



Papers di  
**DIRITTO  
EUROPEO**

[www.papersdidirittoeuropeo.eu](http://www.papersdidirittoeuropeo.eu)  
ISSN 2038-0461

2022, n. 1

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I contributi sono sottoposti ad un procedimento di revisione tra pari a doppio cieco (*double-blind peer review*).

## **Fascicolo 2022, n. 1**

### **INDICE**

Maria Caterina Baruffi e Ruggiero Cafari Panico <i>Le risorse proprie dell'Unione nella prospettiva delle riforme istituzionali</i>	1
Giacomo Biagioni <i>Giurisdizione in materia matrimoniale e principio di non discriminazione in base alla nazionalità</i>	31
Marco Borraccetti <i>Soggiorno di lungo periodo e assenza dal territorio secondo la Corte di giustizia: quando la sporadicità della presenza aiuta</i>	49
Ruggiero Cafari Panico <i>La disciplina delle imprese funebri nel prisma della libera prestazione dei servizi</i>	63
Angela Festa <i>Le sentenze «gemelle» del 16 febbraio 2022: oltre la questione di legittimità, un «manifesto» sui fondamenti del diritto europeo</i>	81
Martina Migliorati <i>Profili discriminatori della pubblicità comportamentale online: strumenti e prospettive di tutela nel diritto dell'Unione europea</i>	111
Olga Rubagotti <i>Collective bargaining and public health protection. Which role for the implementation of Agenda 2030 Goal 3 and EU social policies?</i>	133



# Collective bargaining and public health protection. Which role for the implementation of Agenda 2030 Goal 3 and EU social policies?

Olga Rubagotti\*

CONTENTS: 1. Introduction. – 2. Premises. – 2.1. Italian collective bargaining effectiveness and structure. – 2.2. International and European sustainability's policies on health protection. – 2.3. A focus on cancer and mental health. – 2.4. Implementation issues. – 3. Industrial relations as a lever to relaunch ethical values in the perspective of sustainability. – 4. Italian legislation in support of occupational welfare and the new scope for trade union action. – 5. The link between occupational welfare and sustainable development. – 6. Occupational welfare and public health. – 7. Concluding remarks.

## 1. Introduction.

The Pandemic has forced individuals to come to terms with a bitter real-life scenario that is no longer so apocalyptic: the planet is sick, and the health of individuals is at risk. In this regard, the pandemic has accelerated processes of economic, environmental, and social transformations that were already underway. Thus, the Covid-19 emergency can be also seen as an immediate wake-up call for a new ethic that can protect the right of public health. What can no longer be neglected by States, supranational organisations, and private individuals is the need to set up systems and mechanisms, composed by the interaction of hard and soft law, that can provide a rapid response to the satisfaction of new safety needs.

Protecting public health is one of the goals of sustainability, and, in particular the third goal of the sustainable development UN Agenda has the objective of ensuring health and well-being for all at all ages.

This contribution, share the perspective that sustainability today, in all its declinations, is considered an aim to which labour should strive<sup>1</sup>, and its purpose is to demonstrate that labour law and industrial relations systems can provide a very rapid reaction to the problems linked to the society's transformations in order to satisfy both employees' and all individuals' need for safety and welfare, in accordance with European and International standards of sustainable development.

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<sup>1</sup> B. CARUSO, R. DEL PUNTA, T. TREU, *Manifesto per un diritto del lavoro sostenibile*, Centre for the study of European Labour Law "Massimo D'Antona", pp. 2-6, available [online](#); V. CAGNIN, *Diritto del Lavoro e Sviluppo sostenibile*, Milano-Padova, 2018.

First, it will be argued the reasons why trade unions can actively participate in sustainable development through exerting their own action towards the ethic of sustainability (*infra*, para. 2).

Secondly, this contribution will focus on the specific Italian framework, where the public redistributive policy in support of occupational welfare has the consequence of leading collective autonomy to assume public functions of protection, which are typical of the welfare state (*infra*, para 3). Indeed, these social protection functions, in accordance with sustainable development policies, can be directed towards social, environmental<sup>2</sup>, and economic sustainability to achieve the United Nations' objectives and the European Pillar of Social Rights' policies.

Occupational welfare system is not immune from tensions because it is strictly linked to the collective bargaining and to the contract of employment<sup>3</sup>. This link gives to this system an exclusive nature: it is financed by the community but for the benefit of a few employees (who in the following pages will be referred to as «insiders» of the occupational welfare system).

Although this system has an exclusive nature, it is believed that the trade union, through the negotiation of certain categories of goods and services, able to meet today's sustainability requirements, can extend its beneficial effects also to those are not directly involved in the employment welfare system (*infra*, para. 4). In conclusion, it will be argued the way trade unions can negotiate welfare instruments, with particular reference to public health, capable of making the right of the «insiders employees» a universalizable possibility, by taking advantage of the space for their action, precisely because of its power to generate social value.

## **2. Premises.**

To comprehend better the sense of this contribution three brief premises are required. The first concerns the discipline of the effectiveness of collective bargaining in Italy. The second one regards the international and EU regulatory framework for sustainable development with specific focus on public health protection. The third concerns limits of the sustainable development implementation system.

### **2.1. Italian collective bargaining effectiveness and structure.**

In regulating trade union phenomena, for the Italian legal system, the fundamental rule is the Article 39, para. 1 of the Constitutional Charter: «[t]rade union organisation is

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<sup>2</sup> ADAPT, *La contrattazione collettiva in Italia (2019)*, VI rapporto ADAPT, ADAPT University press, 2020, pp. 183-205.

<sup>3</sup> D. NATALI, E. PAVOLINI, B. VANHERCKE, *Occupational Welfare in Europe: Risks, opportunities and social Partner involvement*, Brussels, 2018.

free», and apart from the public employment sector, there are no legal provisions regulating the effectiveness of collective agreements. This is because of the lack of implementation of Article 39, second part<sup>4</sup>. The consequences of this non-implementation are significative in terms of the legal nature and effectiveness of collective agreements.

Firstly, trade unions in Italy are considered by doctrine and case law to be unrecognised associations, to which the rules contained in the Civil Code apply.

Secondly, collective agreements are brought under the civil law regulation of contracts in general. This approach means that, from the point of view of its scope of effectiveness, the collective agreement is legally binding only for the persons who have signed it and for the persons who are members of the trade unions and employers' associations that have signed it. Over the years, case law has sought to broaden the subjective scope of application of the collective agreement, deeming it binding not only on employers who are members of the stipulating employers' association, but also on those who have adhered to the collective agreement either explicitly. Outside of these hypotheses, case law has been able to use the collective agreement only as a parameter for determining sufficient remuneration within the meaning of Article 36 of the Italian Constitution.

The structure of collective bargaining in Italy reflects the articulation of trade union organisation and it takes on a certain structure, with diverse levels, subjects, competences, and procedures.

With reference to private employment relations, the Italian experience shows three levels of bargaining: a) Cross-sectoral, b) National/Sectoral and c) Decentralised.

Regarding the National or Sectoral level, in a context of trade union freedom it is the social partners themselves who concretely identify the boundaries of the category, even if in the Italian tradition, the category is identified with the production category<sup>5</sup>.

At the decentralised level the collective agreement may be territorial, or company based. This is the level that defines the institutions of the employment relationship that are most linked to individual production contexts (workers' classification, working hours, incentive pay, etc.). At company level, the collective agreement mostly concerns the individual company, but sometimes also smaller areas, such as a factory or a branch. In any case, it is generally medium-sized and large companies that enter into collective

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<sup>4</sup> The second part of Article 39 of the Constitution provides for a mechanism whereby trade unions are required to apply for registration at local or central offices, according to the law. The registration of trade unions is functional to the acquisition of legal personality and, secondly, to the capacity to stipulate collective agreements with general effectiveness for all members of a productive category through unitary representation, i.e. in which each representation is represented in proportion to its members.

