

## NEW ITALIAN EFFORTS AGAINST FALSE INDEPENDENT WORK

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### SUMMARY

1. Introduction; 2. From employer-coordinated freelance work agreements to the crisis of project-based work: the evolution of remedies against false independent work; 2.1. Article 409.3 c.p.c. and the first period of employer-coordinated freelance work agreements; 2.2. The project-based work; 2.3. Efforts to reform project-based work; 3. The innovations provided by Legislative Decree n. 81/2015; 4. In particular: the heter-organized work and the reallocation of risk; 5. The effects of introduction of heter-organized work on Italian occupational levels; 6. Implications of heter-organized work with reference to new issues concerning sharing economy; 7. Conclusions.

### **1. Introduction**

The abuse of false independent work is a long standing problem of the Italian labour market, that the legislator attempted to resolve, without success, from the beginning of 1990s. In 2014-2015, the Italian Government has posed the struggle against false independent work, and a better protection of autonomous workers treated as dependants, on the top of its labour agenda. In particular, the most relevant reform was the introduction of the new legal institute of heter-organized work, with the aim to reduce spaces for an abusive utilization of “apparent” independent workers. The reform has been followed by a relevant debate in Italy, concerning the real effects of this intervention and its concrete impact in the condition of the Italian labour market.

Aim of this article is, after a brief historical review about false independent work in Italy, to analyse the main characteristic of heter-organized work, and try to identify its real impact on the condition of collaborators and autonomous workers, through the observation of official statistics concerning Italian labour market in 2015 and in the first middle of 2016.

Finally, another important issue will be to evaluate whether heter-organized work could be also a mean useful to assure a better protection to the new workers of the on-demand economy.

## 2. From employer-coordinated freelance work agreements to the crisis of project-based work: the evolution of remedies against false independent work

### 2.1. Article 409.3 c.p.c. and the first period of employer-coordinated freelance work agreements

The matter of abuse of false independent work in Italy is strictly connected with the rules regarding employer-coordinated freelance work agreements.

During the 1990s local employers, facing the necessity to reduce costs, begun to utilize the aforementioned kind of labour agreements instead of the standard dependent labour contracts. In fact, the employer-coordinated freelance work agreements allow the employer to exercise, on the worker, powers of control and direction very similar to ones provided by standard dependent labour agreements, but reducing rights and costs <sup>(1)</sup>.

The definition of an employer-coordinated freelance work agreement was introduced in Italy in 1973, with the Law n. 533, that amended article 409.3 of the Italian Code of Civil Procedure (hereinafter, “c.p.c.”), extending the field of application of the legislation concerning labour judicial proceedings to «*other cooperation agreements corresponding to a continuous and coordinated performance, mainly personal, even if not classifiable as a dependent labour agreement* <sup>(2)</sup>».

An employer-coordinated freelance work agreement, therefore, may be identified on the base of three elements: a) the continuous performance; b) the coordinated performance; c) the worker realizes the performance mainly by himself.

A performance may be qualified as continuous, in the light of article 409.3 c.p.c., either with reference to a specific activity of a worker, or to a repetition of results connected by a nexus of continuation <sup>(3)</sup>. The parties may formally agree for a continuous performance, or realize it as a matter of fact <sup>(4)</sup>. The element of continuation allows to distinguish the employer-coordinated freelance work agreement from “genuine” independent work. The latter, according

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(1) See G. SANTORO PASSARELLI, *I rapporti di collaborazione organizzati dal committente e le collaborazioni continuative e coordinate ex art. 409 n. 3 c.p.c.*, in W.P. C.S.D.L.E. «M. D'Antona», Italian section, n. 278/2015, p. 7-8.

(2) See L. NOGLER, *La doppia nozione giuslavoristica di parasubordinazione*, in *Massimario di giurisprudenza del lavoro*, 10, 2000, p. 1028-1029 and M.V. BALLESTRERO, *L'ambigua nozione di lavoro subordinato*, in *Lavoro e diritto*, 1987, p. 42 ff.

(3) In particular, as to the case law, a performance is continuous when persists in the time and entails a dedicated activity of the worker in favour of the customer, see Cass. 19 April 2002, n. 5698, in *Notiziario di giurisprudenza del lavoro.*, 2002, p. 620.

(4) See Cass. 23 December 2004, n. 23897, in *Massimario di Giustizia civile*, 2004, p. 12.

to Italian Civil Code (hereinafter, also the “c.c.”), is qualified as an immediate or prolonged performance, and so, different from the aforementioned continuous activity <sup>(5)</sup>.

The element of coordination is referred to the organizational side of work and underlines the functional link existing between the activity performed by the worker and by the customer <sup>(6)</sup>. Coordination implies a strict connection between the parties of an employer-coordinated freelance work agreement, in order to reach the goals of the customer <sup>(7)</sup>.

The power of coordination of a customer in an employer-coordinated freelance work agreement shows some differences from the corresponding power exercised by the employer on the employee. The customer, in fact, is bestowed only with the power to conform the work performance of the worker to its organizational needs, i.e. including, in the agreement, clauses about the place and the time of the performance, while the employer has also the possibility, according to Italian law, to determine in detail the way of execution of the performance <sup>(8)</sup>. On the other side, an independent worker is supposed only to realize the performance deduced in the agreement with the client, while is not required to respect the power of direction of the counterparty <sup>(9)</sup>. Therefore, coordination may be considered as a peculiar element of employer-coordinated freelance work agreements, that allows to distinguish them from dependent and independent work, in the light of a qualitative point of view.

In addition, the work performance of an employer-coordinated freelance worker, according to L. 533 of 1973, has to be mainly personal. Case law has defined the abovementioned element indicating that the worker is allowed to utilize collaborators, but the contribution of collaborators to the whole performance has not to be predominant if compared with the contribution of the employer-coordinated freelance worker <sup>(10)</sup>.

As indicated above, Law n. 533 of 1973 extended to the employer-coordinated freelance work agreements the application of the procedural rules of Italian labour judicial proceedings. In addition, the same law provided for the application to these agreements of the rules protecting employees from risks of settlements, concerning their rights deriving from mandatory rules of collective bargaining, according to article 2113 c.c.

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(5) See, *inter alia*, A. PERULLI, *Il lavoro autonomo tradito e il perdurante equivoco del “lavoro a progetto”*, in *Diritto delle relazioni industriali*, 2013, p. 18 ff.

(6) See Cass. 16 February 2002, n. 5698, in *Il lavoro nella giurisprudenza*, 2002, 1164, nt. GIRARDI.

(7) See Cass. 6 May 2004, n. 8598, in *Massimario di Giustizia civile*, 2004, p. 5.

(8) See A. PERULLI, *Lavoro autonomo e dipendenza economica, oggi*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2003, I, p. 236.

(9) See G. SANTORO PASSARELLI, *Il lavoro “parasubordinato”*, Milano, 1979, p. 66 ff.

(10) See Cass. 19 April 2002, n. 5698, *op. cit.*; according to Cass. 13 July 2001, n. 9547, in *Foro Italiano*, 2002, I, p. 466, Courts, to qualify a performance as mainly personal, have to evaluate the number of collaborators and also the executive or auxiliary character of the activity of collaborators.

At the beginning of 1990s, with the expansion of the utilization of employer-coordinated freelance work agreements by companies operating in Italy, the legislator partially improved the range of protections for these workers, introducing, through Law n. 335 of 1995, an obligation for them to contribute to the social security system, gradually increased in the following years, and extending to this category of workers the rules about safety of work places, with the Legislative Decree n. 38 of 2000.

