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SELF-EMPLOYMENT IN FRENCH AND ITALIAN LAW

Abstract. The objective of the article is to analyse legal regulations concerning self-employed activity in force in France and Italy. Given that both countries are characterized by a dualism between subordinated work and self-employment, the author looks at legal constructions that do not easily fit into this division. In addition, she places great importance on discussing the social rights of the self-employed.

Keywords: labour law, self-employment, employment relationship, Italian law, French law, economic dependence.

SAMOZATRUDNIENIE W ŚWIETLE PRAWA FRANCUSKIEGO I WŁOSKIEGO

Streszczenie. Celem artykułu jest analiza regulacji prawnych dotyczących samozatrudnienia we Francji i we Włoszech. Biorąc pod uwagę fakt, że oba kraje charakteryzuje dualizm między pracą podporządkowaną a samozatrudnieniem, autorka przygląda się konstrukcjom prawnym, które niełatwo wpisują się w ten podział. Ponadto dużą wagę przykłada do omówienia uprawnień socjalnych osób samozatrudnionych.

Słowa kluczowe: prawo pracy, samozatrudnienie, stosunek pracy, prawo włoskie, prawo francuskie, zależność ekonomiczna.

1. INTRODUCTORY REMARKS

Labour law reforms that have been implemented by the Italian authorities since 2015 confirm and reinforce the traditional duality between subordinated work and self-employment (Rinaldi 2019, 27; Perulli 2018b, 3). This division appears to be extremely simple: self-employed activity does not involve unilateral managerial prerogatives, and if such exist, we are dealing with subordination (Razzolini 2018, 17). However, the situation is complicated by legal regulations that do not quite fit into this two-track scheme, but – in the absence of an intermediate

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category – must fit within it. Specifically, we are talking here about legal concepts called: “cooperation organized by the principal” (*collaborazioni organizzate dal committente; lavoro etero-organizzato*) and “coordinated cooperation organized by the agent” (*collaborazioni coordinate organizzate dal collaboratore*), where the “agent” is the contractor (in the context of the cooperation). It is crucial to carefully distinguish between the aforementioned types of cooperation, as different protection regimes and different acts apply to them.

As in Italy, the French legislature has not decided to introduce an intermediate category between the employee and the self-employed. In this context, problematic legal constructs include the *portage salarial* system, a new type of contract – the *contrat d'entrepreneur-salarié-associé* (CESA), and the regulation of economically dependent professionals and self-employed persons who perform work through online platforms.

The purpose of this article is to analyse in detail the self-employment regulations in force in France and Italy. In the case of the French system, it is necessary to focus on the construct of legal presumption and on the *auto-entrepreneur* regime. In addition, in view of the recent reform of French law regarding the social security regime for the self-employed, this article takes a closer look at its rules in force from 1 January 2020. The analysis of Italian law, on the other hand, requires a focus on the specific rights introduced by the law on the work of the self-employed.

2. SELF-EMPLOYMENT IN FRENCH LAW

2.1. General legal framework for self-employment

The number of self-employed workers in France is currently growing steadily, as Eurostat's 2019 figures show. There were more than 3 million in 2018, compared to 2.5 million in 2008.¹ Importantly, it is difficult to find a legal definition of the self-employed in French law (Gardes 2013, 165). For this reason, legal scholars attempt to characterize this category of workers in negative terms. Thus, it is generally pointed out that they are neither employees nor agricultural workers. Moreover, it is worth noting that in France, no intermediate category has been introduced between the self-employed (*travailleurs indépendants*) and employees (*travailleurs salariés*), with subordination (*lien de subordination juridique*) being

¹ See Eurostat, April 2019, eurostat.ec.europa.eu. Statista 2020. Cf. also: ILO, OECD, 2020, 4. Previously – according to available data since 1800 – France experienced a downward trend in this respect. For example, the self-employed accounted for 35.7% of the workforce in 1900, and for only 20.8% in 1970 (Wennekers et al. 2010, 8). The scope of this article does not include research on the quality of life of the self-employed in France. Interesting findings in this respect are presented in Eib and Siegert (2019).

the main criterion determining the existence of an employment relationship (Eichhorst et al. 2013, 28, 33; Bureau, Corsani, Gazier 2019, 84, 86; Union of Professional and Self-Employed Workers 2014, 14).