<sup>5</sup> Hence the national collective agreement (*CCNL*) for metalworkers, chemists, textiles, etc., which provide, at regular intervals, common rules for labour relations for each of these categories in relation to their respective characteristics. It should be noted, however, that for some time now the major changes in the production system, with the consequent general repercussions, have sometimes made the boundaries between the various activities more uncertain, making it more difficult to identify the category and giving rise to forms of bargaining covering non-homogeneous areas.

agreements, since their small organisational size is unfavourable to union presence. This is because of the combined provisions of Articles 19 and 35 of Law No. 300 of 1970 (the so-called *Statuto dei lavoratori*)<sup>6</sup>.

In summary, what is necessary to know is that national collective bargaining in Italy does not have general legal effect for all members of a given production category. In addition, company or territorial level of collective bargaining is not present in most of the Italian companies.

## **2.2. International and European sustainability's policies on health protection.**

In September 2015, world leaders adopted the UN Agenda «Transforming our world: The 2030 Agenda for Sustainable Development»<sup>7</sup>, establishing a set of Sustainable Development Goals to end poverty, protect the planet, and ensure the protection of human rights by 2030. Among these goals, Goal 3 of the UN 2030 Agenda specifically regards «Ensuring healthy lives and promoting wellbeing for all at all ages»<sup>8</sup>. According to the content of this goal, health issues should not be considered individually, but with an overall view. It aims first to promote education and food security, which affect the success of health programmes. In addition, aims to reduce child and maternal mortality and communicable diseases such as AIDS, malaria and tuberculosis, non-communicable diseases, through treatment and prevention processes. It aims to combat and prevent psychological disorders. Finally, it provides for the achievement of universal access to good health services and medicines and protection from financial risks.

Going beyond the specific contents of this goal, widely known, as one of the required premises of the centrale thesis of this contribution, here it is necessary to focus on the UN measures established to give effectiveness to all the Agenda principles.

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<sup>6</sup> [Law 20 May 1970, No. 300](#), Norme sulla tutela della libertà e dignità dei lavoratori, della libertà sindacale e dell'attività sindacale, nei luoghi di lavoro e norme sul collocamento. Article 19 provides for the possibility of setting up company trade union representatives in a production unit, within the framework of trade union associations that are signatories to the collective labour agreements applied in the production unit. Article 35, on the other hand, for industrial and commercial companies, limits the scope of application of Article 19 to company headquarters, factories, branches, offices, or autonomous departments with more than 15 employees. In Italy, the production sector is characterised by the prevalence of small and medium-sized companies (with no more than 10 employees), with the highly industrialised North in opposition to the Centre-Southern regions. The subjective effectiveness of company level collective bargaining reflects the characteristics of the Italian territory and is therefore limited to a low percentage of companies and workers, compared to the total number of companies and workers in the labour market.

<sup>7</sup> United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, 2015; available [online](#).

<sup>8</sup> United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, cit., p. 20.



These implementation measures have been stated in the Addis Ababa Action Plan<sup>9</sup>, and in the Financing for Sustainable Development Report 2021<sup>10</sup>. Both plans adopt a multilevel logic within which both international institutions, States and private individuals must act.

The Addis Ababa Plan consists of a financial framework aimed at achieving the goals of the 2030 Agenda, with a view to sharing responsibilities at all levels. Indeed, the Action Plan emphasises the importance of private institutions<sup>11</sup>. The primary role of action at national level is stressed, but the private sector is also given a key role.

The Financing for Sustainable Development Report 2021, which is the most recent and complete document about the implementations of the Agenda 2030's goals is drawn up considering also the economic, social, and health crisis caused by the COVID-19 pandemic. All governments involved in the agreement are specifically asked to develop taxation plans appropriate to its financing as first step. Indeed, the document recommends governments to: a) invest in people; b) invest in infrastructure and innovation; c) reform the global political and financial architecture.

With specific reference to investment in people, the report notes how the lack of sustainable progress is closely linked to the degree of vulnerability of families and therefore recommend that governments, in their political action, prioritize spending on social protection and health protection of individuals.

To implement such plans and to improve a sustainable development the European Union has adopted policies aimed at achieving the goals of the 2030 Agenda. The EU has identified key policy areas for a transformational change towards sustainable development<sup>12</sup> through the Sustainable Development Observatory (SDO)<sup>13</sup> which has delivered a European Green and Social Deal<sup>14</sup>.

European Union already pursued, before the UN Agenda, such social policy goals<sup>15</sup> since the introduction of the European Pillar of Social Rights in 2017<sup>16</sup>. **The goal of the program presented was and remains «to promote new and more effective rights for**

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<sup>9</sup> United Nations, *Addis Ababa Action Agenda of the third International Conference on Financing for Development*, 2015, available [online](#). United Nations General Assembly adopted the plan on 27 July 2015, with Resolution 69/313, as an integral part of the 2030 Agenda.

<sup>10</sup> United Nations, *Financing for Sustainable Development Report 2021*, 2021, available [online](#).

<sup>11</sup> In particular, para. 41 of the 2030 Agenda recognizes the role of the private sector in implementing the Agenda, from microenterprises to cooperatives to multinational corporations, and the role of civil society organizations and philanthropic organizations.

<sup>12</sup> Available [online](#) on the European Economic and Social Committee webpage.

<sup>13</sup> European Economic and Social Committee, *Sustainable Development Observatory, work program 2020-2023*, available [online](#).

<sup>14</sup> European Green Deal is a programme outlined in the political guidelines of the incoming President of the European Commission, Ursula von der Leyen (available [online](#)) and consist of a strategy for the EU to achieve climate neutrality by 2050 and provide economic impetus.

<sup>15</sup> See at the following webpage: <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20170616STO77648/social-europe-what-parliament-is-doing-on-social-policy>.

<sup>16</sup> European Commission, *The European Pillar of social rights Action Plan*, 2021, available [online](#).

citizens and to create a fairer and better functioning labour market and welfare systems». Moreover, the European Union itself, through the work of the Commission, in March 2021<sup>17</sup> adopted a new twenty-points action plan for the implementation of the European pillar of social rights<sup>18</sup>, with the aim of making EU social action more effective in the current critical phase of the pandemic. The Action Plan, first, indicates three objectives to be achieved by 2030: raising the employment rate; increasing the participation of workers in training plans to increase levels of employability; limiting the percentage of individuals at risk of poverty.

The point 16 of the 20 principles of the above-mentioned action plan establishes the right of every person to have «timely access to affordable preventive and therapeutic healthcare of good quality». According to the content of this principle, there are two main fields in which the European Union has focused policies on the protection of public health and that have been further implemented: the cancer prevention and treatment, and mental health protection.

### 2.3. A focus on cancer and mental health.

In February 2020, the European Union submitted a *Cancer Action Plan*<sup>19</sup> that was aimed at supporting action by individual Member States to prevent cancer<sup>20</sup> and ensure a high quality of life for cancer patients, survivors, their families, and caregivers. The EU, therefore, aims to provide an added value in areas such as: prevention; early detection; diagnosis and treatment and quality of life for cancer patients and survivors<sup>21</sup>. This plan is the latest of a series of actions put in place by the EU as part of a more comprehensive policy framework full of prevention and control policy measures<sup>22</sup>.

The reports on the State of Health in the EU drawn up every two years (from 2010 to 2020), show that cancer, in addition to representing one of the main causes of death for

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<sup>17</sup> European Commission [Recommendation \(EU\) 2021/402](#) of 4 March 2021 on an effective active support to employment following the COVID-19 crisis (EASE).