Despite the abovementioned reforms, the rules protecting an employer-coordinated freelance worker at the end of 1990s were fragmented and incomplete. The most important omissions were concerning the rules that would have to bestow an employer-coordinated freelance worker, in concrete, of the constitutional right to a sufficient retribution, to vacations, to weekly rest and to a maximum limitation of daily working time <sup>(11)</sup>.

In addition, most of experts considered insufficient the discipline about dismissals of employer-coordinated freelance workers, that recognized, substantially, to the customer the right to terminate the work agreement for any reason, while bestowed the collaborator, if qualified as an intellectual worker, the right to interrupt the relationship only if a just cause was present, according to article 2237 <sup>(12)</sup> c.c.

Finally, employer-coordinated freelance workers were not in condition to strike or to organize them in trade unions: these rights, even if officially admitted by law, were *de facto* not available, in reason of the very fragmented condition of employer-coordinated freelance work.

The abovementioned situation encouraged some employers to abuse of employer-coordinated freelance work agreements, utilizing them instead of standard dependent labour agreements, to obtain a reduction of costs. To contrast this phenomenon, the Italian legislator introduced a deep reform of this matter in 2003, through the Legislative Decree n. 276.

## **2.2. The project-based work**

Articles 61 ff. of the Legislative Decree n. 276 of 2003 introduced a new kind of labour agreement, identified as project-based work.

The definition of project-based work has been provided by article 61 of Legislative Decree n. 276/2003. As to this point, the legislator expressly recalled article 409.3 c.p.c. and, in particular, the elements of continuous and coordinated performance, and of prevalence of the personal activity of the

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(11) See S. LEONARDI, *Il lavoro coordinato e continuativo: profili giuridici e aspetti problematici*, in *Rivista giuridica del lavoro e della previdenza sociale*, 1999, 1, p. 532-533.

(12) This problem was concerning, in particular, workers providing their services for only one customer, as indicated by S. LEONARDI, *Il lavoro coordinato e continuativo: profili giuridici e aspetti problematici*, op. cit., p. 533 ff.

worker<sup>(13)</sup>. In addition, the reform of 2003 introduced the element of the project, program or phase, that had to be expressly indicated in the agreement between the customer and the worker.

The element of program, project or phase was mandatory according to article 69 of Legislative Decree n. 276/2003. In case of its absence, the agreement was immediately transformed in a standard employment contract.

Notwithstanding, after the introduction of project-based work, different problems in interpretation and application of the rules provided by articles 61 ff. of Legislative Decree n. 276/2003 arose. The main issue was referred to the definition of project, program or phase, that was not sufficiently detailed to avoid an abusive utilization of the new agreement and an increase of judicial proceedings referred to the correct interpretation of the rules set forth by articles 61 ff. of Legislative Decree n. 276/2003.

In addition, the requirement of a coordinated performance, indicated also by article 61 of Legislative Decree n. 276/2003, needs to be analysed in the light of the element of project, program or phase<sup>(14)</sup>. Coordination, in fact, implies that the activity indicated as the program is determined by the customer, but has to be realized only by the worker and granting him with the possibility to autonomously decide the time to be devoted to work.

Article 61, paragraphs 2 and 3, concerned a list of work relationships expressly exempted to the application of project-based work. The exempted relationships were, *inter alia*, agency and distribution, occasional performances and activities carried on by workers inscribed to a professional association<sup>(15)</sup>.

Article 62 regulated the form of the analysed agreement. In particular, the legislator indicated the written form as mandatory. Notwithstanding, article 62 did not specified whether the form was required *ad substantiam* or *ad probationem*. This issue lead to a wide debate between scholars, concluded with a preponderance of the opinion in favour of the written form *ad probationem*. This opinion has been confirmed, afterwards, also by the Government<sup>(16)</sup> and by case law<sup>(17)</sup>.

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(13) See, *inter alia*, E. GHERA, *Sul lavoro a progetto*, in *Rivista italiana di diritto del lavoro*, 2005, 1, p. 196-197.

(14) About the distinction between the elements of project, program or phase, see G. SANTORO PASSARELLI, *La nuova figura del lavoro a progetto*, in *Argomenti di diritto del lavoro*, 2005, p. 103-105; for a different point of view, E. GHERA, *Sul lavoro a progetto*, op. cit., p. 203 and V. NUZZO, *Le collaborazioni coordinate e continuative. Una lunga storia*, in *Giornale di diritto del lavoro e di relazioni industriali*, 106, 2005, p. 270. In particular, as to the distinction between project and phase, see M. MAGNANI, *Autonomia, subordinazione, coordinazione nel gioco delle presunzioni*, in *Argomenti di diritto del lavoro*, 2013, 4-5, I, p. 804 and, with reference to the case law, see Trib. Piacenza, 15 February 2005, in *Il lavoro nella giurisprudenza*, 2006, p. 885 ff.; Trib. Torino, 10 May 2006, in *Orientamenti della giurisprudenza del lavoro*, 2006, p. 344 ff.; Trib. Milano, 18 January 2007, in *Orientamenti della giurisprudenza del lavoro*, 2007, p. 246 ff.; Trib. Milano, 5 February 2007, in *Rivista italiana di diritto del lavoro*, 2, 2007, p. 809 ff. and App. Firenze, 29 January 2008, in *Massimario di giurisprudenza del lavoro*, 2008, p. 758 ff.

(15) With reference to a critical approach to numerous exemptions to the application of project-based work, see V. NUZZO, *Le collaborazioni coordinate continuative. Una lunga storia*, op. cit. p. 280-281.

(16) See MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI, Circolare n. 1/2014, issued on 14 January 2014, prot. n. 5/25011/M/LAV.PR, p. 4.

(17) See, *inter alia*, Trib. Torino 17 May 2006, in *Rivista giuridica del lavoro e della previdenza sociale*, 2007, 1, II, p. 52 ff., nt. FONTANA, Trib. Ravenna 25 October 2005, in *Giustizia civile*, 2006, 7-8, I, 1605 ff., nt. EMANUELE and Trib. Torino 5 April 2005, in *Il lavoro nella giurisprudenza*, 2005, p. 651 ff, nt. FILÌ.

Another relevant rule introduced by the Legislative Decree n. 276/2003 with reference to project-based work was article 69. This norm indicated as its object «*prohibition of atypical employer-coordinated freelance work agreements and conversion of the agreement*». Article 69.1 sets forth the sanction applicable whether the project, program or phase would not be expressly indicated in the agreement between customer and worker. In this case, the agreement was converted in a standard employment agreement regulated by article 2094 c.c. According to Article 69.2, in addition, the Court which ascertained that the working relationship, formally qualified as a project-based work, was instead carried on as a standard dependent labour agreement, would have to convert the agreement in the relationship *in concreto* present between the parties, selecting the correct kind of discipline set forth by Italian legal framework. Article 69.3, finally, was intended to prevent the Courts to put in discussion, while verifying the eventual abuse in using of project-based work, the technical and organizational decisions taken by the customer <sup>(18)</sup>.

In the light of above, is possible to affirm that, in general, the project-based work introduced by the Italian legislator in 2003 was an attempt to increase the protection of this kind of autonomous workers, even if some critical aspects remained. As to this point, is possible to make reference to article 67.2, which allowed the parties to individuate new conditions for dismissal, without just cause, only expressly indicating them in the agreement <sup>(19)</sup>; another element could be, also, the persisting absence, in the Italian legal framework, of a legislation providing sufficient rights and guarantees to collaborators, in order to allow them to exercise rights of freedom of thought, freedom of speech, of protection of privacy and preventing hidden controls on the worker <sup>(20)</sup>.