On the one hand, the situation in France is determined by a range of provisions that extend the scope of employee rights to non-employees. This is achieved in that such persons benefit from the institution of presumption of employment relationship or obtain the status of an assimilated employee (*assimilé salarié*). The latter is reserved for company directors who are subject to the general social insurance scheme and enjoy the same social protection as employees, with the exception of insurance against unemployment. On the other hand, under the Economy Modernization Act of 4 August 2008 (*Loi n° 2008–776 de modernisation de l'économie*²), a new category of individual entrepreneur – a person who carries out business activity on their own account (*auto-entrepreneur*) – was introduced (Levratto, Serverin 2015, 284 et seq.; Chauchard 2016, 954–955). This category groups together the many economically dependent self-employed, who are equated by labour legislation with the “classic” self-employed (Eichhorst et al. 2013, 33). Self-employed workers are qualified as entrepreneurs to whom a simplified version of the micro-enterprise economic regime called the micro-social régime (*régime micro-social*) (simplified social security system) applies. They are entitled to benefit from simplified tax returns and social security contributions, provided they do not exceed the annual maximum turnover. They are covered by the same insurance as other self-employed persons, but do not benefit from unemployment insurance in the event that they discontinue their activities. Self-employed entrepreneurs are private micro-entrepreneurs insofar as they undertake independently, as individuals, a self-employed activity that can be carried out as a primary or complementary activity (Célérier, Riesco-Sanz, Rolle 2017, 403; Bureau, Corsani, Gazier 2019, 86). Unfortunately, unlike the situation of those benefiting from the presumption of an employment relationship and the category of *assimilé salarié*, the work of self-employed workers is most often characterized as precarious (Bureau, Corsani, Gazier 2019, 85).

2.2. Legal presumptions and the status of the self-employed

One of the most important presumptions existing in the French Labour Code (*Code du travail*, CT) is regulated in Article L 8221–6.³ It is worth noting the structure of these provisions, which – in negative terms – regulate the presumption of the non-existence of an employment relationship. The cited article – in Part I – provides that persons carrying on an activity to which registration (*immatriculation*) or inscription (*inscription*) applies are presumed not to be bound

² <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000019283050/>

³ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000019285920/2008-08-06

by an employment contract with the principal (*le donneur d'ordre*). Specifically, the following categories of individuals are concerned:

1. natural persons registered in: register of companies (*registre du commerce et des sociétés*), trades register (*répertoire des métiers*), register of commercial agents (*registre des agents commerciaux*), associations for the recovery of social security contributions and for the recovery of family allowances (*des unions de recouvrement des cotisations de sécurité sociale et d'allocations familiales pour le recouvrement des cotisations d'allocations familiales*);

2. natural persons entered in the register of road passenger transport undertakings (*registre des entreprises de transport routier de personnes*) who are engaged in the activity of school transport (*transport scolaire*) and transport on demand (*transport à la demande*) provided for by separate legislation;

3. persons holding leading positions within legal persons (*les dirigeants des personnes morales*) registered with the trade and companies register and their employees;

4. natural persons subject to Article L 123–1–1 of the Commercial Code (*code de commerce*) or to Part V of Article 19 of the Trade and Crafts Development and Promotion Act No. 96–603 of 5 July 1996 (see also Chauchard 2016, 953–954).

Part II of Article L 8221–6 CT introduces the possibility of rebutting the presumption. The existence of an employment relationship can be proven when the persons listed in Part I provide the principal – directly or through third parties – with services under conditions that create a legal relationship of permanent subordination (see also: Pereira 2018, 50; Collectif Francis Lefebvre 2019, 1321; Rousseau et al. 2016, 1269).

Activity as a self-employed person is a conceptual category linked with the presumption provided for in Article L 8221–6–1 CT, introduced by Article 11 of the Economy Modernization Act No. 2008–776 of 4 August 2008. A self-employed person is presumed to be one whose working conditions are determined either by themselves or by a contract concluded with a principal.

The provisions introducing the presumption of an employment relationship for selected categories of working persons likewise deserve special attention. These include Article L 7112 CT, which stipulates a presumption of the existence of an employment relationship for a professional journalist in circumstances where a news agency regularly uses their assistance against remuneration. The Court of Cassation emphasizes that the agency can rebut the presumption by showing that the journalist enjoys complete independence.⁴ In addition, Articles L 7121–3, L 7121–4, and L 7121–5 CT provide for a presumption of the existence of an employment relationship of artists who personally participate in the production of a performance against remuneration. This presumption exists even if it is proven that the artist retains the freedom of expression of their art, that they own all or part

⁴ Cass. soc., 8 April 1992, No. 89–42171, Bull. civ. V, No. 254 (cited after: Fin-Langer 2013, 30).

of the material used, or that they themselves employ one or more persons to assist them, for the reason that they personally participated in the show (see more: Fin-Langer 2013, 30). Furthermore, the French Labour Code introduces a presumption of the existence of an employment relationship with a model (Article L 7123–3).