<sup>18</sup> European Commission, *The European Pillar of Social Rights in 20 principles*, available [online](#).

<sup>19</sup> Communication from the commission to the European Parliament and the Council, *Europe's Beating Cancer Plan*, [COM\(2021\) 44 final](#) of 3 February 2021.

<sup>20</sup> Cancer is a major health problem as outlined in Article 168 of the TFEU, which gives the EU the competence to support, coordinate or supplement the action of Member States in protecting and improving human health.

<sup>21</sup> COM(2021) 44 final, cit.

<sup>22</sup> Indeed, as we can read on the European Commission's [webpage](#) dedicated to the policies about cancer treatment, Europe has nearly a quarter of the total cancer cases and less than 10% of the world's population. Also reported it is the figure of how the total economic impact of cancer in Europe amounts to 100 billion euros per year. The data shows that 40% of cancers can be prevented by putting them through screening and prevention. However, only 3% of health budgets are currently spent on health promotion and disease prevention.

EU citizens<sup>23</sup> represent a factor with a significant social and economic impact, that affects the welfare systems of individual Member States. Indeed, this disease puts pressure on both national health and social protection systems and government budgets, thus affecting productivity and economic growth. To this end, the European Commission calls for the creation of health systems that are more resilient and able to respond to the emergency, also to support member states with concrete help and to ensure that all EU citizens have equal access to prevention, diagnosis, treatment, and follow-up care of high quality.

Another issue addressed by the EU concerns the mental health of individuals. Given that mental health and well-being are influenced by factors such as genetic predisposition, socioeconomic background, adverse childhood experiences, chronic conditions, alcohol, or drug abuse, it can be argued that mental health and well-being are affected by policies and actions in a range of areas, including education, health, employment, social inclusion, and efforts to combat poverty. The *Health at a Glance: Europe 2018*<sup>24</sup> report, even before the pandemic, highlighted that mental health problems affect about 84 million people across the EU, costing more than 4% of the total GDP of the 28 EU countries. Few years later, the *Health at a Glance: Europe 2020*<sup>25</sup> report found out that the COVID-19 pandemic and subsequent economic crisis contributed to rising rates of stress, anxiety, and depression, which also affected young people and people in low-income groups the most.

The European Commission has therefore prepared a system for the treatment and prevention of mental disorders, which is based on international policy frameworks, in particular the UN Sustainable Development Goals. The financial support has been made possible through the 2020 Annual Work Plan of the Health Programme to co-finance the implementation of practices such as: a) a mental health system reform focused on strengthening outreach services developed in Brussel; b) a national multi-level suicide prevention program developed in Austria; c) a stepwise intervention program to address depression, developed through European collaboration. Finally, a proposal for joint action (ImpleMentAll)<sup>26</sup> was submitted in 2021 to introduce the mental health system reform and suicide prevention. The graduated intervention program to address depression will be implemented through EEAD's Best Project.

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<sup>23</sup> T. MUSU, L. VOGEL (a cura di), *Cancro e lavoro. Comprendere i tumori professionali ed intervenire per eliminarli*, Italian edition SindNova, Roma, 2020, available [online](#). In the introduction the editors report data stating that the number of new cancer cases diagnosed each year in the European Union is something like 2.6 million (excluding non-melanomatous skin cancers), while annual cancer-related mortality is about 1.3 million. The most fatal forms of cancer are lung cancer in men and breast cancer in women. Cancer has overtaken cardiovascular diseases to become the leading cause of death in many European countries.

<sup>24</sup> European Commission, *Health at a Glance: Europe 2018*, available [online](#).

<sup>25</sup> European Commission, *Health at a Glance: Europe 2020. State of Health in the EU Cycle*, available [online](#).

<sup>26</sup> The program is available at the following webpage: <https://www.implementall.eu>.

## 2.4. Implementation issues.

Having provided this rich legal framework, the third premise regards the concrete implementation's issue of the general principles set out at international and EU level.

The first one is that, beyond the implementation plans foreseen to achieve the sustainable goals, the main problem linked to the effectiveness of the social rights' protection, as a function of the sustainable development objectives - especially for the case of public health - is the excessive costs that encumbers the budgets of States. With specific reference to the European Union, the concrete realizations the sustainable development's goals are part of the European social policy, which has as a legal base the Article 151 of the TFEU, aimed to conciliate objectives of economic efficiency with objectives of social protection; budgetary constraints of individual member states affect the extent of their own social policies.

Other issues regarding the full implementation of European social policy concern, moreover, the limit of competence of the European Union, the procedure necessary for the adoption of social policy directives and the timing of its implementation.

While respecting the limits of the EU competence, the most important source of European social hard law is the directive, which from the point of view of legal effects, binds each member State to the result to be achieved: indeed, the competence of each Member State as regards the form and means of pursuing those results shall not be affected. The transposition of the directives is not immune from other issues: it does not take place in a brief period, and the rule contained in the directive becomes concretely effective and valid only when transposed; it has no horizontal effect and in the case of failure to transpose it has direct vertical effect in compliance with the conditions of clarity, precision and unconditionality of the rule.

This is not intended to deny the importance of European social policy, nor of the legislative instruments that enable it to be effective, but it is considered, in accordance with the multilevel logic of the plans to implement sustainable development objectives, that international policies and hard law instruments should be flanked by soft law instruments from private actors. Hard law is appropriate to reach some goals, thanks to its power of giving clear limits and sanctions to lawmakers, but it is not enough for changing the culture of all the different countries interested in the process of sustainable development. **The culture of sustainability**, in all its forms, must also be achieved through bottom-up action in a framework composed by hard rules, able of restraining the self-interested behaviour of States and soft laws that are able to suggest, to educate and to advise the private and individuals in order to reach sustainability goals. Rules that can encourage individuals to modify their behaviour by adapting it both to general needs and to the specific needs that arise in different territories and manufacturing contexts.

At last problematic aspect concerns the need to achieve sustainable development objectives as soon as possible<sup>27</sup>. Instead, if we look at the UN webpage dedicated to the Agenda 2030, or even at the European Pillar of Social rights' one, can be frequently seen the use of the expression «by 2030» as a deadline to reach a concrete result, especially if we consider the damage caused by the process of industrialization at any cost and the resulting emergency. So, it is clear the need of a mechanism able to give an immediate effect, and a multilevel system of implementation can accelerate it.

### **3. Industrial relations as a lever to relaunch ethical values in the perspective of sustainability.**

In a scenario characterised by the growth of consumption incompatible with environmental conservation, the advent of globalisation, the post-Fordist industrial model, and digitalisation the link between economic growth and well-being broke down<sup>28</sup>. Indeed, the growth model that has been established to date is now clearly calling into question the lives of people on the planet, or at least their quality of life and causes new forms of vulnerability.

Sustainability becomes a lever for social protection improvement and labour law, welfare legislation, according to sustainable development, must have the function of «taking care» of new and old economic and social vulnerability situations<sup>29</sup>. **Industrial relations should contribute to the development of a more humane labour law model, which is able to adapt itself to the conditions and to the needs of the times we are living in**<sup>30</sup>. Indeed, collective bargaining can achieve a balance between economic, environmental, and social reasons.