The regulation of project-based work of 2003 lead, in any case, to a relevant number of interpretative problems. In addition, the definition of program, process of phase appeared too wide, and allowed some distortions and abusive utilisation of the project-based work <sup>(21)</sup>. Therefore, the legislator attempted to reform the project-based work, for the first time, in 2012.

### **2.3. Efforts to reform project-based work**

Law n. 92/2012 amended the definition of project-based work, its discipline and the system of sanctions connected to an illegal utilisation of this work agreement, in order to reinforce its function of contrast against abuse of precarious working relationships <sup>(22)</sup>.

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(18) With reference to the possibility, in any case, for the Courts, to evaluate the behaviour of the parties after the execution of the agreement, see G. SANTORO PASSARELLI, *La nuova figura del lavoro a progetto*, op. cit., p. 109-110.

(19) See v. NUZZO, *Le collaborazioni coordinate continuative. Una lunga storia*, op. cit., p. 276 ff.

(20) *Ibidem*.

(21) See M. MAGNANI, *Autonomia, subordinazione, coordinazione nel gioco delle presunzioni*, op. cit., p. 803-804, and A. PERULLI, *Lavori atipici e parasubordinazione tra diritto europeo e situazione italiana*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2006, file 4, p. 739.

(22) See E. GHERA, *Il contratto di lavoro oggi: flessibilità e crisi economica*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2013, 4, 140, p. 693-695.

Article 1.23 of Law n. 92/2012 removed from article 61.1 of Legislative Decree n. 276/2003 the wording «*one or more programs or phases of them*». This element was substituted by the requirement to indicate, in the regulation of the working relationship, one or more specific projects, functionally linked to a final result to be evaluated without considering the time spent, by the collaborator, to realize the required activity. However, this amendment seemed to be directed, again, to modify the description of the element of project, and appeared as not sufficient to simplify the distinction of this kind of working relationship from standard dependent work.

Furthermore, Law n. 92/2012 attempted to reinforce the instruments to allow the worker to be protected against abuses in utilisation of project-based work.

Article 61 of Legislative Decree n. 276/2003 was modified by the introduction of a list of elements that excluded the correct utilisation of a project-based work agreement. These elements were in particular: the correspondence between the project and the business purpose of the customer's company and the indication, as the object of the agreement, only of repetitive and executive tasks <sup>(23)</sup>.

Article 69 of Legislative Decree n. 276/2003 was amended with the aim to reinforce the presumption of dependent work in case the employer-coordinated freelance work agreement is «*executed without indicating a specific project*». The project was also defined, by law, as an «*essential element in relation to the validity of the agreement*». This amendment produced, as an effect, that in case the parties did not indicated, executing the aforementioned agreement, a project, or they did not describe it in a sufficiently detailed way, the worker would have been considered as an employee from the beginning of the relationship.

In addition, article 69 bis of Legislative Decree n. 276/2003, introduced by Law n. 92/2012, regulated for the first time in Italy the matter referred to the economic dependence of an autonomous worker. In particular, the abovementioned reform set forth that a formally autonomous worker would have been considered an employer-coordinated freelance worker, save contrary evidence, whether *in concreto* would be present at least two of the following elements: a) a length of the cooperation agreement with the same customer exceeding eight months per year, for at least two consecutive years; b) a total revenue deriving from the collaboration sub a) corresponding to an amount exceeding 80% of the total income of the worker per year, for two consecutive years <sup>(24)</sup>; c) the possibility, for the worker, to dispose of a stable workstation at the premises of the customer.

In case at least two of the conditions sub a)-c) were present in an autonomous work relationship, according to article 69 bis of Legislative Decree n. 276/2003 the whole system of rules regulating the project-based work was applicable. Therefore, in reason of the provisions examined above, whether an independent work agreement, subject to the legal framework of the project-based work agreement according to article 69 bis of Legislative Decree n. 276/2003, did not expressly indicate in the text of

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(23) *Ibidem*.

(24) As prescribed by article 69 bis of Legislative Decree n. 276/2003, the rule sub b) is applicable even if the income of the worker is paid by different subjects, corresponding to the same centre of imputation.

the agreement the project or its details, article 69 of Legislative Decree n. 276/2003 would have determined the conversion of the work relationship in a dependent work agreement regulated by article 2094 c.c. <sup>(25)</sup>.

With reference to the aforementioned article 69 bis, is important to focus on the particular technique employed by the legislator: in case two or three of the elements listed by the article were materially present in the relation between the independent worker and the customer, the working relationship would not be converted in a project-based work, but only the system of rules of the project-based work would be applied to the agreement. The reason to recur to this technique is likely connected with the need not to violate the constitutional principle of “indisponibilità del tipo”, that does not allow, in Italian legal framework, the legislator to affirm that a particular kind of agreement has to be regulated as a different one only because this is the prescription of law <sup>(26)</sup>.

In 2013, with the Law Decree n. 76, the legislator modified again the rules regulating project-based work, mainly with reference to the proceeding to validate resignations of the worker and to the solidarity between contractor and subcontractor when project-based workers are utilized in the framework of a tender.

The balance of the amendment to the discipline of project-based work dated 2012-2013, however, has not been positive. The reforms increased the rigidity of the system of rules referred to this kind of agreement, with the aim to prevent abuses, but the rates of unemployment, and in particular of young unemployment, remained high until 2014-2015 and, therefore, the legislator determined itself to enact a more radical reform of the whole matter.

### **3. The innovations provided by Legislative Decree n. 81/2015**

During the years 2014-2015, Italian Government proposed a wide and radical reform to increase flexibility of Italian labour legislation and of the local labour market <sup>(27)</sup>.

With reference to the efforts against abuse of precarious work, and, in particular, of employer-coordinated freelance work agreements, the most important innovations are contained in the Legislative Decree n. 81/2015, enacted on the base of the provisions of Law n. 183/2014.

First of all, article 2 of Legislative Decree n. 81/2015 identifies a new kind of precarious work, the heter-organized collaboration agreements. To these relationships, that are qualified by the aforementioned article 2 as *«relationships of collaboration corresponding to work activities, exclusively personal, continuous and which modalities of execution are organized by the customer*

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(25) See MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI, Circolare n. 29/2012, issued on 11 December 2012, prot. n. 37/0223530/MA007.A001, p. 6 ff.

(26) See, *inter alia*, C. Cost., 29 March 1993, n. 121, in *Foro Italiano*, 1993, I, p. 2432 and Cass., 16 October 2006, n. 22129, in *Rivista italiana di diritto del lavoro*, 2007, 2, II, p. 283, nt. CATAUDELLA.

(27) For a general overview on the Jobs Act, see, *inter alia*, M.T. CARINCI – A. TURSI, *Jobs Act. Il contratto a tutele crescenti*, Giappichelli, 2015; M. TIRABOSCHI, *Le nuove regole del lavoro dopo il Jobs Act*, Giuffrè, 2016 and G. ZILIO GRANDI – M. BIASI, *Commentario breve alla riforma «Jobs Act»*, CEDAM, 2015.



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also with reference to times and place of work», save exceptions, is applied the system of rules of dependent work.