However, the rules outlined above are exceptions. Indeed, there is no general presumption of the existence of an employment relationship in French law. The person who alleges its existence bears the burden of proof.⁵ It is pointed out in subject literature that an employment relationship can be proven by any admissible means. The authors emphasize that while it is relatively easy to prove the fact that a specific person has provided work and received remuneration, it seems much more complicated to prove the existence of subordination. In this respect, the method of the so-called body of circumstantial evidence (*faisceau d'indices*) is used. The judge forms their opinion based on a set of multiple circumstantial indications of the existence of subordination (Gardes 2013, 133; Peskine, Wolmark 2011, 36). One of these is the establishment of a rule giving the possibility to impose penalties on those providing services in a given company.⁶

2.3. Problematic legal constructs and self-employment

There are several legal constructs in French law that fail to quite fit in the existing dualism between subordinate work and self-employed activity. The *portage salarial* (umbrella company) system is sometimes considered to be an intermediate institution between self-employment and the employment relationship (Kessler 2016, 203). It was introduced into the French Labour Code (Article L.1251–64) by the Act of 25 June 2008 (*Loi n° 2008–596*). In practice, the system had already been in place since the 1980s, with the aim of making it easier for unemployed elderly people to take up a job. The last major changes to the system were made by the Act of 8 August 2016 (*Loi n° 2016–1088*), and the issue is now regulated by Article L1254–1 et seq. of the French Labour Code.⁷ This system comprises a set of contractual relationships between a so-called “umbrella company”, an independent contractor, and a client company. Two contracts are concluded in the umbrella company system. There is, firstly, a service contract between the umbrella company and the client company, and secondly, an employment contract between the independent contractor and the umbrella company. The umbrella company pays social security contributions and taxes on behalf of the independent contractor. When the latter completes the project, the client company pays remuneration to the umbrella company, which then pays it to the independent contractor. The independent contractor has the

⁵ Cass. soc., 13 November 1991, No. 89–41.297 (cited after: Chénéde, Jourdan 2003, 51).

⁶ Cass. soc., 10 July 1997, No. 2870 D (cited after: Chénéde, Jourdan 2003, 19).

⁷ https://www.legifrance.gouv.fr/codes/section_1c/LEGITEXT000006072050/LEGISCTA00003043522/

expertise, qualifications, and autonomy to seek out their own clients and agree with them on the terms of the service and its price (Article L1254–2). When they take on work for the client company, they are no longer classified as an independent contractor, but as an employee of an umbrella company (Kessler 2016, 203–204; Gardes 2013, 147 et seq.).

The second hybrid legal construct refers to the new concept of “full-time entrepreneurs” comprising entrepreneurs who are independent in their activities but employed by labour and employment cooperatives (*entrepreneur salarié d'une coopérative d'activité et d'emploi*). In order to regulate the legal status of this group, Article L 7331–2 of the French Labour Code introduced a new type of contract, the *contrat d'entrepreneur-salarié-associé* (CESA)⁸ (Bureau, Corsani, Gazier 2019, 87; Bureau, Corsani, Gazier 2021, 14, 19).

Some authors identify economically dependent professionals, such as sales representatives, independent salespeople, and agent-managers (*gérants mandataires*), as another hybrid construct. Indeed, the French Commercial Code (Article L146–3⁹ and Article L146–4¹⁰) provides them with special privileges, which include, in particular, a minimum guaranteed commission and severance pay in the event of contract termination (Bureau, Corsani, Gazier 2019, 87).

Problems relating to the qualification of the provision of work as self-employment or subordinated work arise also for self-employed persons who perform work via online platforms. The French legislature has even introduced the principle of social responsibility of platforms into the Labour Code (Articles L7342–1–L7342–7¹¹). It provides the group in question with the rights to: payment by the platform of insurance premiums covering the risk of accidents in the workplace, access to and participation by the platform in the financing of continuing vocational training, and the collective refusal to provide services (e.g. the right to strike) without incurring any penalty (see also Bureau, Corsani, Gazier 2019, 87). In addition, the 2016 El Khmori Law (*loi n° 2016–1088*) granted self-employed persons using online platforms to exercise their solo professional activities the right to form and join trade unions and to assert their collective rights and interests (Article L7342–6 CT; OECD 2019, 73).¹² Moreover, they enjoy the right to access all data relating to their own activities on the platform that enable their identification. In addition, they have the right to obtain this data in a structured format and the right to transmit it (Article L7342–7 CT).

⁸ https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000029313929

⁹ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006222199

¹⁰ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006222200

¹¹ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072050/LEGISCTA000033013020/

¹² As for collective bargaining, on the other hand, the law provides it only to certain categories of economically dependent self-employed, such as general insurance agents (Bureau, Corsani, Gazier 2019, 90).