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<sup>27</sup> D.H. MEADOWS, D.L. MEADOWS, J. RANDERS, W.W. BEHRENS III, *The Limits to Growth*, New York, 1972; The report, based on the World3 computer simulation, predicts the consequences of continued population growth on the Earth's ecosystem and the very survival of the human species. Also see P.E. CERUZZI. *Beyond the Limits: Flight Enters and the Computer Age*. Cambridge, 1989; a first update of the report which claimed that the limits of the planet's «carrying capacity» had already been exceeded. Moreover, in 2008, Graham Turner, of the Australian Commonwealth Scientific and Industrial Research Organisation (CSIRO), published a paper entitled *A Comparison of Developmental Limits and 30 Years of Actual Data* in data from the last 30 years with predictions made in 1972 in the Limits to Growth Report (from D. Meadows' book, *The Limits to Growth*), commissioned from MIT by the Club of Rome. Turner's research concluded that the changes in industrial and agricultural production, population and pollution that had actually taken place were consistent with the 1972 predictions of economic collapse in the 21<sup>st</sup> century.

<sup>28</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, Bergamo, 2018, p. 24; C. FALASCA, *Lavoro e Ambiente. La Cgil e la transizione alla sostenibilità*, Roma, 2006, pp. 33-34.

<sup>29</sup> B. CARUSO, R. DEL PUNTA, T. TREU, *Manifesto per un diritto del lavoro sostenibile*, cit., p. 11.

<sup>30</sup> B. CARUSO, R. DEL PUNTA, T. TREU, *Manifesto per un diritto del lavoro sostenibile*, cit., pp. 9-10, where the authors hope that the values underpinning labour law should not be distorted but should be adapted and modernised. In fact, labour law, in the past, developed thanks to the impulses of social movements, which have now disappeared. Globalisation would have distorted society and the market, so the rules should now, more than ever, be based on values that «cannot be circumscribed to the mere labour dimension» but should rest on universalizable arguments. Labour law should fulfil the function of economic

Industrial relations have a central role in this process for many reasons. First because industrial relations were born to solve arising problems in the labour market<sup>31</sup>. Second, because the paradigm of industrial relations, according to North American sociology, would not be reduced to the mere relationship between capital and labour, but would include a series of equally critical issues relating to labour in general and employment. They would cover any aspect of the employee-employer relationship which would have various practical implications. One of these would be identified with the objective of social welfare understood as the satisfaction of consumer needs, the debate on justice, fundamental rights and the human development<sup>32</sup>.

Industrial relations would have a moral obligation to change terms and conditions of employment deemed to be anti-social or that might harm fundamental human rights. An ethic capable of protecting workers as individuals and not only as employees could be the correct way to improve the capitalist system, that as a «compass» should guide the industrial relations' action in the direction of motivating workers, fostering cooperation between seemingly opposing parties, preventing discrimination, achieving a work-life balance, and preventing the proliferation of inequalities<sup>33</sup>.

Thirdly, because, with a view to relaunching the before-mentioned ethical dimension, industrial relations can generate flexible rules that can be adapted to individual production contexts, industrial sectors, territories and deploy their effectiveness and cogency rapidly. Collective bargaining, even for the hypothesis in which it does not have a general subjective effectiveness<sup>34</sup> the latter always being guaranteed by the force of the law, finds its added values in its ability to generate rules that can be inspired both by values of social solidarity, sustainability, with the aim of the psychophysical well-being of workers, and by the principle of equality and non-discrimination, but at the same time able to consider the company's «reason»<sup>35</sup>.

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support for individuals to be able to reduce the increase in inequalities that has occurred especially in developed countries.

<sup>31</sup> B. KAUFMAN, *The Global Evolution of Industrial Relations: Events, Ideas and the IIRA*, Geneva, 2004; B. KAUFMAN, *Il principio essenziale e il teorema fondamentale delle relazioni industriali*, in *Diritto delle relazioni industriali*, 2006, p. 13; S. JACOBY, *Employing Bureaucracy: Managers, Unions and the Transformation of Work in American Industry, 1900-1945*, New York, 1985; B. KAUFMAN, R. BEAUMONT, R. HELFGOTT, *Industrial Relations to Human Resources and Beyond: The Evolving Practice of Employee Relations Management*, Armonk, 2003.

<sup>32</sup> B. KAUFMAN, *Il principio essenziale e il teorema fondamentale delle relazioni industriali*, cit., pp. 13-14.

<sup>33</sup> B. KAUFMAN, *Il principio essenziale e il teorema fondamentale delle relazioni industriali*, cit., pp. 30-31.

<sup>34</sup> Think about the collective bargaining system in force in Italy, where due to the lack of implementation of Article 39 of the Constitution, the collective agreement does not have *erga omnes* (general) effect for all members of the productive category.

<sup>35</sup> B. CARUSO, R. DEL PUNTA, T. TREU, *Manifesto per un diritto del lavoro sostenibile*, cit., p. 6, with particular attention also to pp. 13-14 where the authors explain that the market economy should not be opposed but regulated.

#### 4. Italian legislation in support of occupational welfare and the new scope for trade union action.

In Western democracies, since the period following the Second World War, public welfare systems have played a central role in protecting public health. The sustainability of welfare systems, particularly the sustainability of national health systems, is at a critical stage<sup>36</sup>. Globalisation, the crisis of the concept of state and citizenship<sup>37</sup>, the ageing of the population and demographic growth are just some of the factors that have made it impossible to provide for the protection of individuals' social rights<sup>38</sup>.

The crisis of the welfare state has led States to create subsidiary welfare systems, or second welfare systems, which could economically support the welfare state<sup>39</sup>.

For the Italian case, the second welfare is defined as the set of new forms of social protection subsequent to the birth of the first welfare and functional to integrate its gaps. The second welfare is a system capable of stimulating the renewal of social protection policies, giving more effectiveness to social sustainability, and creating new organisational, managerial, and financial models to respond to unexplored social needs that cannot be explored by public welfare alone. The logic to which second welfare responds is the efficiency and rationalisation of public resources, which are normally constrained by respect for financial limits, without calling into doubt the primary and redistributive function of the welfare state, which delegates part of its protection functions to private actors<sup>40</sup>.

A central role among the actors of the second welfare is reserved for companies which, since the first paternalistic experiences, have contributed through occupational welfare practices<sup>41</sup>, to make social sustainability more effective through the provision of goods and services to employees, with the aim of improving their working and living conditions. It is within this multi-level system, where the second welfare is subsidiary and supplementary to the first welfare, that we find negotiated corporate welfare supported by the state through recent fiscal policies.

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<sup>36</sup> M. PERSIANI, *Crisi economica e crisi del Welfare State*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2013, pp. 641-663; M. FERRERA, *Trent'anni dopo. Il welfare state europeo tra crisi e trasformazione*, in *Stato e mercato*, 2007, pp. 341-376; L. BALBO, *Riparlamo del "welfare state": la società assistenziale, la società dei servizi, la società della crisi*, in *Papers: rivista de sociologia*, 1982, pp. 51-85; F. CASTLES, *The Future of the Welfare State: Crisis Myths and Crisis Realities*, Oxford, 2004.

<sup>37</sup> M. CINELLI, S. GIUBBONI, *Cittadinanza, lavoro, diritti sociali. Percorsi nazionali ed europei*, Torino, 2014.

<sup>38</sup> F. MAINO, M. FERRERA (a cura di), *Primo rapporto sul Secondo Welfare in Italia*, Centro di ricerca e documentazione Luigi Einaudi, 2013, available [online](#).

<sup>39</sup> R.M. TITMUS, *Essays on the welfare state*, London, 1958.

<sup>40</sup> F. MAINO, M. FERRERA (a cura di), *Primo rapporto sul Secondo Welfare in Italia*, cit., with particular reference to p. 8.

<sup>41</sup> B. CARUSO, «*The bright side of the moon*»: politiche del lavoro personalizzate e promozione del welfare occupazionale, in *Rivista italiana di diritto del lavoro*, 2016, I, p. 186.