Furthermore, article 52.1 of the Legislative Decree n. 81/2015 expressly abrogates the rules concerning project-based work, i.e. articles 61-69 bis of Legislative Decree n. 81/2015, while article 52.2 <sup>(28)</sup> of the same norm exempt from abrogation article 409.3 c.p.c. and, as a consequence, the employer-coordinated freelance work agreements. This reform by one side removes from the local legal framework a kind of precarious agreement that did not reduce the unemployment rates in precedent years and lead to a relevant number of judicial proceedings concerning the interpretation of the abovementioned rules. To the other side, not amending article 409.3 c.p.c., to be read in connection with article 2 of Legislative Decree n. 81/2015, the reform maintains, in Italian legislation, the employer-coordinated freelance work agreements. In particular, employer-coordinated freelance work agreements that are not technically heter-organized according to relevant law, may be executed and valid between a worker and a customer <sup>(29)</sup>. This is a moving back on the side of protections of similar workers, from the period in which the norms regulating project-based work were in force <sup>(30)</sup>. Finally, article 54 of the Legislative Decree n. 81/2015 encouraged employers to execute new standard employment agreements with people already working for them as autonomous workers, employer-coordinated freelances or project-based workers, from the 1 January 2016. To reach this purpose, the legislator sets forth that hire workers already part of the aforementioned agreements would lead the employer to benefice of the extinction of all administrative, contributory, fiscal infractions referred to the wrong qualification of the working relationship, except for infractions ascertained on the base of inspections conducted by competent Authorities before the date of execution of the new employment agreement.

To reach the aim of article 54 of the Legislative Decree n. 81/2015, two conditions have to be respected: a) workers to be hired as employees will have to subscribe, with reference to any possible claim referred to the qualification of the previous relationship with the employers, specific settlements before the bodies recalled by article 2113 c.c. or before the certification commissions; and b) in the twelve months following the hiring of the worker as employee, the counterparty may terminate the agreement only for just cause or for personal misconduct of the worker <sup>(31)</sup>.

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(28) Article 52.1 of Legislative Decree n. 81/2015 sets forth that: “*The provision of article 409 c.p.c. is not amended*”. Italian version: “*Resta salvo quanto disposto dall'articolo 409 del codice di procedura civile*”.

(29) See G. SANTORO PASSARELLI, *I rapporti di collaborazione organizzati dal committente*, op. cit., p. 8-10.

(30) *Ibidem*.

(31) In particular, for a more specific analysis of the criteria set forth by legislator in article 54 of the Legislative Decree n. 81/2015, see G. SANTORO PASSARELLI, *I rapporti di collaborazione organizzati dal committente*, op. cit., p. 24-25.

The effectiveness of Article 54 of the Legislative Decree n. 81/2015 has been enhanced by the three-year reduction of social security costs for employers that hired a worker with an agreement without term in 2015. This reduction has been maintained, even if reduced, also for employees hired without term in 2016 <sup>(32)</sup>.

The general effects connected to the abovementioned reform are, from the point of view of Government, to encourage employers to hire dependants as employees instead of searching a different precarious agreement and in particular agreements concerning different kinds of independent/precarious work. Therefore, the purpose of the legislator seems to be a return to a clear division between the two main domains of autonomous and dependant work, reducing the spaces for third ways only to employer-coordinated freelance work agreements not heter-organized.

#### 4. In particular: the heter-organized work and the reallocation of risk

As concerns the efforts against false independent work, one of the most relevant innovations provided by Legislative Decree n. 81/2015 <sup>(33)</sup> is the new definition of heter-organized work.

This reform, introduced by article 2, is part of the mechanism to lay down a better protection to precarious workers, and in particular to workers who are formally classified as autonomous but, *in concreto*, are subject, as employees, to the pervasive powers of the employer.

With reference to above, article 2.1 sets forth, from 1 January 2016, that the collaboration agreements where the performance of the worker is totally personal, continuous, and organized by the employer also with reference to the time and place of the work activity, are subject to the system of rules of dependent work <sup>(34)</sup> (i.e. articles 2094 ff. c.c.).

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(32) A first attempt in this direction was made in 2012, when article 4 of Law n. 92/2012 provided for a reduction of 50% of social security costs paid by employers who hired dependent workers at least 50 years old, or unemployed for more than 12 months or women in particular conditions of long term unemployment indicated by law. The most important cut of social security costs for employers is, however, dated 2014. With article 1, paragraphs 118-124, of Law n. 190/2014, so called “Legge di Stabilità 2015”, the legislator sets forth an exemption to social security costs to be paid by the private employers, until an amount of 8,060.00 Euro per year, for 36 months, for each worker hired with an employment agreement without term in the period between 1 January 2015 and 31 December 2015. For year 2016, Law n. 208 of 2015 reduced the incentive to a cut of social security costs for each new hired worker of 40% of the sums to be paid by the employer, for a maximum of 3,250.00 Euro per year, for a period of 24 months. With reference to above see, *inter alia*, M. CINELLI – C.A. NICOLINI, *Verso l’attuazione del Jobs Act - La legge di stabilità per il 2015 e i discutibili interventi sulle pensioni già liquidate*, in *Rivista italiana di diritto del lavoro*, 2015, I, p. 31 ff.; M. CORTI – A. SARTORI, *Contratto a tutele crescenti e incentivi alle assunzioni: riparte l’Italia?*, in *Rivista italiana di diritto del lavoro*, 2015, II, p. 105 ff. and G. VITALETTI, *La legge di stabilità 2015: effetti positivi e mancanze strutturali*, in *Rivista di Diritto finanziario e scienza delle finanze*, 2015, I, p. 52 ff.; as to article 54 of Legislative Decree n. 81/2015 see, *inter alia*, G. FERRARO, *Collaborazioni organizzate dal committente*, in *Rivista italiana di diritto del lavoro*, 2016, I, p. 58.

(33) For general considerations about the reform of labour agreements enacted with Legislative Decree n. 81/2015 see, *inter alia*, T. TREU, *Il riordino dei tipi contrattuali*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2015, 146, p. 155 ff.

(34) See G. SANTORO PASSARELLI, *I rapporti di collaborazione organizzati dal committente*, op. cit., p. 14 ff.; with reference to a detailed description of the three elements of heter-organization, see MINISTERO DEL LAVORO E DELLE

Article 2.2 provides for some expressed exceptions to the rule of article 2.1 <sup>(35)</sup>. As to this point, are not subject to the legal framework of dependent work: a) collaborations that are disciplined by specific rules of economic treatment contained in collective agreements executed by the trade unions comparatively more representative at national level, in reason of specific productive and organizational necessities of a particular commercial field; b) collaborations that request the inscription of the worker to a professional association; c) collaborations performed by members of board of directors or board of statutory auditors, and by members of commissions and colleges, while they are exercising their functions; d) collaborations performed for different sport associations or organizations at the conditions set forth by Italian law.

In addition, article 2.3 of Legislative Decree n. 81/2015 allows the parties to appear before certification commissions <sup>(36)</sup> to certify the absence of the elements indicated in article 2.1 (i.e. that the performance is not totally personal, continuous and organized by the employer also with reference to the time and place of the work activity) in order to exclude the possibility to apply, to the certified collaboration agreements, the legal framework of dependent work. In particular, the certification reduces the possibility for the parties to file a claim referred to the labour agreement. As to article 30.2 of Law n. 183 of 2010, in fact, the Court could intervene on a certified labour agreement only in case of wrong qualification of the agreement, defect of consent, or not correspondence between the contractual program and its concrete application; while article 30.3 of the same norm sets forth that, in case of dismissal, the competent Court will have to take into account the additional cases of just cause and personal misconduct of the worker indicated in certified relevant labour agreements.

Finally, article 2.4 of Legislative Decree n. 81/2015 provides that the norm is applicable only to the private sector, until the legislator will have enacted the announced general reform of regulation of precarious work concerning the Public Administration.

The introduction of the heter-organized work raised some theoretical and practical questions.

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POLITICHE SOCIALI, Circolare n. 3/2016, issued on 1 February 2016, prot. n. 37/0001886/MA007.A002.1474, p. 3.

(35) About exemptions, their implication and consequences, see L. IMBERTI, *L'eccezione è la regola?! Gli accordi collettivi in deroga alla disciplina delle collaborazioni organizzate dal committente*, in *Diritto delle relazioni industriali*, 2016, 2, p. 393 ff.

