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The Impact of the Global Economic Crisis on the Evolution of Labour Law in the National Legal Systems

Italian Report

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A) EMPLOYMENT CONTRACTS LAW·

1) *Introduction*

The implementation of the flexicurity strategy in Italy has not given a good account of itself even before the present crisis, such as in other countries in the Mediterranean area of Europe.

Since the two main labour market reforms, introduced in 1997 and in 2003, the Italian regulation has been characterised by a high level of flexibility not accompanied by an equivalent level of security.

After the failure of the attempt to reform the welfare system and reduce the segmentation in the labour market, agreed with the social partners in 2007, a systematic reform was approved in June 2012 and enacted by Law 92/2012, the so-called Fornero reform. This reform tried to introduce "good" flexibility, as a result of a balanced mix of restricted entry-flexibility and major exit-flexibility, supported by the improvement of active labour market policies and restructuring of unemployment benefits. As extensively highlighted in the literature, there was a wide gap between the intentions of the legislator and the uncertainty of the legislative outcome, also due to the complicated political compromise that supported the enactment of the reform.

In particular, as far as entry-flexibility is concerned, the reform introduced restrictions on the use of fixed term contracts and promoted apprenticeships; as far as exit-flexibility is concerned, the reform of Article 18 of the Workers' Statute (L. 300/1970) aimed at simplifying the procedure for dismissals for economic reasons, with a view to reducing the financial burden on undertakings, but it resulted in a more complicated system of remedies, that leaves much discretion to the judges.

Other amendments of labour regulations have been recently adopted (D.L. n. 76/2013, converted into Law n. 99/2013 and D.L. n. 34/2014, converted into Law 16 May 2014, n. 78) to allow again large-scale recourse to atypical work. Labour flexibility is still the only strategy to face economic difficulties and fight unemployment that every government is able to conceive and pursue in Italy.

Since the spreading of precarious jobs and the length of the crisis are weakening both trade unions and workers (who are more and more ready to work for very low salaries in non unionised businesses), the new Renzi's Cabinet is trying to introduce legislation on a national minimum wage for employees (see the Draft Bill A.S 1428, Article 4.d). Trade unions used to be strongly opposed to a national minimum wage implemented through statutory law, because they feared it could jeopardise collective bargaining. Nevertheless, after six long years of crisis they are much more willing to accept a legislative intervention on the matter.

Precarious work is common not only among employees, but affects a large number of self-employed people too. The proliferation of the self-employed has provoked a friction area with Labour Law concerning the independent 'collaborators', since their similarity with workers under contract of employment is getting so great that the former are considered 'functional substitutes' for the latter.

From this perspective, even the proposed alternative formulas for entry-flexibility, invoked as an instrument to restore a central role to stable employment in the labour market, such as the single employment contract, needs careful evaluation so that the commitment to overcome the segmentation of the labour market does not simply lead to a levelling down for the protections of workers.

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2) *Fixed-term contract and temporary agency work*

In Europe, employment has undergone a significant decrease, starting from the second half of 2008: this decline has been continuous and almost steady (according to ISTAT data, a slight recovery has been registered only in recent times).

In the last years, the drop in number of employees and the decrease in the use of temporary work have characterized the adjustment of European labour markets.

While during the first phase of the crisis, temporary workers were the first to be ousted from the production cycle, in Italy, their incidence augmented (as in Scandinavian countries, France and United Kingdom) and the reduction in the employment rate matched an increasing in the temporary work quota.

Part of the burden of the adjustment was shifted to the temporary work agencies, through a drastic decrease in the use of temporary agency work, in particular for what concerns the manufacturing sector.

The Italian legal system gave different answers to the labour market trends related to fixed term contracts and temporary agency work, though moving mainly towards a gradual deregulation, as a tool to increase the employment rate. Nevertheless, both the empirical evidence and most of the economic literature, from Classical to Keynesian, from New Keynesian to Institutional economists, do not seem oriented to state a positive and sustainable relationship between a greater flexibility and employment increase, in the long term (except for the purely New Classical literature, within which there are still many exceptions like Solow, Modigliani and others).

As for the fixed term contract, starting from L. N. 230/1962, "law stratification" has been taking place.