With the 2016 «Financial Law»<sup>42</sup>, the legislator introduced a system of tax incentives in support of contracted employment welfare through which it intends to implement a redistributive public fiscal policy<sup>43</sup>. Already in a phase preceding public support to contracted welfare, corporate welfare practices were identified with unilateral initiatives of enlightened entrepreneurs, dating back to the post-industrial period, but extraneous to negotiation relations with the trade union. These initiatives then developed, through the spontaneous adoption of company regulations, as an expression of a structural change in the organisation of the company. The latter, which had become aware of its political essence, chose to become a socially responsible institution and guarantor of workers' welfare, pursuing not only profit but also the protection of workers' needs and the improvement of their living conditions<sup>44</sup>.

Law No. 208/2015 looks at these practices with favour and offers fiscal support to contracted corporate welfare with the aim of making it the subject of decisions shared with the trade union and thus of the collective agreement.

It does so in the wake of a structural, spontaneous change in business organisation, which it elects as a solution to the problem of the necessary rethinking of the welfare state, that today has reduced resources.

This policy has a threefold effect. Two positive effects, but also a potential negative effect:

1) Pushing the industrial relations system to assume public protection functions typical of the welfare state, without, however, invading its sphere of autonomy. This is because there is no express delegation of regulatory tasks to the collective agreement. Rather the law gives preferential treatment to a specific type of collective bargaining, of

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<sup>42</sup> [Law 28 December 2015, No. 208](#), Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge di stabilità 2016).

<sup>43</sup> B. CARUSO, *Recenti sviluppi normativi e contrattuali del welfare aziendale, nuove strategie di gestione del lavoro o neo consumismo?*, in *Rivista italiana di diritto del lavoro*, 2018, I, p. 370 ff. The incentives would now constitute a *modus operandi* through which the State has intended to implement a public policy of a promotional nature aimed at directing social actors towards participatory corporate negotiation.

<sup>44</sup> M. BARBERA, "Noi siamo quello che facciamo". *Prassi ed etica dell'impresa post-fordista*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2014, pp. 631-645. In particular, at p. 639, the author makes it very clear that the company, following the assessment of the social impact of its actions, with an openness towards external groups or subjects (local communities, government bodies, non-profit associations, educational institutions, trade unions, the press: the so-called stakeholders) would become aware that they may be affected by the effects of company decisions (which constitutes the altruistic *substratum* of CSR), but also that these subjects may, in turn, influence the company's activities in terms of policies or work processes.

The self-regulation of the company, however, implies the loss of control over its values. The unilateral character of the company regulation reduces the control space reserved, in advance to the trade union and in a potential subsequent way to the judge.



a participatory type, because of its content: the provision of fringe benefits to workers employed by the company<sup>45</sup>.

The government's measures are designed to create a link between incentives and employment welfare in case of the social obligation finds its genesis in the collective agreement, be it a company agreement, a CCNL or a Cross-sectoral agreement<sup>46</sup>. A further benefit (tax for workers and contributions for employers), linked exclusively to the company level of collective bargaining, is also provided for in the case of total or partial conversion of productivity wages into welfare benefits and induces the parties to implement wage modernisation strategies, based on advantages induced by public resources made available for this purpose<sup>47</sup>.

2) Giving a new social function to collective bargaining. Collective bargaining mediates a new type of interests, i.e., interests of the worker to the satisfaction of primary needs, constitutionally protected, expression of fundamental and social rights. Interests that, going beyond the settlement of the conflict between labour and capital, has a general nature, because they pertain to the dimension of the individual as such and not as a worker.

The latter are transformed, elected to collective interests thanks to the mediation of trade unions, as a result of a process of will formation, which gives them a new collective dimension, with the consequent functionalisation of collective agreements for purposes of public interest. These interests are ontologically «individual-general». Once they are included in the object of trade union concerted activity, they produce an effect that also has repercussions on the trade union's function: to flank the welfare state in its action as guarantor of the social rights of its representatives<sup>48</sup>.

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<sup>45</sup> The new tax law identifies a set of benefits which, because of their social purpose, whether educational, training, recreational, welfare or health, are subject to benefits such as to exclude the inclusion of their value in the sum of income from employment for the purposes of IRPEF taxation and from business income for the purposes of IRES calculation. For the list of goods and services that allow access to tax and contribution benefits for employees and firms see E. MESSAGLI, S. SPATTINI, M. TIRABOSCHI, *Fare Welfare in Azienda*, ADAPT University Press, 2018, pp. 181-203. For the latest novelties introduced by the 2019 «Financial Law» ([Law 30 December 2018, No. 145](#), Bilancio di previsione dello Stato per l'anno finanziario 2019 e bilancio pluriennale per il triennio 2019-2021) see V. SANTONI, *Welfare aziendale: la Legge di Bilancio 2019 segna una battuta d'arresto*, in *Percorsi di Secondo welfare*, 9 gennaio 2019, reperibile [online](#).

<sup>46</sup> The legislator, who initially reserved this favourable tax treatment only for second-level bargaining concerning employment welfare, with the 2017 Stability Law, has also co-opted the contents of national collective agreements and Cross-sectoral agreements into the system of reliefs and facilities, with a view to extending its scope of effectiveness beyond the peripheral level of bargaining. For more details see D. COMANDÈ, *Il nuovo welfare contrattuale nei negoziati collettivi nazionali: stato dell'arte e criticità*, in *Rivista del Diritto della Sicurezza Sociale*, 2017, pp. 821-842, with reference to pp. 824-825.

<sup>47</sup> B. CARUSO, «*The bright side of the moon*», cit., p.197.

<sup>48</sup> O. RUBAGOTTI, *Welfare occupazionale e tendenze evolutive*, in *Labour & Law Issues*, 2021, pp. 59-92, available [online](#), with reference to the para. 1.2.

The occupational welfare legislation seems to be a part of the process of institutionalisation of collective autonomy<sup>49</sup>, or rather, to some extent, seems to go beyond it, precisely because of the effect of pushing the trade unions to take on a new multidimensional<sup>50</sup> political-institutional function, which could be summarised as follows: a) a positive dimension of the development of the organisational-procedural function, which unfolds its effect within the industrial relations system, aimed at the participatory redefinition of business models as well as the design of strategies to increase productivity<sup>51</sup>; (b) a negative dimension, the expression of the transfer to the collective agreement of a political power, which produces effects outside the industrial relations system and lightens the burden of social benefits weighing on the state also thanks to its ability to rebalance the internal components of public expenditure<sup>52</sup>.

This last functional dimension allows the opening of political negotiating opportunities for the trade union<sup>53</sup> which, in this way, becomes the guarantor of the interests of its representatives, which are the expression of fundamental rights, and do not belong to them as insiders in the labour market<sup>54</sup>.

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<sup>49</sup> Massimo D'Antona, already in the late 1980s and early 1990s, dealt with the issue of the delegation of public functions to the collective agreement and studied the growing role of public authorities in regulating labour relations and company crises. See: M. D'ANTONA, *Pubblici Poteri nel mercato del Lavoro. Amministrazioni e contrattazione collettiva nella legislazione recente*, in *Rivista italiana di diritto del lavoro*, 1987, I, pp. 226-291; M. D'ANTONA, *Diritto Sindacale in Trasformazione*, in G. GHEZZI (a cura di), *Contrattazione, rappresentatività, conflitto. Scritti sul diritto sindacale*, Roma, 2000, p. 69; M. D'ANTONA, *Le varie dimensioni giuridiche dell'azione sindacale e della contrattazione*, in F. AMATO, S. MATTONE (a cura di), *Il sindacato alla svolta degli anni '90: contrattazione, rappresentanza, democrazia*, Milano, 1989, pp. 93-97.