2.4. The scope of rights of the self-employed

In principle, the self-employed are exposed to the same risks as employees, but unfortunately they do not always enjoy identical social and labour rights (Westerveld 2012, 158). Historically, the French social security system for the self-employed was built separately from the general system. The origins of this decision can be traced to the strong opposition of professionals without regular remuneration, including the self-employed, to the 1946 law on pension insurance. Although the basic coverage of the schemes was largely harmonized, there were still significant differences in terms of contributions and protection. In particular, the self-employed were not covered by a compulsory insurance scheme that included the risk of accident at work or the risk of unemployment (Bureau, Corsani, Gazier 2019, 88). In 2005, the *Régime social des indépendants* (RSI) was established (more in: Morvan 2019, 32, 511, 661), collecting funds for sickness insurance and compulsory pension insurance. However, as a result of the failures following the 2008 financial crash, the system encountered a serious credibility problem and public demonstrations against the RSI took place in France in 2015. In 2017, Emmanuel Macron decided to abolish the scheme and reintegrate it into the general regime (Bureau, Corsani, Gazier 2019, 88).

As of 1 January 2018, the social security scheme for the self-employed (RSI), whose tasks were gradually integrated into the general social security system over a transitional period of two years, was abolished. From that date, the national RSI fund took the name of the national delegated self-employed social security fund (*caisse nationale déléguée pour la sécurité sociale des travailleurs indépendants*, SSI) and the local funds took the name of regional delegated self-employed security funds (*caisses régionales déléguées pour la sécurité des travailleurs indépendants*).¹³

Since 1 January 2020, all self-employed persons have been covered by the universal social security and social protection system, including: health insurance and the Primary Health Insurance Funds (*Caisses Primaires d'Assurance Maladie*, CPAM), pension insurance and the care of the Pension Insurance and Occupational Health Fund (*Caisse d'Assurance Retraite et de la Santé au Travail*, CARSAT) or the Île-de-France pension insurance (*Assurance retraite Île-de-France*, CNAV Île-de-France), as well as the fund for the collection of social security contributions and family allowances (*Union de recouvrement des cotisations de Sécurité sociale et d'allocations familiales*, Urssaf).¹⁴

The compulsory affiliation to the general social security system of all persons performing work in any capacity is regulated by Article L311–2 of the Code de of

¹³ <https://bpifrance-creation.fr/encyclopedie/statut-du-dirigeant-son-conjoint/regime-social-independants-precisions/protection-0>

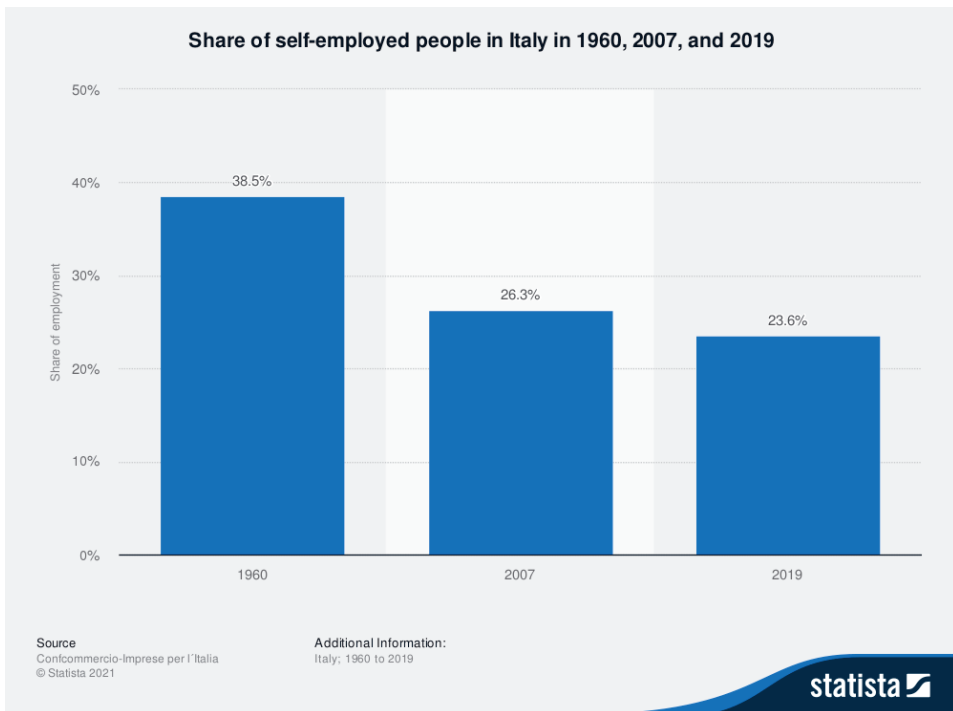
¹⁴ Ibidem.

