"THE ROLE OF COLLECTIVE BARGAINING IN EUROPE IN THE PROMOTION OF FLEXIBILITY, WORKPLACE PRODUCTIVITY AND THE WELFARE OF WORKERS IN THE WORKPLACE"

by **Michele Squeglia**
Prof. aggregate of labour law and labour safety law
University of Milan - Faculty of Law
Department of Private Law and history of law
Via Festa del Perdono 7, 20122 Milan (Italy)
✉ *michele.squeglia@unimi.it*
🕊 *@SqueglіaUnimi*

In order to compensate for the progressive loss of the purchasing power of wages and the reduction of benefits (social security and welfare), in many countries (not only in Europe), it is given the attempt, through incentives of a normative and fiscal nature, to recognise collective bargaining in its different declinations, the privileged place to promote the flexibility, efficiency and well-being of workers in the workplace.

Recent researches on the processes of transformation of welfare systems in Europe[1] have long been highlighted by the relationship between the socio-demographic changes of western societies with the increasing difficulties that they themselves encounter in maintaining levels of social and welfare benefits are unchanged. At the same time, an OECD study increases the benefits of a private and voluntary nature, provided by companies in France, Great Britain, the Netherlands, Germany and Italy.

In the various European experiences (except for some exceptions), there is a common aspect: the use of contractual autonomy for the purpose of building a social welfare, welfare and private "tailor-made" path of the needs of the worker of their company (specialist visits, therapies and rehabilitation, training and education courses, home care, recreational activities, babysitting services, work-life balance, wellness, etc.), most of the times also identified in replacement of the traditional result award. Of this private instrumentation of welfare the innovative profile in the content and sources of the industrial relations system in Europe must be read in the first place, ending it to translate into a way of responding to social security needs, health and welfare not fully satisfied, or not satisfied at all, by the "*private welfare*", intermediated through the employment relationship and its regulatory sources; this, moreover, in line with the changed orientation of collective bargaining, which decides to incorporate in the synallagma of the exchange of labour law services and welfare benefits, directly linked to qualified and deducted social needs to the consumption choices of earners of monetary income.

Even in **Italy** it is possible to grasp this truth. The multifaceted interdisciplinary instrumentation of fringe benefits (and, therefore, of the remuneration in kind referred to in article 2099, code civil[2]) Having, as a goal, to promote the private life of the individual and not only the working life of the provider of

[1] U. BECK, *Il lavoro nell'epoca della società della fine del lavoro. Tramonto delle sicurezze e impegno civile*, Torino, Einaudi, 2000; G. ESPING-ANDERSEN, *Why We Need a New Welfare State*, Oxford Scholarship Online, 2003.

[2] Fringe benefits represent a form of "remuneration in nature": in Italy art. 2099, paragraph 3, code civil establishes that "the service provider may also be paid in whole or in part [with participation in profits or products, with Commission or] with benefits in kind". According to the Agenzia delle Entrate (resolution. 29 May 2009, N. 137/E), they are defined as "compensation in kind", consisting of goods or services, including products from the same employer, or in special discounts on the purchase of such goods and services". Fringe benefits began to speak in **Italy** in the branches of the most famous multinational groups (IBM, Hp, Unilever, Procter & Gamble, etc.), settled in the second half of the years 50 in Italy, to meet the needs of managers from abroad. It was only later that the remuneration policy of the large national companies (for example, Mondadori, Fiat, Rinascente, Benetton, etc.) was complied to that introduced by multinational companies. A company policy that differed from that adopted by other companies that were active in the social field, reinforcing their care facilities focused on the medical assistance, livelihood for families and widows (on the point, see V. FERRANTE, *Il welfare aziendale: una formula che non lascia sconfitti*, in *Personale e lavoro*, ISPER, 11, 2017, 4) It is in this context that stands out the well-known model of "corporate welfare", theorized by Adriano Olivetti, who had the ambition to assist his workers in all aspects of life, work and family. For a model analysis olivettiano, si v. *http://www.storiaolivetti.it/percorso.asp?idPercorso=638*.

works[3], while not finding a specific legislative forecast, is contained in the comprehensive expression of "*welfare* aziendale", whose definition, in the absence of a legislative forecast, is entrusted to the appreciation and the constructions of the doctrine. This is an unavoidable meaning which is inevitably encompassing the social security, generally understood, in which, in a disorganized and systematic way, all the employer's initiatives to some extent referable to a purpose of collective wellbeing, which exceeds the minimum levels of health protection imposed by law[4].