(36) Certification commissions are part of the certification procedure, regulated by art. 75 ff. of Legislative Decree n. 276/2013. The certification procedure is a voluntary procedure that the parties may trigger proposing a request to the certification commission in order to ascertain the qualification of the labour agreement and to clarify nature and characteristics of the kind of agreement adopted. Law n. 183 of 2010 devoted to the certification commission new functions, i.e. ascertain the real consent of the parties to insert single clauses on a labour agreement, indicate in detail particular behaviours relevant in a dismissal proceeding for just cause or for personal misconduct of the worker, certify the consent of the parties to introduce in the labour agreement an arbitration clause in respect of provisions of Italian law.

First of all, the problem faced by Italian doctrine concerns how to classify heter-organized work. As to this point, different theories have been proposed.

The first one considers heter-organization as a particular kind of working relationship, different from dependent and independent work <sup>(37)</sup>.

Another orientation suggests that article 2 of Legislative Decree n. 81/2015 would have modified the definition of standard employment agreement contained in art. 2094 c.c., including in this definition not only the work relationships heter-directed by the employer, but also heter-organized by the customer.

Finally, the third interpretation suggested by scholars intends article 2 of Legislative Decree n. 81/2015 as a reform that enacted the most widespread criteria to identify subordination already elaborated by Courts. The purpose of the rule would be, therefore, to introduce a relative presumption that could lead to application of the legal framework of dependent work to the abovementioned relationships. The counterparty could oppose the effects of this presumption by proving the contrary, in the light of articles 2727 ff. c.c. With reference to above, the attempt to qualify heter-organized work as an autonomous category of working relationships has been criticized because article 2 of Legislative Decree n. 81/2015 seems to represent not the whole new regulation of a kind of particular and specific labour relationship but, rather, the description of a specific method to perform an ordinary working activity. Therefore, the partial and not all-encompassing discipline set forth by article 2 suggests that heter-organization cannot be qualified as the new regulation of a third category of working relationships, to be added to dependent and independent work <sup>(38)</sup>.

On the other hand, also the theory which connects introduction of article 2 of Legislative Decree n. 81/2015 to an attempt to modify art. 2094 <sup>(39)</sup> c.c., and so the definition of standard employment agreement, does not seem fruitful. As to this point, first of all, is important to underline that the legislator has not amended article 2094 c.c. In addition, moreover than modify art. 2094 c.c., Italian Government appear to have chosen to open the access to dependent work to a relevant

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(37) See, *inter alia*, P. ICHINO, *Il lavoro parasubordinato organizzato dal committente*, <http://www.pietroichino.it/?p=36980> (last consultation 11 June 2016) and A. ZOPPOLI, *La collaborazione eterorganizzata: fattispecie e disciplina*, in W.P. C.S.D.L.E. «M. D'Antona», Italian section, n. 296/2016, p. 20 ff.

(38) See M. TIRABOSCHI, *Il lavoro etero-organizzato*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2015, 4, p. 980 ff.

(39) As to scholars that consider art. 2 of Legislative Decree n. 81/2015 an absolute presumption of dependent work and, therefore, an attempt *de facto* to enlarge the field of art. 2094 c.c., see L. NOGLER, *La subordinazione nel d.lgs. n. 81 del 2015: alla ricerca dell'«autorità dal punto di vista giuridico»*, in W.P. C.S.D.L.E. «M. D'Antona», Italian section, n. 267/2015, p. 16 ff.; for a similar interpretation, assuming article 2 of Legislative Decree n. 81/2015 as an “additive” kind of dependent work to be placed near art. 2094 c.c. with an extensive aim, see G. FERRARO, *Collaborazioni organizzate dal committente*, op. cit., p. 62 ss.

number of people previously employed by mean of precarious contracts. To support this point of view, is possible to recall the attempts of the Italian Government, from 2012, to reduce the costs connected to a standard employment agreement, with: reform and simplification of dismissals, temporary reduction of social security costs for employers hiring dependent workers <sup>(40)</sup> and the modification of article 2103 c.c. in relation to professional deskilling <sup>(41)</sup>.

In the light of above, the most persuasive interpretation of the reform enacted by the Government with article 2 of Legislative Decree n. 81/2015 seems to be the one considering it as a transposition in law of some of the common index utilized by judges to qualify a work agreement as a dependent relationship <sup>(42)</sup>. Consequently, article 2094 c.c. is not modified by the legislator, and the core of the definition of dependent work remains the powers of heter-direction bestowed to the employer; nonetheless, the legislator lays down some criteria to extend the application of the legal framework of dependent work, and respective rights and protections, to a category of work relationships – the heter-directed work of article 2 of Legislative Decree n. 81/2015 – which does not fall directly into the field traced by the definition of dependent work enacted by the aforementioned article 2094 <sup>(43)</sup> c.c.

Irrespective of the classifications made by Italian scholars, with article 2 of Legislative Decree n. 81/2015 the legislator appears to intend to simplify local labour market and to extend the area of dependent work also to of the field of heter-organization. In this way, it seems that the Government is attempting to reduce the area of autonomous work only to the “genuine” independent work relationship, with an action that would be inspired to the contrast of abuse of false independent work <sup>(44)</sup>.

From a practical and applicative point of view, in any case, the most relevant issue remains the distinction between heter-organized work and “genuine” employer-coordinated freelance work agreements.

As indicated above, the main difference between heter-organized work and employer-coordinated freelance work agreements seems to be that in the first relationship the employer, once the labour

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(40) See footnote n. 32.

(41) See F. AIELLO, *Il nuovo art. 2103 c.c.: equivalenza senza professionalità pregressa?*, in *Il lavoro nella giurisprudenza*, 2015, 11, p. 1034 ff.; U. GARGIULO, *Lo “ius variandi” nel nuovo art. 2103 cod. civ.*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2015, 3, p. 619 ff. and V. NUZZO, *Il nuovo art. 2103 c.c. e la (non più necessaria) equivalenza professionale delle mansioni*, in *Rivista italiana di diritto del lavoro*, 2015, 4, p. 1047 ff.

(42) As to indexes utilized by Italian Courts to qualify a working relationship in the category of dependent work see, *inter alia*, Cass. 16 December 2013, n. 28025, not in print at this moment; Trib. Milano 21 July 2014, in *Il lavoro nella giurisprudenza*, 2015, p. 97 ff. and Trib. Foggia 8 January 2014, in *Il lavoro nella giurisprudenza*, 2014, p. 719 ff.

(43) See G. SANTORO PASSARELLI, *I rapporti di collaborazione organizzati dal committente*, op. cit., p. 16-17 and M. TIRABOSCHI, *Il lavoro etero-organizzato*, op. cit., p. 985 ff.; it seems to share this opinion also MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI, Circolare n. 3/2016, issued on 1 February 2016, prot. n. 37/0001886/MA007.A002.1474, p. 1 ff.

(44) See L. IMBERTI, *L'eccezione è la regola?! Gli accordi collettivi in deroga alla disciplina delle collaborazioni organizzate dal committente*, op. cit., p. 393 ff.

agreement is executed, is allowed to determine one-sidedly time and place in which the performance of the worker has to be done while, in the field of employer-coordinated freelance work agreements, the parties will have to agree, from an equal position, about the conditions in which the activity has to be performed. In substance, heter-organized work allows the employer to exercise a unilateral power on the worker that is not permitted, on the contrary, in the field of collaborations and of autonomous work.