<sup>50</sup> V. BAVARO, *Sulla prassi e le tendenze delle relazioni industriali in Italia (a proposito di un'indagine territoriale)*, in *Diritto delle relazioni industriali*, 2017, p. 41; B. CARUSO, *Recenti sviluppi normativi e contrattuali del welfare aziendale*, cit., pp. 369-388.

<sup>51</sup> L. PILOTTI, *Welfare aziendale tra Industry 4.0 e smart working: leve di wellness partecipative, creative per la crescita della produttività cognitiva e del paese*, in C. ALESSI, M. BARBERA, L. GUAGLIANONE (a cura di), *Impresa, lavoro e non lavoro nell'economia digitale*, Bari, 2019, pp. 214-240. See also C. MURENA, *Welfare aziendale e fidelizzazione dei lavoratori*, in *Lavoro Diritti Europa*, 2020, n. 3, available [online](#).

<sup>52</sup> F. RAZETTI, F. MAINO, *Attori e risorse tra primo e secondo welfare*, in *Quarto rapporto sul secondo welfare in Italia*, Centro di ricerca e documentazione Luigi Einaudi, Torino, 2019, pp. 49-52, available [online](#).

<sup>53</sup> O. RUBAGOTTI, *Welfare occupazionale e tendenze evolutive*, cit., pp. 68-70. Without claiming to be exhaustive, through the establishment of supplementary health funds, membership of bodies and mutual aid funds, which are moreover institutions regulated by the national collective agreement of the category and therefore accessible to a greater number of employees, it is possible to support the private health expenditure of families. F. RAZETTI, F. MAINO, *Attori e risorse tra primo e secondo welfare*, cit., p. 71. Supplementary pension funds can have a corrective effect on the loss of contributions linked to the exercise of the right to convert the performance bonus into fringe benefits. G. MALLONE, T. TAFARO, *Premio in welfare oggi, quale pensione domani?*, in *Rivista delle Politiche Sociali*, 2017, n. 2, pp. 47-59.

In addition, occupational welfare can be understood as a tool to encourage the sharing of family care roles, which currently weigh mainly on women. In this way, trade unions can promote targeted family welfare policies that have a greater impact on the sharing of family care duties than on work-life balance, and thus play an active role in promoting women's participation and permanence at work. C. ALESSI, *Lavoro e conciliazione nella legislazione recente*, in *Diritto delle relazioni industriali*, 2018, pp. 804-821.

<sup>54</sup> O. RUBAGOTTI, *Welfare occupazionale e tendenze evolutive*, cit., pp. 67-68.

3) Increasing the dualisms that already characterise the labour market and potential contraction of universal welfare. This is due to the intertwining of the fiscal discipline and the operating rules of the industrial relations system, which make employment welfare a system of limited subjective effectiveness.

The intervention of the fiscal lever on employment welfare works with redistributive, indirect, facilitation mechanisms (tax expenditures) aimed at favouring the acquisition of social services through the private market. The State has renounced to collect part of the taxes normally charged to enterprises and workers, potentially destined to the financing of the first welfare, in order to decrease the labour costs on a limited number of enterprises and the tax pressure on a limited number of workers employed by them<sup>55</sup>.

The tax cut is a significant cost<sup>56</sup> borne by the community, but whose effect, as empirical research has shown<sup>57</sup>, benefits a small number of individuals. If the State continues to guarantee the respect of social rights by intervening more and more through monetary transfers and tax breaks rather than through services provided directly to citizens, in the absence of corrective measures, it will end up producing social segmentation. Tying welfare, even if supplementary, to the collective agreement and therefore to the existence of a long-term subordinate employment relationship, will create a set of subordinate workers, strong and protected through insurance mechanisms on the one hand, and the other citizens, self-employed, marginal, and discontinuous workers, on the other<sup>58</sup>.

To avoid this kind of tensions a legislative intervention by the State seems to be more appropriate because the law is the correct instrument to provide coordinates and limits for the action of the social partners and to avoid liberalist drifts in the social protection system<sup>59</sup>. The time required for the entry into force of a law capable of limiting

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<sup>55</sup> E. PAVOLINI, U. ASCOLI, *The Dark Side of the Moon: il ruolo del welfare fiscale nel sistema di protezione sociale italiano*, in *Politiche sociali*, 2019, pp. 41-43.

<sup>56</sup> E. PAVOLINI, U. ASCOLI, *The Dark Side of the Moon*, cit., p. 41. *Contra* A. PANDOLFO, *Principi costituzionali e regole generali del welfare contrattuale*, in T. TREU (a cura di), *Welfare aziendale 2.0, nuovo welfare, vantaggi contributivi e fiscali*, Vicenza, 2016, pp. 53-72; F. RAZETTI, F. MAINO, *Attori e risorse tra primo e secondo welfare*, cit., p. 49 ff., who instead argue that a correct and complete estimate should consider not only the lost revenues, but also the higher revenues (tax and social security contributions) generated by corporate welfare, thanks to the activation of new entrepreneurial activities, to the possible effects in terms of emersion of undeclared work, especially in the personal services sector, as well as to the expected increase in productivity induced in firms that introduce welfare for their employees.

<sup>57</sup> L. SBARRA, A.R. MUNNO, S. SPILLER, R. BENAGLIA, *V Rapporto OCSEL. Il lavoro cambia...la contrattazione costruisce le risposte*, dicembre 2019, available [online](#); L. SBARRA, R. BENAGLIA, A.R. MUNNO, S. SPILLER, *IV Rapporto OCSEL. Una contrattazione aziendale sempre più plurale e nuova*, luglio 2018, available [online](#); CGIL, *Secondo rapporto sulla contrattazione di secondo livello*, gennaio 2020, available [online](#); Si veda anche *Welfare Index PMI – Rapporto 2019*, available [online](#).

<sup>58</sup> S. RENGA, *La protezione sociale e il lavoro che manca*, in C. ALESSI, M. BARBERA, L. GUAGLIANONE (a cura di), *Impresa, lavoro e non lavoro nell'economia digitale*, Bari, 2019, pp. 763-771, at p. 767.

<sup>59</sup> O. RUBAGOTTI, *Welfare occupazionale e tendenze evolutive*, cit., with particular attention to the para. no. 5, p. 84 ff.

these risks may be extremely long, and in the meantime collective autonomy could provide for their containment by itself.

## 5. The link between occupational welfare and sustainable development.

At this point, it can be stated that there is a connection between the sustainability's principles and the occupational welfare's goals.

The key elements of sustainability, in general, are the improvement of welfare and living conditions of individuals, social cohesion, the achievement of a competitive social market economy and the advancement of the European social model, the prevention against the damages caused by the capitalist industrial system<sup>60</sup>. In this perspective, occupational welfare, by protecting the social rights of workers and easing the burden of social benefits on the welfare state<sup>61</sup>, meets all the objectives mentioned above.

Actually, the object of the occupational welfare's bargaining, concretely, is a set of benefits which, by virtue of their social aims, be they educational, training, recreational, welfare, health or environmental, protect the well-being of workers and ensure the maintenance of their social protection levels<sup>62</sup>.

This connection is particularly strong and evident if we refer to the concept of social sustainability that is the capacity of a system to guarantee for all the individuals' access to fundamental goods and rights, to the welfare, under equal's conditions for today's and future communities<sup>63</sup>. The connection is also strong for the environmental sustainability<sup>64</sup>. In this regard, the United Nations Environmental Programme, in promoting sustainable development, already in 2007, mentioned collective bargaining in as a privileged institution to regulate work organization with the aim to guarantee environmental protection and that of workers also using the wage lever<sup>65</sup>.

Labour law and collective bargaining can act as a lever for both organisational sustainability, understood as protecting the health of workers, and ecological sustainability, in terms of energy saving and reduction of environmental damage. The organisation of work performance can also have a fundamental role in reducing the

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<sup>60</sup> V. CAGNIN, *Diritto del lavoro e sviluppo sostenibile*, cit.