However, these are initiatives that intersect, or may intersect, with the experiences of bilaterality rooted in some European countries, foreshadowing the risk of an overlap and, therefore, a duplication of functions and services offered by the welfare private contractual and by bilateral bodies (vocational training, income support, for example). A danger that does not seem to be conceivable in the **French case** of the "*Organisme commun des institutions de rente et de prévoyance*" (OCIRP), that is to say the dedicated bilateral welfare system, in addition to supporting the income of the lender of works, to the training professional. Being a "pure" system, influenced by state intervention, the usability of these services originates from the collective bargaining which intervenes in the promotion of the different services offered through a specific union agreement without can waste any space on the unilateral initiative of the employer in the design of those measures.

It emerges then that the contractual autonomy, which is assigned the task of adapting the traditional welfare system to the modern needs of the workers, ends up delivering to us specific research topics: the contribution exemption and the tax incentive scheme for goods or services, given the logic of satisfying the needs of the worker; the adaptation of the notion of remuneration to extrinsic parametrics of work performance such as profitability, productivity, well-being (compared to traditional indices of gravity, intensity, time); the broadening of the concept of workplace safety at the time when contractual measures are laid down which exceed the statutory minimum safety standard; the changes in the company organization, given the forthcoming cognitive work of the "Industria 4.0" (think, for example, in the field of start-ups, cultural and social innovation), that will delay the time of work to the entire span of one's life; the metamorphosis of physical productivity into "cognitive and digital" productivity.

In **Italy** the key to the connection between "*welfare* aziendale" and remuneration is represented by the collective autonomy which, in the wake of the tendency to determine the quantitative aspects and the forms and criteria for calculating remuneration, is a candidate primary welfare discipline. Moreover, the generic expression of "remuneration", contained in the positive regulation of the constitutional principles and the statutory framework, has undoubtedly favoured the contractual autonomy in its intention to propose renewing different assets that have presented composite forms and denominations over time, handing to doctrinal and jurisprudential reflection.

In this respect the Italian experience differs from the analysis of the **British welfare model** in which the role played by collective bargaining is residual compared to that traditionally carried out by the companies. In the context of their own remuneration policies, the retention of staff and the improvement of the company's climate. Indeed, it is the one-sided initiative of the employer, which has to be included the offer of different benefits, for example, in the field of life-work conciliation on the side of care services, of the flexibility of working hours[5] and child support services. Emblematic is the case of the "*Childcare vouchers*"[6]

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[3] M. SQUEGLIA, *L'evoluzione del "nuovo" welfare aziendale tra valutazione oggettiva dei bisogni, regime fiscale incentivante e contribuzione previdenziale*, in *Argomenti di diritto del lavoro*, 1, 2017, 103-132; M. SQUEGLIA, *La previdenza contrattuale nel modello del welfare aziendale "socialmente utile" e della produttività partecipata*, in *Argomenti di diritto del lavoro*, 2, 2017, 383-409; M. SQUEGLIA, *La «previdenza contrattuale». Un modello di nuova generazione per la tutela dei bisogni previdenziali socialmente rilevanti*, Torino, 2014, 93 seguenti; T. TREU (curated by), *Welfare Aziendale 2.0. Nuovo Welfare, vantaggi contributivi e fiscali*, Milano, 2016; T. TREU, *Introduzione Welfare aziendale*, in *WP CSDLE "Massimo D'Antona".IT – 297/2016;* A. TURSI, *Il «*welfare *aziendale»: profili istituzionali*, in *Riv. Polit. Soc.*, 2012, 3, 213 e following.