On the other hand, also employer-coordinated freelance work agreements, in general, require an introduction of the collaborator in the organizational structure, and sometimes to the premises, of the customer. So that, likely, the collaborator will have to conform time and place of his performance to the customer's organizational structure, in order to be coordinated with customer's requirements<sup>(45)</sup>.

Therefore, when, from a theoretical point of view, the border between heter-organized work and employer-coordinated freelance work is clear, on the side of a practical prospective the distinction seems to be difficult, with the risk of a high number of claims before the Courts to determine whether the activity of the worker has or not to be subject to the legal framework of dependent work.

Finally, is possible to say that, with the reform of article 2 of Legislative Decree n. 81/2015, considered in the large landscape of the package of modifications to Italian labour legislation provided by the Jobs Act, the legislator seems to have intended to provide for a reallocation of risk adequate to move employers towards the field of dependent work.

However, this reallocation of risk does not entail a transfer of entrepreneurial risk from the employer to the worker but, from a different point of view, makes more useful and profitable for an employer to hire a standard dependent worker than trying to abuse of precarious work.

In fact, before the years 2014-2015 an employer was encouraged to abuse of precarious work, in place of "genuine" dependent work, in order to "escape from risks" of the standard labour relationships regulated by articles 2094 ff. c.c., i.e. a discipline of layoffs strongly protecting the worker and the relevant social security contributions to be paid by the company.

Nowadays, the recent reform mentioned above has simplified the framework, removed the difficulties, heavily reduced the costs to dismiss an employee, and lowered, even if temporary, the social security contributions to be paid by the employer.

In addition, the project-based work has been removed from Italian legal framework, while heter-organized work is an instrument that could discourage companies to execute collaboration agreement instead of hire dependent workers. In fact, the new legal institute simplifies the burden of proof of the employees in order to obtain a requalification of their work relationship.

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(45) See G. SANTORO PASSARELLI, *I rapporti di collaborazione organizzati dal committente*, op. cit., p. 18 ff.

All the aforementioned conditions seem to press the employers, in reason of reduced costs and risks, to hire workers as employees instead of trying an abusive utilization of independent workers to obtain advantages in term of costs that are, nowadays, clearly reduced.

In conclusion, also with reform enacted by article 2 of Legislative Decree n. 81/2015, the legislator appears to have realised a particular reallocation of risks and benefits for employers, reducing the difficulties connected to hire dependent workers: standard dependent work agreements are becoming more convenient than abusive utilization of independent work.

Is now important to analyse statistical data on occupational levels in Italy from January 2015 to June 2016, in order to see whether the attempt of the legislator produced the desired effects.

## **5. The effects of introduction of heter-organized work on Italian occupational levels**

The reform enacted with article 2 of Legislative Decree n. 81/2015 is, as indicated above, part of the framework of innovations approved by the legislator to increase the flexibility of the labour market and the occupational levels after the economic crisis started in 2008.

Therefore, in order to analyse statistics on occupation in Italy after the introduction of heter-organization <sup>(46)</sup>, is important to consider some relevant factors.

First of all, the reform contained in the aforementioned article 2 is in force from 25 June 2015 <sup>(47)</sup>; for this reason, its first effects may be evident only after the second trimester of the last year.

In addition, the evolution of Italian labour market is produced by the complex of innovations provided by the Jobs Act (i.e. simplification of dismissals, temporary reduction of social security costs for employers hiring workers with agreements without term, heter-organization, incentives to transform employer-coordinated freelance work agreements into dependent labour agreements etc.) and not only by article 2 of Legislative Decree n. 81/2015.

Finally, to highlight the impact of heter-organization will be necessary to focus the attention on the occupational levels concerning one of the most widespread examples of abuse of independent

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(46) On this topic see, *inter alia*, B. ANASTASIA, *Sguardo lungo sul mercato del lavoro*, <http://www.lavoce.info/archives/40854/come-va-loccupazione-unanalisi-di-medio-periodo>, published on 3 May 2016 (last consultation on 11 June 2016); B. ANASTASIA, *Il 2015 dell'occupazione*, <http://www.lavoce.info/archives/39157/il-2015-delloccupazione>, published on 23 December 2015, (last consultation on 11 June 2016); P. GARIBALDI, *Meno precari, ma la crescita è ancora un problema*, <http://www.lavoce.info/archives/39762/meno-precari-ma-la-crescita-e-ancora-un-problema/>, published on 16 February 2016 (last consultation on 11 June 2016); A. CERRATO – F. CHIOCCHINO – M. FELICI et al., *Com'è cambiato il mercato del lavoro dopo il Jobs Act*, <http://www.lavoce.info/archives/39391/come-cambia-il-mercato-del-lavoro-dopo-il-jobs-act/>, published on 22 January 2016 (last consultation on 11 June 2016).

(47) The Legislative Decree n. 81/2015 has been published on the Official Gazette of the Italian Republic on 24 June 2015 and, as indicated by its article 57.1, it enters into force the day following the one of publication.

work: employer-coordinated freelances (i.e., the collaborators) and independent workers without employees. In principle is important to underline that Italian labour market seems to be, from 2015, in a phase of very light expansion.

As affirmed by the Istituto Nazionale di Statistica (hereinafter, ISTAT), during the third trimester of 2015 the national GDP increased of 0.8% <sup>(48)</sup> if compared with the GPD of the third semester of 2014; the augmentation has been confirmed during the fourth semester of 2015 <sup>(49)</sup> and the first semester of 2016 <sup>(50)</sup>, with an increase of about 1%.

The improvement of economic situation has determined a feeble increasing of occupation, which augment of 0.1% (about 32,000 people) in the period August-October 2015, if compared with the previous trimester, and remained stable in the fourth trimester of 2015 and in the first trimester of 2016. At the end of march 2016 the augmentation of occupied workers in respect of march 2015 has been of about 242,000 people. The driving kind of agreement was dependent work without term, with an annual increase of 341,000 people. Employees hired with term contracts in this period remained stable, while employer-coordinated freelances and autonomous workers without dependents decreased. These data are confirmed also by information collected by the Istituto Nazionale della Previdenza Sociale (hereinafter, INPS), which does not consider stock of employed/unemployed people divided by sector or kind of agreement, but the general number of new dependent agreement executed in a particular period of time <sup>(51)</sup>.

As indicated by INPS, in September 2015 the total number of new employment agreements executed in respect of January 2015, deducted layoffs, was of 599,178 <sup>(52)</sup>, most of them, corresponding to 340,323 people, without term <sup>(53)</sup>. At the end of 2015, the general number of new

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(48) See ISTAT, *Il mercato del lavoro*, IIIrd trimester of 2015, <http://www.istat.it/it/files/2015/12/Mercato-del-lavoro-III-trim-2015.pdf?title=Il+mercato+del+lavoro+-+11%2Fdic%2F2015+-+Testo+integrale+e+nota+metodologica.pdf>, published on 11 December 2015, p. 1, (last consultation on 11 June 2016).

(49) See ISTAT, *Il mercato del lavoro*, IVth trimester of 2015, <http://www.istat.it/it/files/2016/03/Mercato-del-lavoro-IV-trim-2015.pdf?title=Il+mercato+del+lavoro+-+10%2Fmar%2F2016+-+Testo+integrale+e+nota+metodologica.pdf>, published on 10 March 2016, p. 1 (last consultation on 11 June 2016).

(50) See ISTAT, *Il mercato del lavoro*, Ist trimester of 2016, <http://www.istat.it/it/files/2016/06/Mercato-del-lavoro-I-trim.pdf?title=Il+mercato+del+lavoro+-+09%2Fgiu%2F2016+-+Testo+integrale+e+nota+metodologica.pdf>, published on 9 June 2016, p. 1 (last consultation on 11 June 2016).