From the former rigidity of law (that typified the cases of use of fixed-term contracts in seasonal work, replacement of absent employees, and preset works and services, non-recurring or occasional), to L. n. 56/1987 (that extended the use of fixed-term contracts to the cases set by collective bargaining) and L. n. 196/1997 (an intervention aimed at mitigating the system of sanctions, by laying down the so-called "cushion times") – just to list some of the most important acts – when the crisis erupted, fixed-term contracts were regulated by Legislative Decree N. 368/2001 (that responded to the alleged rigidity of law through the "very general clause" provision, so that fixing a term was allowed, provided that there were "technical, production, organization or replacement-linked reasons"). This act was amended by L. n. 247/2007 (that set the maximum duration of fixed-term contracts in 36 months), L. n. 133/2008 (on the maximum amount of compensation, in case of breach of the conditions related to the setting of the term and of the reason for the mentioned term), L. n. 92/2012 (introducing for the first time the 12 months' fixed-term contract with no substantive reason, for the first hiring, or the first mission in temporary agency work), the so called "Giovannini Decree", D.L. n. 76/2013, converted into Law n. 99/2013 (it conferred to collective bargaining the power to identify further cases to exclude reasons that would have legitimated the fixing of the term): the latest amendment concerns the introduction of an up-to-three-year fixed-term contract with no substantive reason (D.L. n. 34/2014, now converted into L. 16 May 2014, n. 78).

This is the main provision of a "Decreto-Legge" (Law Decree) – labelled "Urgent provisions to enhance the employment rate and to simplify burdens on businesses": no one doubted that the requirements for urgent decrees were present: the President of the Republic found the prerequisites set in Article 77 of the Italian Constitutional Chart, in the "extraordinary need and emergency to adopt provisions that simplified some employment contract types, to increase the employment rate, above all among young people". It is worth noting that a very significant turning point in legislation and in the definition of fixed-term contract is presented as a measure to simplify contract types, to create employment, above all among young people.

D.L. n. 34/2014 replaces a qualitative case with a quantitative one, both with subjective (as for maximum duration term, for a single relationship), and objective limits (with reference to the

percentage of job positions suitable for fixed-term contracts). The underlying idea is to give greater certainty to businesses that want to make use of a fixed-term employment contract, since it might represent an effective tool to grasp any opportunity to increase production volumes and staff.

If part of the non-standard employment relationships, in particular fixed-term ones, salaried and not, lies in the way in which businesses are organized, even in systems with different levels of rigidity, law focuses on the prevention of abuse, rather than adopting a punitive approach towards the fixed-term contract.

Thus, the question of compliance of national law with clause 5 of Directive 1999/70/EC arises: both point b), and c), par. 1, of clause 5 could be met by the setting of a 36 months' maximum limit of prolongation for the fixed-term contract, with the further limitation on the number of possible extensions, and the limitation – of objective nature – of the percentage of fixed-term employment relationship, up to 20% of the "number of permanent employees".

Compared to the previous system, the repealing of a reason legitimating the fixing of the term was an example of deeply deregulation also with reference to the temporary work agency contract, falling under Articles 20 ff. of Legislative Decree No. 276/2003, though the scope of the provisions was emphasized only with reference to the fixed-term contract.

Again, the Legislator crackled more and more the centrality of the rule of Article 20, par. 4, Legislative Decree No. 276/2003 in its original version, providing additional means of access to the temporary agency work.

First, in 2009, paragraph 5-bis was added: it extended to temporary agency employment, the benefits laid down by Article 8(2), L. n. 223/1991 for hiring fixed-term redundant workers. Paragraphs 5-ter and 5-quater were then inserted (by Legislative Decree No. 24/2012): two further exceptions to the need of technical, organization, production and replacement-related reasons were established, through the use of temporary agency contract with no substantive reason, with regard to some subjective requirements of temporary agency employees. The picture was then drawn adding L. 92/2012, with the possibility to conclude an up-to-12-month fixed-term contract with no substantive reason, also for temporary employment agency (Art. 1, par. 1-bis, Legislative Decree No. 368/2001); and, finally, D.L. 34/2014, that adds to the much-discussed "staff-leasing" – repealed, in 2007, by L. 247/2007 and reintroduced, in 2009, by L. 191/2009 - the possibility to make use of the temporary agency work with no substantive reason.

The task matches the recovery of a positive trend in using agency employment contracts: an average monthly increase of 6,5% of temporary agency employees, calculated on an annual basis, with respect to 2012; a slow recovery that seemed to have started in 2011, from a -17,4% of the maximum value, reached in the period before the crisis of the first half of 2008.

3) *Single employment contract*

The Decree Law No. 34/2014 converted into Law No. 78/2014 – containing urgent rules to increase employment rates and to simplify the obligations of the companies – in addition to the reform of the apprenticeship contract (see § A.4), amended also the regulation of fixed-term contract. Article 1 of d.l. 34/2014 justified the reform with these words: "considered the persisting occupational crisis and the uncertainty of the current economic situation, companies have to be allowed to operate, in the meantime of the adoption of a reform of the employment contracts, with the introduction of an open-ended contract with growing-protection measures and the actual regulation of unemployment contracts, seeing directive 1999/70/CE, the legislative decree n. 368/2001 is modified in this way (…)".