Social Security (*Code de la sécurité sociale*).¹⁵ Article L311–3¹⁶ of this act confirms the inclusion in social insurance of a broad group of economically dependent self-employed workers, as well as the classic self-employed.

3. SELF-EMPLOYMENT IN ITALIAN LAW

3.1. General legal framework for self-employment

Italian law maintains a traditional dualism between subordinated work and self-employment (Rinaldi 2019, 27; Perulli 2018b, 3). *Prima facie*, this division appears to be extremely simple. Self-employed activity does not involve unilateral managerial prerogatives, and if such exist, we are dealing with subordination (Razzolini 2018, 17).



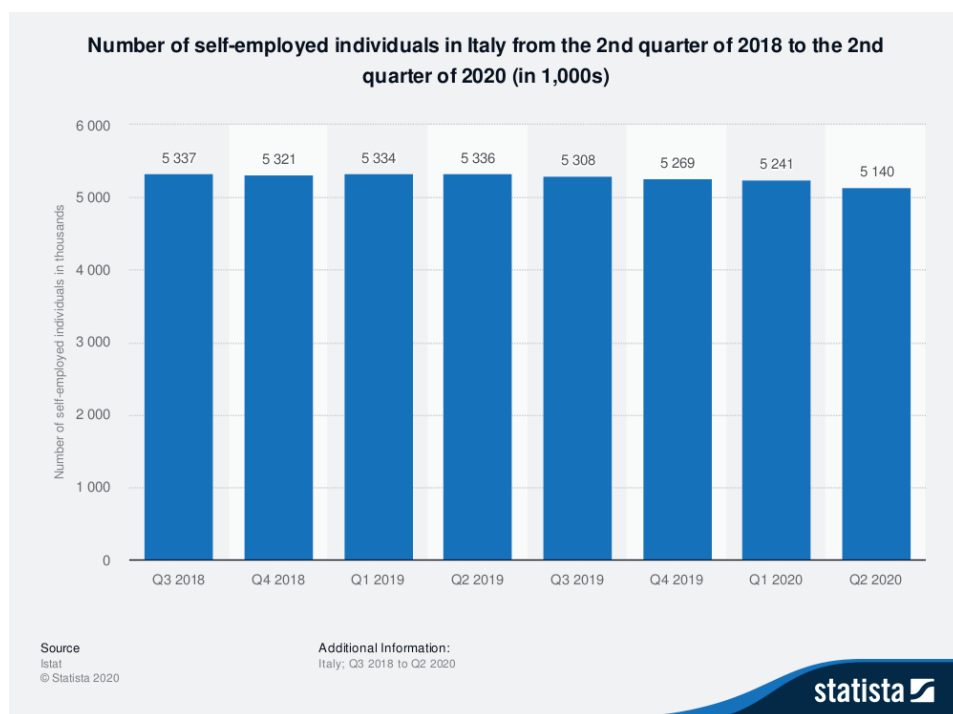
The development of self-employment in Italy can be divided into three stages. The first – which lasted from the end of the World War II until the late 1960s – involved the activity of small artisans and retailers. In the second phase, spanning the 1970s and 1980s, the self-employed were joined by a multitude of

¹⁵ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006742437/

¹⁶ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042683874/

people running small and micro businesses. The scale of self-employment in Italy was particularly affected by the last stage, lasting from the early 1990s, which was characterized by the expansion of the service sector and the transformation towards a post-industrial economy (Semenza, Mori 2018, 15–16).

The chart above shows the share of the self-employed in the total number of working people in Italy between 1960 and 2019. It is evident that the number of the self-employed in the country has decreased over the years. While the self-employed accounted for around 38% of working people in 1960, this share was only 24% 60 years later.¹⁷



According to data, there were 5.1 million self-employed people in Italy in the second quarter of 2020. Compared to the second quarter of 2019, their number decreased drastically.¹⁸ The chart above shows the number of self-employed people in Italy between 2018 and 2020 (in thousands).

Given the scale of self-employment in Italy, in order to address the significant problems with ensuring adequate protection for this category of working people, the Italian authorities passed the Self-employed Persons' Work Act No. 81 (*Misure*

¹⁷ Confcommercio-Imprese per l'Italia, Presentazione Ricerca Confcommercio Professioni, 2 November 2020. Statista 2021.

¹⁸ Istat. November 2020. dati.istat.it. Statista 2020.