[4] M. SQUEGLIA, *L'evoluzione del "nuovo" welfare aziendale tra valutazione oggettiva dei bisogni, regime fiscale incentivante e contribuzione previdenziale*, in *Argomenti di diritto del lavoro*, 1, 2017,103 e 104.

[5] Alongside the possibility of reducing working time, companies agree to cumulate and recover working hours, to vary the start and end times of the working day and to take advantage of specific permits in case of family emergencies. Recently, teleworking has also spread, the possibility to work the same number of hours of a full time but in less days and the opportunity to take advantage

which are granted in lieu of wage increases, but also in exchange for salary sacrifices compensated by the value of vouchers, on the basis of reciprocal conveniences relating to the costs for the payments of the care services of children because the portion of remuneration paid in the form of a voucher is exempt from taxes and contributions. The minor role played by the trade unions in the diffusion of private welfare, is tied to the policies of the Government aimed at reducing their participation already in the late 1970s in English political life. More than "promoters" of welfare universalistic policies, trade unions have thus concentrated more on costs, more than on the potential advantages they can obtain, by adopting a little strategy to support the development of these policies. A judgement that changes when they are proposed as "producers" of welfare services rather than as promoters.

Unlike in **Italy,** where the recent collective bargaining established that the "minimum economic treatment" (prefigured by the "Factory Pact" of 28 February 2018 between Confindustria, Cgil, Cisl, Uil, point 5, *letter e, f*), does not run out of "treatment overall economically" (TEC) recognized to the worker, placed that the "treatment overall economically" (TEC)" will include other fees aimed at financing "also any forms of welfare" that the national collective category agreement "will qualify common to all workers in the sector regardless of the level of negotiation to which the same national collective agreement of category will entrust the discipline". In wishing to investigate the content of the item "forms of *welfare*", the same agreement (point 6, *letter a)* refers to the design of address lines, through "interconfederal" agreements, with the aim of permitting, even in areas without specific initiatives, greater universality of safeguards in the context of complementary pensions, supplementary health care, protection of non-self-sufficiency, social welfare benefits and life-work conciliation. These agreements seem to compose the complex mass and sometimes inconsistent of the protections of the positive right, to compensate for the shortcomings of the public *welfare* protections, of disengaging from the schemes that appear inadequate or, in some cases, even unjust, to abandon the idea of standardized welfare.

Under this profile, the Italian solution to delegate to national and/or territorial collective bargaining also the function of creating schemes of private welfare useful to integrate benefits based on journalism has already found in **France** a precise response from the legislator from across the Alps that has identified various instruments of a private nature to which the contractual autonomy is called to play a significant role in promoting the needs of employees in the company. These are the well-known "*Compte Épargne Temps*" and "*Cheques Emploi Service Universel*". The first is an hourly account that allows employees to compensate, in the presence of overtime or leave not enjoyed, the hours of excess work or of receiving an allowance: in the latter case, if at the time of the resting place the worker will not have benefited from such facilitations will be entitled to contributory benefits. Well, collective bargaining is assigned the task of setting the framework of the modalities for the implementation of the time savings account on the basis of the rules laid down by the legislative source and to fulfil relevant information obligations in favour of employees[7]. On the same wavelength the "*Cheques Emploi Service Universel*" (CESU), the voucher expendable for services to the person and the family nucleus of the employee, co-financed by the employer, which allows to pay the services related to children, to the management of house and to the care of people dependent on the provider of works, as well as increasing the purchasing power of those who employ it. Instruments that have paved the way for a social services market in which both formal, profit and non-profit organizations operate, as well as individual lenders hired directly by families.

In **Italy**, however, two different models of "*private welfare"* are oscillated as identified by the forecasts contained in D.P.R. 22 December 1986, no. 917.

