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AGREEMENT OF 9 MARCH 2018: A REAL PROJECT ON THE FUTURE OF THE INDUSTRY?

Considerations on the ambitious agreement between Confindustria and Trade Unions for a new contractual model and a dynamic system of industrial relations.

On 9 March 2018, CONFINDUSTRIA and CGIL, CISL and UIL signed the Agreement which is said to outline a "shared and responsible path to foster growth" with a view to renewal, introducing new contents and guidelines for industrial relations and collective bargaining. On a careful reading, it seems foolish to affirm that the agreement of 9 March constitutes, notwithstanding grand declarations of intent, a real turning point.

Democracy and the measure of representation

A modern system of industrial relations oriented towards a shared development strategy cannot evidently ignore a set of rules on the measure of representation that effectively counteracts the pervasive phenomenon of contractual dumping, i.e. proliferation of collective bargaining agreements signed by parties with no representation power. In defining the Agreement of 9 March 2018, the Parties showed particular sensitivity to the issue, but so far have shown that they do not have the promptness and effectiveness that is required. It has been estimated that of the 868 collective bargaining agreements deposited with the CNEL, only 300 have been qualified as regular agreements. This will inevitably lead to a serious alteration in the competitive dynamics between companies and lower levels of protection for workers. Currently, in the light of the current regulatory framework, the intervention promised by the National Labour Inspectorate, which declared that it intends to take "specific supervisory action" to keep the phenomenon in check, cannot be decisive either.

To overcome the deadlock, the Agreement calls for cooperation between the institutions in a climate of complete and loyal collaboration, so that actions can be taken to ensure the proper functioning of a certification system for the representation of parties who sign the collective bargaining agreement.

In this sense, the 2014 Consolidated Act on Representation (which until now has not been applied) has been "brought back to life" and a proposal has been made to adopt a mechanism to measure and certify the representation of both trade unions and employers with direct involvement of the CNEL, in order to identify the collective bargaining parameters as well as the signatories. In this way, parties without effective representation could be prevented from entering into collective agreements that "interfere" with national collective trade agreements.

There is the threat that the CNEL itself will be the one to qualify collective bargaining agreements, attributing a sort of "licence" to collective agreements signed by representative organisations.

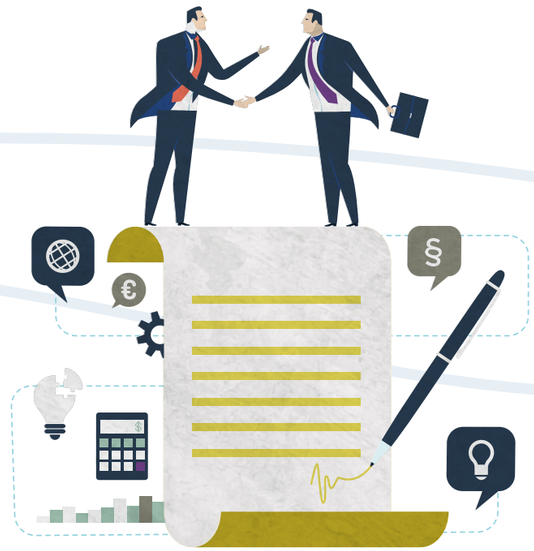
At best, it will take some time before the framework conditions are created that will enable the mechanism proposed by the social partners to be operational and to 'guarantee collective bargaining with generalised effectiveness and enforceability, in compliance with the principles of democracy, freedom of association and trade union pluralism'.

Asset and contents of collective bargaining

The Agreement of 9 March 2018 confirms the tried-and-tested two level collective bargaining system, introducing some important new elements:

– the national collective bargaining agreement will act as a source of regulation for employment relationships and a guarantee of regulatory and economic treatments common to all workers in the sector. In particular, the national collective bargaining agreement will be responsible for identification of the minimum economic treatment (TEM), adjusted over time according to the Harmonised Consumer Price Index (IPCA), and the Overall Economic Treatment (TEC), consisting of the TEM and economic treatments common to workers in a sector (which expressly provide for the inclusion of forms of welfare);

– the company (or territorial, if existing) collective labour agreement will be assigned the function of regulating



the wages connected to a company's productivity, quality, efficiency, profitability and innovation, so as to guarantee a virtuous exchange between the company's economic results and the workers' income. This level of bargaining will also include the enhancement of digitalisation processes and of forms and methods of workers' participation who, in all likelihood, will find it difficult to assert themselves in the absence of a guiding action taken by national employers' and workers' representatives at a national level.

Industrial relations

In the future, industrial relations will focus on themes of welfare, training and skills, safety at work (in a participatory manner), the labour market (with particular importance given to paths of work integration and greater inclusion of young people in the job market) and forms of participation, considering 'the enhancement of forms of participation in the processes to define a company's strategic guidelines as an opportunity.'

In fact, the openness to the theme of participation seems to suffer from a certain reluctance, a terseness that would lead us to consider the introduction of such an institution as a timid 'hint' rather than a fundamental element for the future development of the system of industrial relations.

The Agreement of 9 March 2018 also gives rise to some doubts on the arguments relating to supplementary pension schemes. On the one hand, the contracting Parties legitimately intend to strengthen supplementary pension schemes both in terms of size (encouraging new memberships) and the services offered (expanding the range of possible portfolio choices), while on the other hand they make collective bargaining a priority which, in actual fact, is far from being confirmed by the current regulatory framework on supplementary pensions laid down by Leg. Decree no. 252 of 5 December 2005.

Therefore, the Agreement of 9 March 2018 conveys a political message, which perhaps is inappropriate. If we can agree with the claim that the scheme defined by the Parties on supplementary pensions is the 'result of an overall contractual balance' worthy of firm legal protection, why claim – as if it were a warning – that the 'calling into question of this principle by the legislator not only affects the autonomy of collective bargaining by altering its balances, but (…) calls into question the function currently assigned to funds'?

With regard to training, which is one of the focal themes of industrial relations, the tax credit recognised in accordance with article 1, paragraphs 46-56 of the 2018 Budget Law for training expenses will provide an opportunity for businesses, and, at the same time, a time for verifying that training truly is central to the development of competitiveness and innovation.

As anticipated, the agreement does not seem to outline a contractual model with major new elements, nor does it seem to have presented any effective solutions. Moreover, it seems to contrast with the 'project' aimed at broadening the contents and at spreading second-level bargaining with thematic and geographical surveys, making it more organic than first-level bargaining. Nor are the involvement methods of the CNEL fully convincing (which until recently was even supposed to be abolished), and perhaps too much hope was placed in it to combat contractual dumping.

It is unlikely that the Agreement of 9 March 2018 will have the expected strong positive impact, nor will it be as effective as might be expected from an agreement of this magnitude. We may have to wait for sector-level collective bargaining to concretely achieve the "ethereal" objectives of the system of industrial relations and to interpret its functions within a wide-ranging contractual model with a greater 'grip' on the industrial fabric.

However, the above criticism should not diminish the value of an agreement that nevertheless constitutes a declaration of intent useful to build contracts of the future, perhaps without falling into the recurrent typical Italian practices of 'forgetting' guidelines and directives to resolve management problems by duplicating contractual institutions: the organic nature of economic and regulatory treatment is – more than anything – the first driver of industrial internationalisation.