*per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l'articolazione flessibile nei tempi e nei luoghi del lavoro subordinato*¹⁹) on 22 May 2017. It applies to work contracts and service contracts regulated by the Italian Civil Code (Articles 2222–2238), i.e. situations in which a person undertakes to perform a work or service against remuneration, mainly in person and without being subordinated to the principal (self-employment). The quoted law applies also to other contracts that are regulated in Book IV of the Civil Code, such as the agency contract, the contract of carriage, the fiduciary contract, or agency contracts, as long as these are not concluded and performed as part of a business activity (Pallini 2018, 239). However, it is worth noting that entrepreneurs, including small entrepreneurs referred to in Article 2083 of the Italian Civil Code, are not covered by this law. In this context, serious problems may arise in practice in distinguishing small entrepreneurs from self-employed persons (Zilio Grandi, Biasi 2018, 6; Bottini, Falasca, Zambelli 2019, 458). The Italian law requires small entrepreneurs – in addition to the provision of work mainly in person or with the help of family members – to contribute a set of tangible and intangible assets that make up a business within the meaning of Article 2555 of the Civil Code (Pallini 2018, 244).

3.2. Problematic legal constructs and self-employment

However, the dichotomous division between subordinated work and self-employment is complicated by legal regulations that do not quite fit into this two-track scheme, but – in the absence of an intermediate category – must fit within it. We are talking here about two legal concepts, namely: “cooperation organized by the principal” (*collaborazioni organizzate dal committente; lavoro etero-organizzato*) and “coordinated cooperation organized by the agent” (*collaborazioni coordinate organizzate dal collaboratore*), where the “agent” is the contractor (in the context of the cooperation). It is crucial to carefully distinguish between the aforementioned types of cooperation, as different protection regimes and different acts apply to them.

When it comes to the interpretation of the legal construct of “cooperation organized by the principal”, all doubts were supposed to be dispelled by Article 2(1) of Legislative Decree No. 81 of 15 June 2015 (*Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni, a norma dell'articolo 1, comma 7, della legge 10 dicembre 2014, n. 183*²⁰). It stipulates that, as from 1 January 2016, the provisions on the employment relationship apply to cooperation relationships consisting in the provision of work exclusively in person and on a continual basis, where the conditions of performance are organized by the principal, including with regard to the time and place of work.

¹⁹ *Gazzetta Ufficiale* from 13 June 2017, No. 135.

²⁰ *Gazzetta Ufficiale* from 24 June 2015, No. 144.

This means that all the provisions concerning the employment relationship apply to this category of workers, including with regard to remuneration, working time, social security, protection against unlawful termination of employment, etc. In terms of protection, these persons are therefore treated by the Italian legislation as employees. Given the problems that arise when trying to qualify work provided as subordinate, it should be emphasized that Article 2(1) of Legislative Decree No. 81 did not change the wording of Article 2094 of the Civil Code (Royal Decree of 16 March 1942, No. 262, *Codice civile*²¹), which provides that a person providing subordinate work is a person who undertakes to cooperate in an enterprise against remuneration, providing intellectual or physical work under the direction and dependence of the entrepreneur. However, the interpretation of Article 2(1) of Legislative Decree No. 81 of 15 June 2015 is not uniform. Some legal scholars present the view that it expands the scope of subordinate work, meaning that it now includes not only the traditional directive, repressive, and distributive subordination, but also cooperation relationships “whose conditions of performance are organized by the principal, also with regard to the time and place of work”, and the work is performed personally and continually (Bottini, Falasca, Zambelli 2019, 450; Perulli 2018a, 54). Other authors argue that these provisions have introduced a presumption of the existence of an employment relationship. Moreover, there are claims that cooperation of this type – despite granting full employment rights – should be qualified as self-employment (Santoro-Passarelli 2018, 435). It is not the purpose of this article to resolve the interpretative doubts mentioned above. However, it is worth noting that the Italian legislature has excluded certain categories of cooperation from the scope of the discussed rule (Article 2(2) of Legislative Decree No. 81 of 2015). These exceptions concern, for example, cooperation in the exercise of white-collar professions for which registration in special professional registers is required, or cooperation organized by the principal but covered by collective agreements (e.g. call centre associates).

The second legal construct that raises considerable interpretative issues in Italy is “coordinated cooperation organized by the agent (contractor)”. A momentous change took place in Italian law in 2015. Article 52(1) of Legislative Decree No. 81 of 15 June 2015 abolished project work (*lavoro a progetto*), which had been in force since 2003, while retaining Article 409 of the Code of Civil Procedure (Royal Decree of 28 October 1940, No. 1443, *Codice di procedura civile*²²), which regulates the above-cited “coordinated cooperation organized by the agent (contractor)”. It does not fall within the scope of subordinate work and is therefore treated as a form of self-employment to which the protection provided for in the aforementioned Self-employed Persons’ Work Act No. 81 of 22 May 2017 (Santoro-Passarelli 2017, 778) applies. Persons classified in this

²¹ *Gazzetta Ufficiale* from 4 April 1942, No. 79.