The first model, in which collective bargaining does not intervene, can be called "pure *welfare* aziendale" or, if you prefer, "pure corporate *welfare*". Subordinated work, in contrast to self-employment, for which the exemption from taxation of non-strictly remunerative goods and services is not enshrined, benefits instead of certain total or partial derogations (or exclusions) from the so-called income taxable (non-monetary

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of whole days of abstention from work for family reasons. Consider that several companies provide for the extension of parental leave periods with respect to the provision of national legislation.

[6] The beneficiaries of the childcare vouchers in the United Kingdom increased from 156,000 of 2006 to 464,000 of 2011, with an increase of 197.6% equal to 308,000 units.

[7] In the absence of agreement establishing these conditions, employers shall fulfil the obligation to provide information.

forms of pay) which are presented as exceptions to "the principle of all-ecompassing remuneration" (art. 51, paragraph 2, d.P.R. 22 December 1986, No. 917) is precisely the identification of individual benefits[8], expressly identified and listed by the tax legislator, that the employer builds the plan of "*welfare* aziendale", completing the traditional system of remuneration of remuneration policies in favor of "general or categories of employees", with the exclusion of any ad *personam* incentive. Moreover, in the appreciable objective of making non-monetary forms of remuneration more responsive to the progressive evolution of needs, paragraphs 2 and 3 (last period) of art. 51, d.P.R. 22 December 1986, no 917 have been the subject of a recent restyling[9] which enriched the forms and contained the phenomenon of "*welfare* aziendale" for the private sector.

Within this model it is possible to identify a sub-type represented by the "socially useful *welfare* aziendale"[10]. These are the fringe benefits provided by the employer, based on the "new" letter f), of art. 51, paragraph 2, d.P.R. 22 December 1986, no. 917, for the conduct of works or for the enjoyment of services, for specific purposes of education, education, recreation, social and health care or worship; letter f-*bis*) for education and parenting support; letter f-*ter*) for support for non-self-sufficiency; and letter f-*quarter*) in the case of insurance forms for non-self-sufficiency[11].

The novelty is to be ascribed to art. 1, paragraph 190, letter *a)* number 1, Law no. 208 of 28 December 2015 (the law of Stability 2016), which has now expressly stipulated that the relative value of such works and services does not concurr to the income of employees not only when they are supported "voluntarily" by the employer , but also when (the offer of "social content" benefits is the subject of a "*welfare* aziendale" plan) has been realized "in accordance with terms of contract or agreement or corporate regulation", also "interconfederal and national".

A scheme, that of the model "socially useful of welfare aziendale", that relaunches, what you call, the "contractual security"[12], in the terms in which the need has dropped in the social security dimension, in the shareable conviction of giving the collective bargaining the task of adjusting remuneration and responding to needs of each employee since the absence of involvement of the social partners involves a limited tax deductibility not exceeding 5 per thousand of the amount paid by the employers party.

The study of the Italian case in which employers negotiate business welfare plans with workers, offering them the opportunity to choose between different options, is functional to the objectives that this essay proposes:

For example, think about the connection with the "fringe benefits" and with the "welfare plans" typical of the American order, which, while differentiating by nature and ratio, are examples of a company policy

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[8] Contributions to the pension fund, the supplementary health fund, the assistance to elderly or non-self-sufficient family members, the participation in the summer centres, the granting of scholarships and loans or mortgages, services relating to Education and education also in preschool, including integrative services and canteen related to them, etc...

[9] See in particular the paragraph 190, article 1 of law No. 208 of 28 december 2015, paragraphs 160-163 of article 1 of law 11 december 2016, no. 232 and paragraphs of law no. 205 of 27 December 2017.

[10] M. SQUEGLIA, *L'evoluzione del "nuovo" welfare aziendale tra valutazione oggettiva dei bisogni, regime fiscale incentivante e contribuzione previdenziale*, in *Argomenti di diritto del lavoro*, 1, 2017,103 e 104.

