home or temporary workers, not to mention the self-employed persons³². The texts would need numerous adjustments and adaptations to take account of these workers' specific needs.

Those difficulties explain why specific standards have been adopted on temporary work (Convention No.181 and Recommendation No.188 of 1997 regulating private employment agencies), on home work (Convention No. 177 and Recommendation No. 184, 1996), on domestic work (Convention No. 189 and a Recommendation No. 201, 2011) and on part-time work (Convention No. 175 and Recommendation No. 182 of 1994); and also why sometimes the general rules have also been adjusted to the specific constraints faced by these workers (as suggested in recent instruments on occupational health and safety).

The ILO conventions on social security constitute a further illustration of those difficulties. The instruments adopted by the Organization since the end of the Second World War deal, using various formulas, with categories either of wage earners or

³¹ Many instruments cover only wage-earners, whereas precarious employment is also, if not mainly, to be found amongst the self-employed (the ILO Recommendation No. 198 on Employment Relationship, 2006, focuses on the demarcation line between the contract of services and the contract for services).

³² One knows how uneasy it is to exercise freedom of association in the gig economy, even if this fundamental right is legally recognized and if the trade-unions do the utmost to defend the interests of the workers concerned.

more broadly of working or resident population. Many States should revise their pension and social insurance systems with those options in mind so that they are no longer tied to continuous employment because a number of precarious workers find it very difficult to join social security schemes based on a lasting work relationship or to meet the conditions to receive benefits, in particular the obligation to have worked or contributed for a minimum period (or worked for a minimum number of hours or paid a minimum amount of contributions)³³.

Another difficulty is that in national social security schemes the amount of the benefits usually depends on the earned salary and among precarious workers that amount is often modest³⁴.

The fundamental problem is to adapt social security – which is a guarantee of income – to the categories of workers who have few resources and for whom social welfare schemes don't offer, for one reason or another, suitable provision. The ILO Income Security Recommendation, 1944 (No. 67) and the Medical Care Recommendation, 1944 (No. 69) had already established the principle of a comprehensive coverage of the whole population by a social protection scheme associating measures of social insurance, social assistance and public services. The Social Protection Floors Recommendation, 2012 (No. 202) promotes a guaranteed minimum income for the poorest. Those instruments constitute the key for the extension of the social protection to everybody.

The present crisis has confirmed the need, in a socio-economic perspective, to overcome the traditional distinction between wage earners and independent workers. The extension of the protection to all corresponds finally to a very basic idea: that it is morally and politically desirable that the person or the enterprise that benefits from

³³ Convention No. 102 on social security (minimum standards), 1952, and more recent conventions, like national rules, authorize qualifying periods, although the supplementary recommendations usually ask that those qualifying periods be waived.

³⁴ This is not the only method of calculation, however. Convention No. 102 and the subsequent instruments authorize – and themselves use for their "average" standards for determining the minimum amount – techniques that are not directly related to the wage received.

the work be charged with some obligations vis-à-vis the worker that has provided a profit or permitted otherwise an enrichment.

Progress in that direction has been made if we only think that – as it has already been reminded in this Review³⁵ – in 2019, the ILO has adopted the Convention No. 190 and the Recommendation No. 206 covering beyond wage-earners, all persons "in the world of work". It means that they protect workers irrespective of their contractual status, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.

Last but not least as labour and social security regulation could also be of private origin, another important track of thoughts is the development of collective representation and bargaining in such a way that the precarious workers with or without a contract of employment would be better covered in practice. Some countries and the European law have made timid effort in this direction. The possibility to negotiate at a level higher than the enterprise (branch or inter-sector) gives more chance for trade unions to reach the objective.

4.2. ... and distant work

As mentioned above, distant work, and especially homeworking, have considerably increased during the pandemic and it is expected to continue, at least partially, on a long-lasting basis.

It is therefore useful to look at the ILO's regulation on that specific phenomenon.

The main instruments are the following two.

The Home Work Convention (No. 177), 1996 which applies to work carried out at home or in distinct chosen premises, other than the workplace of the employer.

³⁵ JEAN-MICHEL SERVAIS, *The social consequences of the COVID 19: Which help to be expected from the ILO?*, in *Lavoro Diritti Europa*, No. 3, 2020, pp. 1-12.

It therefore covers telework, including platform work. States ratifying the instrument undertake to adopt, implement and periodically review a national policy aimed at improving the situation. It promotes equality of treatment between homeworkers and other wage earners, but does not apply to persons who have "the degree of autonomy and of economic independence necessary" to be considered independent workers under national laws.

The complementary Recommendation (No. 184), 1996 deals with the right to organize and to collective bargaining and the settlement of disputes; remuneration, minimum age, occupational health and safety, protection in the event of dismissal, protection of maternity and social security. The Recommendation further encourages information and training programmes and access to the necessary facilities.