<sup>61</sup> D. NATALI, E. PAVOLINI, B. VANHERCKE (edited by) *Occupational Welfare in Europe: Risks, opportunities and social Partner involvement*, Brussels, 2018. B. GREVE, *Occupational welfare. Winners and losers*, Cheltenham, 2007.

<sup>62</sup> G. MALLONE, *Imprese e lavoratori: il welfare aziendale e quello contrattuale*, in F. MAINO, M. FERRERA (a cura di), *Primo rapporto sul secondo welfare in Italia*, Centro di ricerca e documentazione Luigi Einaudi, Torino, 2013, pp. 49-81, available [online](#).

<sup>63</sup> J. MCGUINN et al., *Social Sustainability. Concepts and Benchmarks*, Study PE 648.782, 2020, available [online](#).

<sup>64</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, cit.; ADAPT, *La contrattazione collettiva in Italia (2019)*, cit.

<sup>65</sup> UNEP, *Labour and the environment: A natural Synergy*, 2007, available [online](#).

pollution but also in improving psychophysical health<sup>66</sup>. Also, the legislation on occupational welfare in Italy offers a space for action for trade unions to negotiate goods and services environmental oriented. There are many examples about the bargaining of work-life balance benefits has a beneficial impact not only on the health of the worker benefiting from the benefit, but also decreases the probability of accidents and harmful behaviour for him/her and the surrounding environment<sup>67</sup>. Even the contracted welfare, at company level can be considered as a form of «functionalisation of part of labour income» towards forms of sustainable consumption aimed at promoting the purchase by workers and their families of environmentally sustainable goods and services<sup>68</sup>. Through performance pays, the collective bargaining can contribute to overcoming the dividing line between the state and the market<sup>69</sup>, also through the creation of networks and partnerships between companies and local autonomies<sup>70</sup>.

Moreover, occupational welfare has positive impacts in terms of economic sustainability. It has the power to reduce labour costs by cutting the amount of taxation on companies and workers. The way it operates allows companies to invest part of their saved capital in the market and maintains the purchasing power of workers by supporting consumers. As the occupational welfare system is subsidiary to the welfare state, it integrates it and alleviates part of the costs of social benefits that would normally be charged to it<sup>71</sup>.

The problem remains the exclusive (limited subjective effectiveness) nature of the occupational welfare system, due to its complex mechanism of operation, but by using the leverage of occupational welfare, the union with the employers' associations could solve this issue, through the negotiation of sustainable goods and services. Indeed, the

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<sup>66</sup> For example, among the studies cited in support of this thesis there is: F.-X. DEVETTER, S. ROUSSEAU, *Working Hours and Sustainable Development*, in *Review of Social Economy*, 2011, pp. 333-355, who through empirical analysis demonstrate the link between reduced working hours and reduced pollution, as income is related to the number of hours worked and income is related to consumption; S. DE SPIEGELAERE, A. PIANSI, *The why and how of working time reduction*, ETUI, 2017, revision in January 2021, with particular attention to pp. 35-37, available [online](#).

<sup>67</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, cit., p. 254 ff. Examples are welfare measures aimed at promoting sustainable mobility on the way to work, which are agreed upon within the framework of company bargaining. In these cases, companies stipulate agreements with public transport companies or local authorities to promote sustainable transport methods in order to reduce CO<sup>2</sup> emissions and to comply with Italian and European standards of sustainable mobility and to implement them.

<sup>68</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, cit., pp. 226-233, where the author gives some examples of environmentally sustainable welfare measures; see also ch. 3, part. 3, par. 6 about the role of wage in the promotion of sustainable development.

<sup>69</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, cit., p. 240.

<sup>70</sup> R. PESSI, *L'accordo sul modello di welfare aziendale nel distretto industriale pratese: l'avvio di una possibile esperienza di welfare society*, in *Giornale di diritto del lavoro e relazioni industriali*, 2015, pp. 133-142. For the author today arises the necessity of an evolution from the welfare state to the welfare society, in which the welfare of citizens is no longer referred to the state alone, but to society as a whole. The idea is to transform and lighten the welfare state, with a welfare model capable of resolving the crisis of the traditional system. The ultimate effect would be to redesign the role of the welfare state, which would become the centre for coordinating social relations.

<sup>71</sup> F. MAINO, M. FERRERA (a cura di), *Primo rapporto sul secondo welfare in Italia*, cit.

principles of sustainable development have a conservative function according to the maintenance of an environmental and economic heritage and the rights of individuals, but at the same time they are preventive with regard to their further deterioration. Sustainable welfare measures have a «preventive power» or are «prevention-oriented» and their preventive purpose gives them the capacity to generate social value.

For examples if we think about welfare measures aimed at protecting the environment, they can prevent the risks associated with pollution and climate change, with a double beneficial effect:

- an immediate and direct one to the employees included in the occupational welfare systems because they are direct recipients of fringe benefits aimed at environmental protection;
- a second one, diffuse, advantage for the community, because the environment is the place where the life of all individuals takes place: a healthy environment is a necessary factor for the well-being of all individuals.

In this case, goods, services and, consequently, the possibilities they aim to protect, even if they are attributed to a few subjects, can generate social added value and utility that cannot be privatised and become universal, precisely because of their sustainable nature.

## **6. Occupational welfare and public health.**

Such arguments can be applied to collective bargaining which provides for welfare measures aimed at protecting the health right and promote wellbeing, according to International and European policies.

The premise is that the increase in diseases such as cancer, mental disorders, cardiovascular diseases, and others, highlights the inadequacies of current prevention policies, the fight against which will face fierce political opposition because of the fundamental questions it raises about the way we produce.

In this regard collective bargaining shows that occupational welfare today is already a potential method for combating the inadequacy of the National Health System, which has become incapable, due to continuous budget cuts, of meeting the general health needs of the population, which have increased in recent years also because of its progressive ageing<sup>72</sup>. Trade union's action in bargaining can become a powerful tool to prevent the incident of many diseases.

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<sup>72</sup> The component of public expenditure earmarked for healthcare has been stationary since 2008 until 2019, while it is set to increase in the coming years. Public expenditure on health has been stationary since 2008 until 2019, while private expenditure on health care, which is borne directly by citizens, is increasing, which implies the risk of an increase in the cost of health care for the citizens, which means that there is a risk of additional costs, especially for the most disadvantaged in terms of health. This implies the

The general right to health of workers benefiting from welfare measures is nowadays mainly protected through the establishment of supplementary health funds and membership of mutual aid institutions and funds, which are moreover institutes regulated by the national collective agreement for the category and therefore accessible to a larger number of employees, it is possible to support the private health expenditure of families. These types of measures clearly have a direct effect: on the subjects who are «insiders» of the employment welfare system because they are covered by the subjective effectiveness of collective bargaining and are also holders of employment contracts.

Instead, trade unions together with employers' associations can play a fundamental role in protecting not only the health of the occupational welfare system's insiders, but also of all individuals who have access to the national health system and in particular for all the occupational welfare system's «outsiders».

This can be achieved by negotiating «health-care preventive» welfare measures. Trade unions could, for example, negotiate welfare measures to support workers' psychological wellbeing, including a choice of psychological sessions and cancer screening among the basket of company benefits provided to workers. In this case, the preventive nature of welfare measures would be directed towards the sustainability of the national health system, due to a potential decrease in the costs of treating some preventable diseases. Hypothetically, the resources saved could be used by the national health system differently and towards more fragile and weak individuals, who are not included in the occupational welfare system.