[11] Whether it is a phenomenon of considerable growth shows the fact that in the last five years Italian companies have started to rapidly develop corporate welfare policies. According to the recent Report "*Welfare Index 2018*" (*http://www.welfareindexpmi.it/wp-content/uploads/2018/04/Rapporto-Welfare-Index-PMI-2018.pdf*) 35.6 per cent of the companies surveyed said ' that they increased their productivity as a result of increased worker satisfaction; and in the next 3-5 years, 52.7 percent of SMEs are proposing further growth in "*welfare* aziendale". As far as intensity is concerned, companies that have implemented at least five "*welfare* aziendale" initiatives have increased from 26.2% in 2016 to 37.1% in 2018.

[12] For the term "contractual security" (or "previdenza contrattuale"), see M. SQUEGLIA, *La «previdenza contrattuale» nell'ordinamento previdenziale italiano* in C. JANNOTTI DA ROCHA – L. VASCONCELOS PORTO – M.F. BORSIO – R. SIMÃO DE MELO (curated by), *Seguridade Social e Meio Ambiente do Trabalho: Direitos Humanos nas Relações Sociais*, Tomo I, Editora RTM, Belo Horizonte, 2017, 111 ss.; previously M. SQUEGLIA, *La «previdenza contrattuale». Un modello di nuova generazione per la tutela dei bisogni previdenziali socialmente rilevanti*, Torino, Giappichelli, 2014, 121. According to my reconstruction, with the term "contractual security" it is possible to identify that security originating from a complex of collective agreements, which is part of the law of industrial relations, which are pre-ordered for the satisfaction of Workers ' interests due to typical events that result in the suspension, reduction and/or loss of work, the disease and, more generally, the implementation of interventions to protect "socially relevant security needs".

rooted and supported even legislatively, which is concretized in the ability to freely compose the performance package that most reflects the needs of its employees, minimising and, in some cases, resetting the company's tax (and contributory) impact. On the other hand, the American experience is rich in business programs that have as an object, for example, the physical and psychophysical wellbeing of the employee and his family: indicative cases of disability plans, long term care plans, dependent care assistance programs, the adoption assistance programs or the most common wellness and health promotion programs.

A solution that is also followed in Europe, among countries that are characterized by a high-incidence public welfare. In the **Netherlands** for example where the crisis of the State social system has led to an increase in private assistance, from 1 January 2006, the possibility of establishing a specific, fiscally facilitated fund, called *"Levensloopregeling"* (LCSS), was envisaged, which it allows the worker to freeze a portion of their salary in order to benefit from them later in the case of leave. The flexibility of the fund allows the remuneration allowances to be also frozen in cases of suspension of the employment relationship and then to be reinstated once the employment relationship is re-established or even repaid in the case of Retirement in the pension fund. The LCSS fund thus allows to better satisfy the need to personalize the working time, since it is the employee who decides when to accumulate their income and when to benefit from them (except for cases of certain limitations and regulations according to the business or sector contract)[13]. This instrument[14], as well as lending itself to the individualisation of working conditions, also fits well into the transitional approach of labour markets.

The role of the negotiation is not secondary in the regulation of the fund: it is intended to establish the conditions relating to the right, the duration of the leave and to identify the causes in which it is permissible to refuse to grant the Leave. But above all it is recognized the possibility of choosing the supplier of the *"Levensloopregeling"* between the banks, the insurances and pension funds, promoting the subscription of a savings account or an investment product. The dissemination of employer's contributions to the scheme, as well as the forecast of *"Levensloopregeling"* in collective agreements, have received a favorable positive impact on the participation rate.

In addition to the private welfare plans, special interest in Italy is a second model of "*welfare* aziendale", as a worker's option to the result prize and, therefore, to "participatory productivity". Paragraph 184 of art. 1 of the law of 28 December 2015, no. 208 (the law of Stability 2016), as amended by paragraph 160 of the law of 11 December 2016, no. 232, imported a new model, declined only in the territorial and corporate contractual sphere, and therefore precluded to individual autonomy (as well as national and interconfederal), which allows the worker to choose between the disbursement of the result premium (the flexible remuneration quantified on the basis of labour productivity or participation in and fringe benefits referred to in the said art. 51, paragraphs 2 and 3, D.P.R. 22 December 1986, no 917[15]. In this case, the benefits of welfare are subject to the total limit of disbursement of the result prize (of euro three thousand, which could be raised to four thousand in case of equal involvement of the workers in the organization of the work) and to the respect of precise objective and subjective conditions[16]. Meanwhile, it is worth recalling that the single premium paid in cash applies the 10% detaxation, replacement of the income and the additional regional and municipal (art. 1, paragraph 182, Law No. 208/2015) and the ordinary contribution (article 1, paragraph 67, law December 24, 2007, No. 247), while in the case of conversion of the results in "*welfare* aziendale", the tax is set to zero and the exemption of compulsory contributions is enshrined in almost all cases.

