

Roundtable work track on "digitisation, smart work, MiFID II: how is the demand for skills changing and what challenges await trade unions in terms of job protection?"

The impact of the new European rules on the discipline of employment relations and the system of industrial relations (Domenico Iodice)

Directive 2014/65/EU, better known as **MiFID II**, which came into force on 3 January 2018, introduced a wide range of changes compared to the previous regulatory framework (resulting from MiFID I); these changes are underway and object to study and analysis, but no specific in-depth study on "**what changes for the employment contract and the definition of labor obligation**". The prevailing regulatory and scientific reference is instead aimed at the **effects on the behaviour and functioning of intermediaries and financial markets**, with a view, pursued by the Community legislator, to **increase consumer rights** and protection and thus strengthen confidence in the **reliability of the financial system** as a whole.

These topics can be summarised in terms of the '**Investor Protection**' framework, on the one hand, and the '**Market Infrastructure**' framework, on the other. In particular, concerning the "Investor protection" framework, the elements of novelty impact on the internal organization of investment firms, through an innovative process outlined by the EU legislator and constituted by **POG (Product Oversight Governance)**. This "governance" postulates precise rules in the definition of corporate responsibilities and tasks (between producer and distributor of financial instruments intended for savers), intending to trace a complete "process chain" and a "chain of responsibilities" in the process up to the advice given to the saver. A **clear separation of roles** (producer *versus* distributor) and a logic of monitoring the entire "financial product life cycle" is established. The POG also places a more articulated and pervasive discipline of the **conflict of interest** at the centre of reflection and internal control activities, aimed at ensuring **the quality of the control that** (in the organization of company functions) **must inhibit inappropriate economic "incentives"**, granted both to employees and to corporate subjects, in the operations of investment companies that concern the end user: the customer-saver. The objective of these rules is **to protect the best interests of the customer**, avoiding the most disastrous effects of the mass sale of financial products almost reduced to "over-the-counter products". Similarly, the "Trading venues and market infrastructure" framework addresses the issue of market efficiency. The complexity of the organisational adjustments required to the banking and financial system has justified the request and the obtaining by the latter of an extension of one year of the deadline for the effective and full force ("dies a quo") of the new Community legislation. Two years after the entry into force of the new rules, however, not all organisational problems can be defined as solved either by the adoption of new production models or by the adoption of new distribution models.

Moreover, the topic "**organization of the work**" of banks and the topic "**redefinition of labor obligation**" remain crucial: two issues that impact, respectively, on the system of industrial relations and the evolution of labour law.

The effects of MiFID II are not limited to responding to the expectations of institutional investors and savers and more generally to the expectations of the financial system's credibility and market stability. MiFID II is reflected, in fact: a) in the current business model of companies operating in the sector, and even more so b) in the current employment relationship models and c) in the structure of industrial relations in the financial sector.

As regards point a), banks must define and clarify to their customers **which kind of financial advice** they intend to offer: **"independent" advice** (which may be provided by self-employed or employed persons), with a more marked professional content (for which special fees are payable), or **"non-independent" advice** (which may also be provided through either employment or self-employment). This choice implies, in both cases, the adjustment of value production models and, in particular, will have important effects on the distribution network, which could even be the subject of spin-off operations (aiming to enhance the commercial results, with a possible reduction in overall employment balances). **The new constraints, stemming from the adoption by banks of the independent consultancy model, would have represented, if it had been adopted, greater protection for workers in the sector:** and this is due both to the breadth of the offer of financial instruments and, above all, **because it would free the worker from commercial pressures for the placement of a specific financial product.** Independent advice could prove to be instrumental in virtuously orienting the relationship between intermediaries and clients, with the former becoming true financial education agents. In short, independent advice would be a condition of "win-win" relationship between customer and bank, a model capable in itself of generating a higher degree of financial awareness and responsibility. **This choice requires the real professionalism of the financial intermediaries' collaborators.**

The practical problem which our Project has to deal with is that **unfortunately banks** (unanimously or almost unanimously) **have so far adopted a different model of consultancy:** on a **non-independent basis.** As a result of this, a series of effects of a different sign can be expected, especially about points b) and c) above.

As regards point (b), there is a need to 'professionalise' and 're-professionalise' in a serious way and within a short period the staff which companies intend to use for consultancy. **Career transitions" should be accompanied responsibly and the transversal skills of older and experienced workers should be enhanced, to prevent digitisation and MiFID II from acting as an accelerator of expulsion processes:** this would, among other things, be potentially detrimental to customers. The figures of workers "trained" at the end of this professionalisation phase will assume **more intense contractual collaboration duties and more stringent professional obligations** than the "status quo ante"; they could be the recipients of **specific disciplinary codes**, even assuming criminal, administrative and civil responsibilities "on their own" and externally, directly towards clients and public authorities. Consequently, **these new "banking professionals" must be better protected in terms of regulations (specific safeguards) and remuneration.** Their employment relationship, if subordinate, will tend to be formulated on the assumption of a more intense fiduciary base and characterized, always, by the so-called "*intuitu personae*". There is a first problem: **how to carry out the transition from the old to the new professional figures**, which postulate **new individual protection**, new contractual frameworks and **adequate salary profiles.** **There is a concrete possibility that the number of self-employed workers will increase** compared to the number of employed workers, just as there is a **concrete possibility that forms of legal hybridization between employed and self-employed workers will be integrated.** In the silence of the legislator (both Community and national), **practical experiments of hybridization are being carried out:** both through juxtaposition formulas (called in jargon: "**minotaur**", mythological figure half man and half bull), where the subordinate work element is represented by the **part-time** (horizontal or vertical), and through real contractual hybrids, or **atypical contracts** realized by **co-installing different elements**, even coming from the so-called "**smart working**". **These regulatory aspects must certainly be the object of governance of the collective parties** at the highest possible level, and cannot in any case be left to the autarchy of the companies. The protection of savers goes hand in hand with the protection of "responsible" work, and this responsibility can be understandably attributed to the banking company where it uses forms of employment.

Regarding point c), it is clear that **the governance of these complex processes of adapting the organisation of work in companies postulates a system of industrial relations that is mature and open to**

social dialogue and the extension of collective bargaining to the theme of work organisation. In practice it is a matter of **rewriting** (together: employers and trade unions) **the rules of the game: collective labour agreements** (recognizing greater importance to bilateral bodies for shared management of processes) and **new formulas for new labour relations**, anticipating or integrating the work of national legislators. Legislators today are laboriously engaged in defining only marginal aspects of digitization (think of work in and on digital platforms, which only incidentally touch the most delicate aspects of financial consulting).

The EU MiFID II regulation of markets started on 3 January 2018; **the social partners' MiFID II area still has no agenda nor even self-awareness.**

The objective of our Project is to highlight the current critical issues, the areas of intervention to be addressed and the role that the negotiating parties are called to play in this magmatic process.

There must be **two keys** to interpreting the phenomena: **the legal and sociological one** (entrusted to the universities involved) and **the trade union one** (entrusted to company, national and European trade unions).

The debate of the round table in Bratislava, against the background of the processing accelerator represented by the digitalization of the banking and financial sector, **will address both the evolution of the industrial relations system and the evolution of labour law** (i.e. of the employment relationship), in a perspective: a) of an empirical/inductive type (through the survey of sector trends in Europe); b) of a theoretical/deductive type (i.e. analysing possible legal and contractual options). **The two fields of investigation concern, respectively, the Universities and Research Institutes (on the one hand) and the Trade Unions (on the other)** participating in the Panel.