A number of interrelated difficulties have quickly been confirmed when Covid-19 obliged more people to carry out their activities outside a firm or work of an enterprise.

The first concerns the applicable law, competent jurisdiction and the enforcement of the sentences when the relationship contains a transnational dimension. A complementary question has to do with the *applicability* of the identified legislation. Implementing rules on hours of work is no easy task in this case. One may be tempted to apply the same reasoning to occupational health and safety, but other considerations intervene, namely the incidence of certain practices on the life and health of the worker, his spouse and his family. Article 7 of the Convention No. 177 provides that "national laws and regulations on safety and health at work shall apply to homework, taking account of its special characteristics, and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in homework for reasons of safety and health". As concerns hours of work, Recommendation No. 184 simply requests that the deadline to complete a work assignment not deprive a homemaker of the possibility to have daily and weekly rest comparable to that enjoyed by other workers; national laws and regulations should

establish the conditions under which homeworkers are entitled to benefit, as other workers, from paid public holidays, annual holidays with pay and paid sick leave.

A second difficulty consists in the fact that the applicable rules cannot be *supervised* in the same way. Generally speaking, admission to inhabited premises is subject to the authorization of the person occupying those premises; that person can refuse entry, perhaps simply because of an ill-defined fear of supervision. This is why the Recommendation insists that labour inspectors be allowed to enter ‘the parts of the home or other private premises in which the work is carried out’³⁶.

Recommendation No. 184 suggests a number of means of reinforcing the effectiveness of inspection. It is not enough to know the rules: information on or awareness of the risks to health and the usefulness of protective rules are of signal importance here. The home worker should be kept informed of the specific conditions of employment in writing or by other means; employers, or the intermediaries used by them, should be registered (and provide the information requested); they should be required to notify the competent authority when they give out homework for the first time and should keep a register of all home workers, classified according to sex, to whom they give work; they should also keep a record of the time allocated for a given task and of the rate of remuneration.

The inspector then has to supervise, not only compliance with the applicable rules but also, in a way, the validity of the contract and respect for its content. The implementation of the Recommendation’s provisions can lead to a return to a certain degree of formalism in the framing of the contract for homework: the obligation to set the conditions of employment down in writing is a recognized guarantee for the worker; registration, an invaluable aid for the labour inspector.

Other difficulties are not yet covered, or not sufficiently covered, by ILO standards.

³⁶ Several countries have set up bodies of inspectors specially trained for this kind of employment, such as the *Entgeltprüfer* for homework in Germany.

Working from home should make it easier to reconcile professional life and family responsibilities. Recent experiences however have highlighted the difficulty of carrying out a professional activity with the children present. Hence the importance *inter alia* of a truly recognized right to disconnect.

As a modern form of homework, telework brings with it, on the one hand, well-known advantages (as for handicapped people or partners of expatriates) and on the other hand huge disadvantages, including the risk to be marginalized in the enterprise. Discrimination is more likely to occur in those circumstances. Furthermore the trade unions activities are more difficult to organize and the personal conflicts within the staff less easy to solve. In addition, people may feel alone and stressed in front of too demanding requirements from the management, especially with regard to workers whose wages are calculated on a piece-work or output basis and of workers engaged to complete a specific task. This is why it would be important to extend the present protection to new forms of distant work encountered in the so-called gig economy. New ways to communicate have to be elaborated to inform the workers on their statute, their working conditions, the risks implied in their job, on the electronic means to control them, on the use of algorithms and AI in general.

The new instrument could insist on the voluntary character for both parties of the telework, as does the EU framework agreement of the 16th of July 2002. Exceptions could be authorized as do today a number of legislations (like Bulgaria, France, Hungary, Poland, and Russia) in case of epidemic.

A last problem to consider is related to the fact that the ILO has not yet elaborated general rules on workers' privacy and the protection of their data, but only some specific provisions as in the Convention No. 181 and Recommendation No. 188 on private employment agencies, 1997. On the contrary, the EU framework agreement asks the employer to adopt more general measures in this regard.

The document also refers to provisions on the necessary equipment (that should normally be provided by the enterprise) and on training.

The use of computers at work has made an existing problem even more acute. What limitations, if any, should be imposed, for example, on the use of computer equipment for personal purposes on company premises, or even during working hours?

It would be useful to clarify those issues in a revised ILO instrument on distant work. There is in particular a need for more detailed rules that cover both self-employed and wage-earners and take into account often the transnational character of the work relationship. They should also deal with the misuses of the IA to blur the nature of the relationship between the firm and the worker and to control the activities of the latter without regard to his/her privacy and the protection of personal data.