²² *Gazzetta Ufficiale* from 28 October 1940, No. 253.

category of working people benefit also from procedural protection. Indeed, the Italian law leaves within the competence of the labour court disputes arising from cooperation relationships that manifest themselves through the performance of work in a continual and coordinated manner, mainly in person, even if not subordinated (*rappporti di collaborazione che si concretino in una prestazione di opera continuativa e coordinata, prevalentemente personale, anche se non a carattere subordinato*) (Article 409 No. 3 of the Code of Civil Procedure). It should be emphasized that, under Article 15 of the Act No. 81, the legislature has given an authentic interpretation to the concept of “coordinated cooperation” (*collaborazione coordinata*) from Article 409(3) of the Code of Civil Procedure, indicating that it occurs when, under the terms of coordination agreed by the parties, the contractor organizes the professional activity independently (*organizza autonomamente*). The expressions “even if not subordinated” and “organizes independently” seem to confirm that the coordinated cooperation organized by the contractor is correctly classified as self-employment, which is defined in Article 2222 of the Civil Code as an undertaking by a person to perform a work or service against remuneration, mainly in person and with no subordination to the principal. It is pointed out in subject literature that the expression “organizes independently” means nothing more than precisely “the performance of a work or service in the absence of subordination to the principal” (Carabelli 2018, 51).

In grasping the difference between “cooperation organized by the principal” and “coordinated cooperation organized by the contractor”, it is also important to note that the terms of coordination under the latter must be “agreed upon by the parties”. By way of comparison, agreement between the parties does not fit into the construct of cooperation organized by the principal. In this case, the principal itself determines the terms and conditions of the work. Moreover, the characteristics of cooperation organized by the principal include the exclusively personal provision of work and the organization of the terms of cooperation by the principal, also with regard to the time and place of work (Carabelli 2018, 52, 54). To elaborate on this thought, it must be stressed that the small entrepreneur – if they are a party to coordinated cooperation organized by the contractor – admittedly enjoys the procedural protection of Article 409(3) of the Code of Civil Procedure, but is no longer covered by the Self-employed Persons’ Work Act (Razzolini 2018, 26). This is due to the exclusions adopted by the Italian legislature.

3.3. The scope of rights of the self-employed

When it comes to the rights introduced by the 2017 Self-employed Persons’ Work Act No. 81, attention should undoubtedly be drawn to Article 3(4). It stipulates that Article 9 of the Act of 18 June 1998 No. 192 (*Disciplina della subfornitura nelle attività produttive*²³) concerning the abuse of economic

²³ *Gazzetta Ufficiale* from 22 June 1998, No. 143.

dependence applies *mutatis mutandis* to the relationships covered by Act No. 81. Following the reference, we learn that economic dependence occurs when an enterprise is able to establish, in its commercial relations with another enterprise, an excessive imbalance of rights and obligations. Economic dependence is assessed by taking into account the abusive party's actual ability to find satisfactory alternatives on the market. The competence to counteract the abuse of economic dependence is vested in the court, which under Italian law has the power to declare contracts void in such cases (Pallini 2018, 248–249; Cavallini 2018, 292–294).

In addition, provisions that give the principal the right to unilaterally amend the terms of the contract or, in the case of a contract characterized by continuity of work, the right to withdraw from the contract without giving a reasonable period of notice, as well as clauses under which the parties agree payment terms exceeding sixty days from the date of receipt of the invoice or demand for payment, are considered abusive clauses. It is also considered abusive for the principal to refuse to enter into a written contract. The self-employed person has the possibility to claim compensation in all situations mentioned in this paragraph (Article 3(1)–(3) of the 2017 Act No. 81).

In an attempt to meet the needs of the self-employed, the Italian authorities introduced in the 2017 Act No. 81 a number of tax benefits for this group, such as deductions for training costs or skills certification. There were also regulations on unemployment benefits, including the stabilization and extension of benefits for unemployed workers who were parties to a coordinated cooperation organized by the contractor. Of primary importance for self-employed women were undoubtedly the regulations on rights related to parenthood, including the possibility to use maternity benefit two months before the date of childbirth and three months after that date, even in the case of continued employment.

