



## **Employers' Representation. Considerations Over a Symmetric Contract Model**

SUMMARY: 1. Employers' representation and Article 39 Cost. – 1.1. Outcomes of the issue. – 1.2. Conceptual overlapping e limits of the Agreement of 9th March 2018.-. 2. “Outsight” and “Insight” of Article 39 Cost. – 3. May the employers' associations be deemed as ‘unions’? An ‘originalist’ view of the Constitutional provision. – 4. Inside the constitutional boundaries: the underpinnings of a symmetric contract system.

### **1. Employers' representation and Article 39 Cost.**

Before recognizing the criteria for measuring employers' representation, as suggested by the Inter-Confederations Agreement of 9<sup>th</sup> March 2018, the following considerations move from the legal scenario.

The issue of employers' associations, in-between two opposite perspectives, does not have found yet an effective legitimation within our legal system.

Thus, the goal of this contribution is not to fully address critical issues that have been already considered by important Authors by the past, rather than to contribute to a systematic revision of the topic.

The renewed focus on employers' representation in the bargaining process, and the issues thereof, seems to have left unchanged the differences between the two perspectives.

In fact, on one hand it has been traditionally argued that reference made by Article 39 of the Italian Constitution only to unions would exclude employers' associations from the scope of this provision; this conclusion would be grounded on emphasis attributed to the trade-union freedom e right to organize, along with collective autonomy and bargaining, while employers can act in the contractual system also *uti singuli*.

On the other hand, it must be highlighted that speaking about 'organizations' there is no reason not to include also the associations of employers: this conclusion would be strengthened by making reference to several international provision, such as Article 10 of the OIL Convention no. 87/1948 providing for a definition of "organization" as «any organization of workers or employers aimed at promoting and protecting the interests of the workers and the employers» and also Article 152 of TFEU equalizing representation and collective interests protection of workers and employers. Furthermore, this opinion would be fostered by connecting the right of employers to organize with the freedom of economic activity (Article 41).