(51) For this reason, as indicated by INPS itself, the data collected by this institution and ISTAT seem different. In particular, a single employed worker for ISTAT may be counted as more than one employed worker for INPS, because he could have executed more than one new employment agreement during the analysed period of time.

(52) In particular, from January to September 2015, the total number of new labour agreements executed in Italy has been of 4,094,061, while the labour agreements interrupted during the same period have been 3.494.883, see INPS, *Osservatorio sul precariato*, Gennaio – Settembre 2015, p. 4, [http://www.inps.it/docallegati/DatiEBilanci/osservatori/Documents/Osservatorio\\_Precariato\\_Gen\\_Set\\_15.pdf](http://www.inps.it/docallegati/DatiEBilanci/osservatori/Documents/Osservatorio_Precariato_Gen_Set_15.pdf), p. 4 (last consultation on 11 June 2016).

(53) *Ibidem*.



labour agreements executed by private employers, layoffs excluded, has been of 5,408,904, +11% in respect of 2014, +15% if compared with 2013<sup>(54)</sup>. The number of dependent agreements without term executed on the total amount aforementioned is of 41%, in respect to 32% of 2014<sup>(55)</sup>.

During the first trimester of 2016, 1,189,000 people have been hired as dependent workers, with a reduction of 176,000 people, equal to 12.5%, in respect of the first trimester of 2015<sup>(56)</sup>. This consequence descends basically from the reduction of incentives connected to employers' social security costs for 2016<sup>(57)</sup>. The difference between hired and dismissed employees is still, in any case, positive, and corresponds to 241,000 people.

With reference to the main goal of this paper, the number of independent workers in general decreased during the period following the introduction of Jobs Act.

In particular, autonomous workers were, at the end of first trimester of 2015, substantially stable, in a number equal about to 5,538,000, with an augmentation of 25,000 people from the first trimester of 2014, corresponding to +0.5%. Among them, collaborators were 373,000 people, with an augmentation of 2,000 workers in respect of first trimester of 2014, equal to +0.7%<sup>(58)</sup>.

The situation changed from the second trimester of 2015, after the introduction of the first innovations of Jobs Act, and in particular of reduction of social security costs for employers hiring employees, and before the introduction of the reform enacted in article 2 of Legislative Decree n. 81/2015.

In fact, in the second trimester of 2015, independent workers were about 5,507,000, with a light overall reduction of 3,000 workers, corresponding to -0.1%, in respect of the same period of 2014<sup>(59)</sup>. However, this stability was the product of an augmentation of autonomous workers with their own organization and a relevant decrease of collaborators, equal about to 45,000 people, corresponding to -11.4% in respect of the same period of 2014.

After the introduction of article 2 about heter-organization, the trend has been confirmed.

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(54) See INPS, *Osservatorio sul precariato*, Gennaio – Dicembre 2015, p. 4, [http://www.inps.it/docallegati/DatiEBilanci/osservatori/Documents/Osservatorio\\_Precariato\\_Gen-Dic.pdf](http://www.inps.it/docallegati/DatiEBilanci/osservatori/Documents/Osservatorio_Precariato_Gen-Dic.pdf), p. 4 (last consultation on 11 June 2016).

(55) *Ibidem*.

(56) See INPS, *Osservatorio sul precariato*, Gennaio – Marzo 2016, p. 4, [http://www.inps.it/docallegati/DatiEBilanci/osservatori/Documents/Osservatorio\\_Precariato-Gen-Mar\\_2016.pdf](http://www.inps.it/docallegati/DatiEBilanci/osservatori/Documents/Osservatorio_Precariato-Gen-Mar_2016.pdf), p. 4 (last consultation on 11 June 2016).

(57) See footnote n. 32.

(58) See ISTAT, *Occupati e disoccupati*, [http://www.istat.it/it/files/2015/06/Occupati-e-disoccupati\\_3\\_giugno\\_2015.pdf?title=Occupati+e+disoccupati+%28trimestrali%29+++03%2Fgiu%2F2015++Testo+integrale.pdf](http://www.istat.it/it/files/2015/06/Occupati-e-disoccupati_3_giugno_2015.pdf?title=Occupati+e+disoccupati+%28trimestrali%29+++03%2Fgiu%2F2015++Testo+integrale.pdf), published on 3 June 2015, p. 8 (last consultation on 11 June 2016).

(59) See ISTAT, *Il mercato del lavoro*, Ist trimester of 2015, published on 15 September 2015, <http://www.istat.it/it/files/2015/09/Mercato-del-lavoro.pdf?title=Il+mercato+del+lavoro+++15%2Fset%2F2015++Testo+integrale.pdf>, p. 5 (last consultation on 11 June 2016).

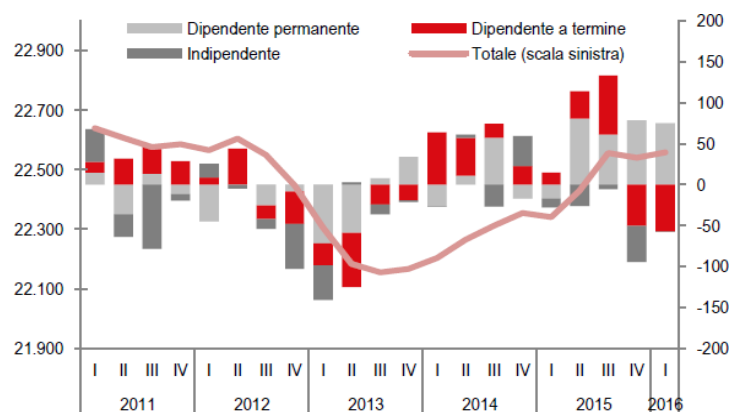
At the end of third trimester of 2015 independent workers were about 5,461,000, with an overall augmentation of 5,000 people, corresponding to +0.1% if compared to values of 2014. Instead of it, collaborators, which are part of the autonomous workers, decreased of 26,000 people, corresponding to -7.1% <sup>(60)</sup>.

From September 2015, the reduction of collaborators and autonomous workers without dependents accelerated.

During the last trimester of 2015 autonomous workers decreased to the number about of 5,403,000 people, with a reduction in respect of the same period of 2014 of 114,000 people, equal to -2.1%. While “genuine” autonomous workers with an organization structure, i.e. with dependants, increased of 4.8%, a reduction of autonomous workers without employees was registered, for a number of 132,000 people, equal to -3.5% if compared with 2014. Also more evident was the decreasing of 49,000 units of collaborators, equal to -13% in respect of 2014 <sup>(61)</sup>.

At the beginning of 2016, when incentives concerning social security costs for employers that hired new dependents without term has been reduced by Government <sup>(62)</sup>, the aforementioned trend, in any case, continued.

Autonomous workers decreased of 101,000 units in respect to the first months of 2015, equal to -1.8%, for an overall amount about of 5,437,000. In particular, the reduction was concentrated, again, among autonomous workers without dependents (less 66,000 people in respect of 2015, equal to -1.8%) and, in a more evident way, among collaborators (less 63,000 people in respect of 2015, equal to -16.8%) <sup>(63)</sup>.