Then, pursuant to Article 14(1) of the 2017 Act No. 81, it is possible to suspend (without right to remuneration) a contract characterized by continuity of work for up to 150 days per calendar year in the event of pregnancy, sickness, or accident of the self-employed person. In addition, in a situation of maternity, a self-employed woman may with the consent of the principal use the substitution of another trusted self-employed person (Article 14(2) of the 2017 Act No. 81). In the event of sickness or accident that prevents work for more than sixty days, a suspension of the payment of social security contributions for the entire period of the sickness or accident is provided for, up to a maximum of two years (Article 14(3) of the 2017 Act No. 81; Bottini, Falasca, Zambelli 2019, 458; Rausei 2017, 67–68).

In Italy, collective representation of the self-employed is fragmented and very often even non-existent. As Anna Mori points out, traditional trade unions have shown no interest in this group of people, for two reasons in particular. The first was the focus of all attention on the false self-employment that spread through the Italian labour market in the late 1990s and 2000s. Trade union strategies were mainly devoted to how to deal with the new forms of precarious, non-standard,

and flexible contractual arrangements. A second reason was that unions perceived self-employed professionals as thriving and benefiting from the protection guaranteed by the various professional registers. Only relatively recently has it been possible to direct trade union interest towards the self-employed. Examples include the Professionals' Labour Advisory Body (*Consulta delle professioni*) set up by the Italian General Confederation of Labour (*Confederazione Generale Italiana del Lavoro*, CGIL), and the online community of self-employed people vIVAce! created by the Italian Confederation of Workers' Unions (*Confederazione Italiana Sindacati Lavoratori*, CISL). More recently, there have been further grassroots initiatives and spontaneous movements to highlight the demands of the self-employed. They are gaining popularity through the use of social media. These include the Chamber of Self-Employment and Precarious Work (*Camere di Lavoro Autonomo e Precario*) as well as the 27 February Coalition (#27F) (Mori 2019, 103–105).

4. CONCLUDING REMARKS

In discussing the existing dualism between subordinated work and self-employment, the French use the fable “The Wolf and the Dog” by Jean de La Fontaine (Chauchard et al. 2003, 301). Since there is no dog-wolf hybrid, any legal figure considered by some authors as “intermediate” must ultimately fit into the existing scheme. This is true for the *portage salarial* system, for the new type of contract – CESA, for economically dependent professionals, and for those providing work through online platforms. The situation is similar in Italy, where two legal constructs have proved most problematic: “cooperation organized by the principal” and “coordinated cooperation organized by the agent”.

An analysis of Italian law leads to the conclusion that, in order to correctly classify the work provided as either subordinate work or self-employed activity, four different concepts have to be taken into account, which in practice causes many difficulties. These are namely: the definition of self-employment under Article 2222 of the Civil Code, the concepts of “coordinated cooperation organized by the contractor” under Article 409(3) of the Code of Civil Procedure and “cooperation organized by the principal” under Article 2(1) of Legislative Decree No. 81 of 15 June 2015, and the term “subordination” under Article 2094 of the Civil Code (see Voza 2017, 9).

In French law, on the other hand, it is popular to extend employment rights to non-employees. To this end, not only presumptions of the existence of an employment relationship, but also other legal constructs are used: the assimilated worker, who is subject to the general social security system but does not benefit from unemployment insurance, and the individual entrepreneur – a self-employed person (*auto-entrepreneur*) using a simplified social security system.

As far as the self-employed are concerned, the French law reform of 1 January 2018 abolished the hitherto separate social security system (RSI) applicable to them and integrated its tasks into the general social security system. Finally, as of 1 January 2020, all self-employed persons are covered by the latter regime. It is worth mentioning that there has been a public debate for years in France about granting the self-employed a full right to unemployment benefits, which has not yet been done. However, President Macron announced changes in this regard in September 2021. Loss of employment is supposed to provide this group of people with access to benefits once every five years without having to liquidate their business (York 2021). Analysing the Italian regulation, on the other hand, we see that the self-employed have gained quite a number of hitherto unknown rights under the 2017 Self-employed Persons' Work Act No. 81.

As for the collective rights of the self-employed, their regulation in France seems to be fragmented and selective. For example, the legislature showed good will towards self-employed workers via online platforms in 2017. It namely granted them express right to form a trade union organization, to join it, and to assert their collective interests through it. Moreover, it is noteworthy that the self-employed have been granted the right to refuse services collectively without any penalty, including the right to strike. The right to collective bargaining can be mentioned as another example. This has been provided only to selected categories of self-employed persons, namely to those who perform activities under conditions of economic dependence, such as general insurance agents. A similar situation exists in Italy, where collective representation of the self-employed is fragmented and organizations of the self-employed have begun to emerge relatively recently.

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