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[13] In the same way as the most modern instruments of conciliation-work life, and therefore, to the application of the principle of "self-determination of one's own time", each individual employee can choose, because of their age, professional career and with the agreement with the employer work, the period that it considers most appropriate to be absent from work for the care of children or elderly parents, training leave, holiday periods or sabbatical periods.

[14] The LCSS is based on the holistic approach of life cycle: at the point see, W. H. HEINZ-V. W. MARSHALL, *Social Dynamics of the life course: transitions, institutions, and interrelations*, New York, De Gruyter, 2003.

[15] And the theme is all the more relevant in Italy when you consider that previously the Ministry of Labour had firmly excluded the possibility for the employee to opt for the provision of goods and services in place of the result award, presumably in order not to To indulge fraudulent practices in which the production premium had already accrued rather than being the subject of ex ante bargaining.

[16] See the recent circulars in Italy of the Agenzia delle Entrate No. 28/E of 15 June 2016, and No 5/E of 29 March 2018.

It is an application of the policies of "*total reward*", which offer an integrated system of functionality that allows you to forget the old systems of incentives, rooted in the bidimensionality of the product between effort and profit, in favor of a configuration that covers more heterogeneous and adaptable aspects to human resources. Recognizing employees the ability to choose the level or type of reward they will receive recalls the **US policy** of the early 1980s and also in other countries it is possible to detect such a trend. The Italian legislature has now convinced that in the "*welfare* aziendale" the widening of bargaining opportunities, and the promotion on the tax level of it, allows the worker to actively participate in the processes of decision-making and sharing of social security, welfare and integrative health paths.

From the foregoing considerations emerges the fact that involving the parties responsible for the progress of the working relationship, the welfare that originates from the contractual source presents itself as a regulatory medium capable by its nature to develop in a capillary way and to promote participatory involvement of workers. A "*private welfare*" – or if you prefer the italian expression of "*welfare* aziendale – that is able instead of promoting interventions in terms not only of incisiveness but also of respect for the different values in play, taking into account the particular need to satisfy.

There is no doubt then that the relationship between collective autonomy and contractual welfare should present itself as a privileged relationship, being evident the difference between a welfare plan built on the basis of the employer's general order feedback and another that originates in negotiation taking into account the needs of workers in the national, territorial and corporate reference[17].

In conclusion, the impression that is extracted from the analysis of the models of private welfare in Europe-and that allows you to fully grasp the function entrusted to the remuneration at the present time where the shares perceived as consideration of employment, of an economic utility in kind or of a higher yield – is that they apply, on the one hand, to represent a non-marginal part of the resources concerned to feed social security, health and welfare forms and, on the other, to elevate the private welfare to component of the social security/welfare/compulsory system, at a time when it confers, not so secretly, the competence to deal with services institutionally and traditionally donated to the public subject.

by **Michele Squeglia**
Prof. aggregate of labour law and safety law
University of Milan
Faculty of Law
Department of Private Law and history of law
Via Festa del Perdono 7, 20122 Milan (Italy)
✉ *michele.squeglia@unimi.it*
🕊 *@SqueglіaUnimi*

[17] In Italy, the data of February 2018 of the Ministry of Labour show that the active contracts comprising the results premiums were 8,899, of which 7,356 company and 1,543 territorial 41.6% of the total, and therefore almost half of these agreements, have introduced corporate welfare measures.