With specific regard to mental health protection, recent studies show that mental health promotion measures to prevent mental disorders are cost-effective in low- and middle-income environments. Recent research conducted by researchers at Deakin University<sup>73</sup> and published in March 2021 shows that prevention of mental disorders in the workplace is effective in terms of reducing potential treatment costs related to the onset of mental disorders. It also highlights the effectiveness of preventive measures and mental health promotion through cognitive behavioural therapy for adolescents, with reference to its power to reduce anxiety disorders<sup>74</sup>.

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risk of increased costs, especially for the most disadvantaged in terms of health conditions and/or low income. Health is the most significant area of welfare spending for households, with a total value of 37.7 billion euros in 2018. For more details see F. RAZETTI, F. MAINO, *Attori e risorse tra primo e secondo welfare*, cit., pp. 53-58.

<sup>73</sup> L.-K. D. LE, A.C. ESTURAS, C. MIHALOPOULOS, O. CHIOTELIS, J. BUCHOLC, M.L. CHATTERTON ET AL., *Cost-effectiveness evidence of mental health prevention and promotion interventions: A systematic review of economic evaluations*, in *PLoS Medicine*, 2021, available [online](#).

<sup>74</sup> The economic evidence of psychological interventions targeting high-risk populations for prevention of anxiety disorders consistently reported that child-focused Cognitive Behaviour Therapy, parent-focused, or parent-focused psychoeducational interventions provided good value for money. L.-K. D. LE, A.C. ESTURAS, C. MIHALOPOULOS, O. CHIOTELIS, J. BUCHOLC, M.L. CHATTERTON ET AL., *Cost-effectiveness evidence*, cit., p. 7.

If preventive access to psychological therapy can avoid the development of mental disorders and consequently reduce part of their eventual treatment costs, which normally encumber the national health system and families, then it is possible to affirm that an occupational welfare system that provides the access to preventive psychological therapies is directed towards the sustainability of the welfare state. There will be direct benefits for the individual receiving preventive measures, but indirect benefits for all those who have access to the national health care systems in terms of potential savings of resources for the public welfare systems that can be invested differently.

Same argument can be spent on the provision of welfare benefits and services functional to cancer prevention. For this hypotheses, although the debate on the relationship between the costs and benefits of prevention is broad and not always in agreement, part of the researchers come to the conclusion that preventive screening allows a high detection rate, a higher number of cancers detected at an early stage, the possibility of removing on the basis of screening a large number of adenomas, a clear reduction in demolition interventions and, finally, a longer survival of patients affected by this neoplasm. These results are accompanied by foreseeable economic returns<sup>75</sup>, since these returns would save suffering and costs both for patients suffering from the disease and for the national health system, which covers most of the costs of treating the disease.<sup>76</sup>

Unlike the hypothesis of welfare measures aimed at reducing environmental risks, Italian collective bargaining does not yet seem to adopt with frequency *preventive* welfare measures plans to protect the right to health of workers and individuals in general.

Therefore, it would be useful to empirically verify whether trade unions and companies have set up occupational welfare plans directed towards the latter objective, in order to set them up, in case of lack, or otherwise implement them.

## 7. Concluding remarks.

In conclusion, the increase and diversification of social needs and the difficulty for welfare state systems to rapidly recalibrate their social protection policies have encouraged the Italian legislator to make the industrial relations system assume public functions of social protection, which are typically the prerogative of the welfare state. The climate change, the environmental pollution, the new social and economic needs, and, at last, the pandemic have also confronted individuals with the need to relaunch an ethic of solidarity and social, environmental and economic sustainability.

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<sup>75</sup> For the specific case of colon cancer see V. GHEZZI, *Analisi costi benefici dello screening per il cancro conorettale in Italia*, Milano, 1998. For the specific case of the breast cancer see L. SUN, R. LEGOOD, Z. SADIQUE, I. DOS-SANTOS-SILVA, L. YANG, *Cost-effectiveness of risk-based breast cancer screening programme, China*, in *Bulletin of the World Health Organisation*, 2018, pp. 568-577, available [online](#).

<sup>76</sup> Osservatorio sulla condizione assistenziale dei malati oncologici, *11° Rapporto sulla condizione assistenziale dei malati oncologici*, 2019, available [online](#).



While international organisations have drawn up agreements and policies aimed at achieving sustainable development objectives, the Italian tax legislation on occupational welfare opens up spaces for trade union action according to the objectives dictated at supranational level by the UN and the European Union.

The negotiation of «preventive» welfare measures aimed at protecting the environment, the social rights and, as has been argued, the public health have a series of potential positive effects that we could quickly summarise here:

- a) alleviating the cost of welfare benefits that are borne by the state, redistributed to the private sector;
- b) providing a rapid response to new social needs and, in a multilevel perspective, contributing to the achievement of sustainable development objectives;
- c) contributing in a direct way to the increase in the welfare levels of workers benefiting from welfare measures, in response to their vulnerability and needs which are constantly evolving and require the rapid design of flexible policies and targeted services<sup>77</sup>;
- d) transforming the right of the occupational welfare system workers insiders' into a universalisable possibility, precisely because of the capacity of that type of right attributed to a few subjects to generate social value and utility that cannot be privatised.

In this way, rights attributed only to subjects covered by collective bargaining and also holders of a subordinate employment contact, become tendentially universal. Although indirectly, their universal character can therefore contribute to extend the subjective scope of collective bargaining in the field of welfare and help prevent the occupational welfare system from accentuating the segmentations that already characterise the labour market.

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<sup>77</sup> F. RAZETTI, F. MAINO, *Un rinnovato protagonismo per stakeholder e corpi intermedie? Il secondo welfare tra evoluzioni concettuali e sviluppi empirici*, in *Quarto rapporto sul secondo welfare in Italia*, cit., pp. 49-80.

**ABSTRACT:** Il paper, previa disamina delle recenti politiche adottate a livello internazionale ed europeo e dirette al rilancio di un'etica della sostenibilità in grado di tutelare la salute pubblica, intende dimostrare come le relazioni industriali possano fornire una risposta efficace al problema della sostenibilità dei sistemi di welfare. Per il caso italiano, la *policy* pubblica di stampo redistributivo a sostegno del welfare occupazionale ha l'effetto di spingere l'autonomia collettiva ad assumersi funzioni pubbliche di protezione, tipiche dello Stato Sociale. Il sistema di welfare occupazionale ha carattere esclusivo: è finanziato dalla collettività ma a beneficio di pochi lavoratori subordinati. Si argomenterà di come le parti sociali, però, sfruttando lo spazio d'azione politica conferitogli, possano contrattare strumenti di welfare in grado di rendere il diritto degli *insiders* possibilità universalizzabile proprio per il potere di generare valore sociale, tutto ciò in linea con gli obiettivi delle politiche d'attuazione del Pilastro Europeo dei diritti sociali.

**PAROLE CHIAVE:** Sostenibilità; politiche sociali; relazioni industriali; welfare occupazionale; salute pubblica.

*ABSTRACT: After examining recent policies adopted at international and European level aimed at relaunching an ethic of sustainability capable of protecting public health, the paper intends to demonstrate how industrial relations can provide an effective response to the problem of the sustainability of welfare systems. For the Italian case, the public redistributive policy in support of occupational welfare has the effect to encourages the collective autonomy to assume public functions of social protection, typical of Welfare State. Occupational welfare system has an exclusive nature: it is funded by the collectivity, but only a few employees can gain the benefits. It will be argued how the social partners, using the space for political action given to them, can negotiate welfare instruments. Through these instruments the right of insiders can be universalizable, precisely because of its power to generate social value, in line with the objectives of the implementation policies of the European Pillar of Social Rights.*

*KEYWORDS: Sustainability; social policies; industrial relations; occupational welfare; public health.*