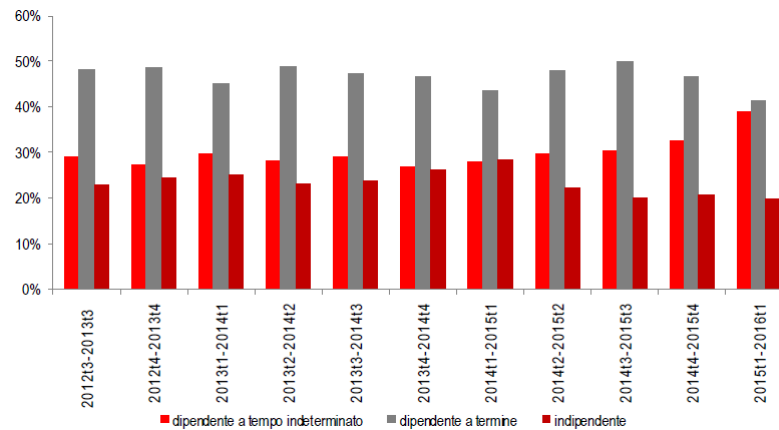
(60) See ISTAT, *Il mercato del lavoro*, IIIrd trimester of 2015, op. cit., p. 6 (last consultation on 11 June 2016).

(61) See ISTAT, *Il mercato del lavoro*, IVth trimester of 2015, op. cit., p. 5 (last consultation on 11 June 2016).

(62) See footnote n. 32.

(63) See ISTAT, *Il mercato del lavoro*, Ist trimester of 2016, op. cit., p. 6 (last consultation on 11 June 2016).

The first graphic highlights the evolution of the number of dependent workers without term, dependent workers with term and independent workers in Italian labour market from the 1st trimester of 2011 to 1st trimester of 2016 <sup>(64)</sup>.



The second graphic highlights the incidence of different kinds of labour relationship in reference to young people that enter for the first time in the labour market <sup>(65)</sup>.

The outcome of the data reported above highlights that Jobs Act, at least partially, reached its main objectives: encourage the overall augmentation of occupied people, supporting the execution of new employment agreements without term, and discouraging abuse of false independent work.

In particular, is evident the progressive and increasingly reduction of the two typical forms of false or precarious independent work: autonomous workers without dependents and, basically, collaborators. This trend started in the first middle of 2015, with the aid of reduction of social security costs for employers who hired these workers as employees, but clearly accelerated, in particular with reference to collaborators, from September 2015.

This result, therefore, seems to be a product also of introduction of article 2 of Legislative Decree n. 81/2015, which lead to dependent work some labour agreements previously qualified as collaborations, and to the mechanism of incentivisation to convert collaborators in employees set forth by article 54 of Legislative Decree n. 81/2015.

Jobs Act and heter-organization, at this moment, appear to have reached the goal to contrast and reduce the abuse of false independent work. Notwithstanding, some scholars have already underlined that the next turning point for Italian labour market will be in 2018, when the first *tranche* of incentives concerning social security costs of employers will cease. It is not clear, in fact, whether investments on new employees done before 2018, and the new organizational structure

(64) *Ibidem*, p. 4.

(65) *Ibidem*, p. 17.

arose on the base of the new employment agreements executed in these years, will lead employers to continue the trend started in 2015 or, on the contrary, also with the aid of the simplification of the rules about dismissals, from 2018 Italian labour market will come back to the difficult situation preceding the reform of 2014-2015 <sup>(66)</sup>.

## 6. Implications of heter-organized work with reference to new issues concerning sharing economy

In the analysis of the innovations provided by the Jobs Act and, in particular, by Legislative Decree n. 81/2015, seems to be appropriate to evaluate the possible implications between heter-organized work and the spreading phenomenon of sharing economy and job on-demand.

With reference to above, in this case is relevant the new shape of work agreement that it is conveying in our juridical framework.

The reference is made to the diffusion of on-line platforms where demand and offer of work can meet without the direct intermediation of an employer or of any third party.

This new condition may be, as highlighted by numerous scholars, another occasion for exploitation of precarious work <sup>(67)</sup>. Therefore, also jobs deriving from sharing economy may be at the origin of some, well-known, problems concerning precarious workers' ordinary life: they might have to face with problems connected with lack of work, discontinue income and difficult to access to health safety and social security systems, cases of self-exploitation in order not to be penalised by rating automatic systems controlling the performances of the workers and a pulverizations of labour conditions that could let become difficult a collective organization of these workers.

In the light of above, part of national and international scholars, according with pronouncement of administrative authorities, suggests to conduct the work relationships of sharing economy to the area of dependent work, with the consequent extension of the respective rights and protections <sup>(68)</sup>.

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(66) On this point see also, *inter alia*, B. ANASTASIA, *Quattro scenari per l'occupazione*, <http://www.lavoce.info/archives/39805/quattro-scenari-per-loccupazione/>, published on 19 February 2016 (last consultation on 11 June 2016).

(67) See, *inter alia*, E. DAGNINO, *Uber law: prospettive giuslavoristiche sulla sharing-demand economy*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2016, I, p. 137 ff.; B. ROGERS, *The social costs of Uber*, in *The University of Chicago Law Review – The Dialogue*, 82, 2015, p. 85 ff. and A. RAVENELLE, *Microentrepreneur or precariat? Exploring the sharing economy through the experiences of workers for Airbnb, Taskrabit, Uber and Kitchensurfing*, presented at *First International Workshop on the Sharing Economy*, Utrecht University, 4-5 June 2015.

(68) See, as to case-law, the decision of the Department of Economic Opportunity of Florida mentioned in *Florida says uber drivers are employees, but FedEx, Other Cases promise long battle*, in *Forbes*, 26 May 2015 and the one of the Inspección de Trabajo de Cataluña, mentioned in *Trabajo dice que lo chóferes de Uber son empleados de la firma*, in *El País*, 13 June 2015.

As to heter-organization introduced by article 2 of Legislative Decree n. 81/2015, the goal of the rule seems to be the same as the one suggested to contrast precarious work deriving from sharing economy: utilize presumptions to apply the legal framework of dependent work to the relevant workers.

Even if the aim is the same, nevertheless heter-organized work appears as not sufficient to contrast the abuse of autonomous workers by new platforms of on-demand economy.

The elements characterizing the aforementioned article 2 are, in fact, a performance exclusively personal of the worker, a continuous relationship and, last but not least, the possibility for the employer to indicate to the worker the time and place of its labour activity.

Sometimes these elements are not present in a work performance typical of sharing economy: in particular, the work activity not always is continuous and, even more, is difficult to sustain that a platform where offer and demand of work can meet corresponds to an employer who determines time and place of the worker's performance.

Therefore, even if the regulative technique seems to be similar of part of the proposals to contrast abuse of precarious workers by sharing economy, heter-organization appear not to be an instrument with relevant implication on this matter, save particular and exceptional cases.

## 7. Conclusions

As to the outcome of the analysis conducted above, heter-organization seems to be a useful tool to contrast abuse of false independent work, at least in a short term perspective.

As confirmed by statistics of ISTAT and INPS, the introduction of the discipline set forth by article 2 of Legislative Decree n. 81/2015, in conjunction with other innovations contained in the Jobs Act and the very light but persistent economic growth of national GDP, produced an augmentation of the number of dependent labour agreement, in general without term, with detriment both of unemployment and also of autonomous workers without their own organization and collaborators, that are the main sectors in which abuse of false independent work is situated.

Heter-organization, in particular, eases the worker to obtain application of legal framework of dependent work in some cases of false autonomous work, and therefore represents a mean to encourage the employers to hire employees without term, because the attempts to "escape" from the area of dependent work through abuse of precarious work has become less convenient.

The general effect on Italian labour market, at the moment, appears as positive, even if the effective impact of the reform will be clear only from 2018, when the first *tranche* of incentives concerning the aforementioned reduction of employers' social security costs will cease.

On the other hand, the kind of labour relationship described by article 2 of Legislative Decree n. 81/2015 is different from the ones typical of the spreading sharing and on-demand economy: therefore, this instrument seems not to be relevant in order to contrast cases of abuse of precarious work connected with sharing economy, that require a specific and detailed intervention of the local legislator.

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