The new fixed term regulation was enacted just before the proposal to introduce, in our legal order, the so called single employment contract, an open-ended contract without the application, for the first three years, of protection rules provided by Article 18 of Law. No. 300/1970; this new contract would aim to overcome the typical dualism of the Italian labour market, meeting the needs

of employees and employers, in order to reduce unemployment and face the economic crisis gripping our country.

The "single employment contract" proposal is not a new one; since the possibility to introduce a contractual type with an open-ended duration from its beginning and a growing level of protection has been discussing among legal scholars for years. There are various proposals about it: the first one, known as "Boeri-Garibaldi proposal" – converted into draft bill Nerozzi No. 2000/2010 – provides for an open-ended contract, more flexible during the first three years of its duration, thanks to the low firing costs, with the application of art. 18 of the Workers' Statute from the fourth year on. The proposal made by Pietro Ichino is based on a growing-protection contract, with a level of protection proportioned to job seniority, where the choice of firing is incontestable even after three year (except for the possibility of a judicial scrutiny about discriminations and retaliation), thus implying a growing firing cost and an unemployment insurance duty. Finally, the proposal of a growing-commitment contract, presented by Bruno Caruso, providing for an open-ended contract, free, during the first year, from firing restrictions (except for discriminatory dismissals), but without subsidies. After the first year, the proposal provides for some "soft" forms of restriction (a minimum *firing cost* for economic dismissals) and some economic promotional subsidies (reduced), aimed to stimulate the mutual commitment of the parties; the same is for the third year, but in a progressively increasing way (both for protections and, above all, for subsidies); after the third year, the contract will have the integral application of standard protections provided for the open-ended employment contract and, for a certain period, a final occupational bonus for the employer who continues employment relationship beyond the three years threshold.

All the proposals provide for an open-ended contract from the beginning, although without all the guarantees currently related to open-ended contracts. The differences among the proposals are referred mainly to the modulation and the types of the growing protections.

Trade unions disagree with these proposals because they think that the protection provided by Article 18 is not the real problem for the companies; so, the lack of its application wouldn't be the solution to occupational crisis; even some politicians disagree with the proposal because of the differences between this contract and the "actual" open-ended contract.

4) *Apprenticeship*

Apprenticeship has often been reformed, particularly in the last years, by regulatory interventions aimed to confer a prominent role to this type of contract, as a preferential way, for young people, to access the labour market.

In particular, since 2011 the number of reforms has been increasing in order to face the growing youth unemployment rate and solve the problem of the lack of integration between theoretical and practical training, which makes the transition from school to work harder. In fact, as showed by statistical data, youth unemployment rates are lower in the countries where the apprenticeship contract is more popular, in the double type of a contract which allows to obtain a qualification and a contract which alternates study and work during academic studies.

For this purpose, in 2011 the Legislative Decree No. 167/2011, reorganising the subject in a Consolidated Act, described apprenticeship as an open-ended contract, aimed to training and youth employment, through:

a) apprenticeship for qualification for young people aged between 15 and 25;
b) professional training apprenticeship, for young people aged between 18 and 29;
c) high training and research apprenticeship for young people aged between 18 and 29.

Just a year after, the Law No. 92/2012 introduced many changes; the Fornero Law, adopted by the so-called "technical Government", modified apprenticeship legislation with reference to: duration, the maximum number of apprentices per employer and the confirmation of the apprenticeship contract.

As for the duration, the Article 1, co. 16, point a) of the law sets a minimum duration of the contract (at least 6 months) except for seasonal activity, for which national collective agreements can provide specific ways of apprenticeship implementation, even fixed term ones.

As for the apprentices' maximum number, the Law modified the link between apprentices' total number and skilled workers: the apprentices' total number cannot exceed the proportion of 3 to 2, compared with the skilled workers number. This proportion cannot exceed 100% for employers with less than ten employees.

As for the hiring limit of new apprentices, the Law provided that it was possible only on condition that at least 50% of the apprenticeship contracts whose training period had elapsed in the previous 36 months were confirmed as open-ended employment contracts (however, the rule applied only to employers with more than ten employees).

Although these changes in the law, the new Government – the Renzi Cabinet – has recently reformed apprenticeship.

Only two years after the previous reform, the Law Decree n. 34/2014 – the so called "Poletti decree", converted into law n. 78/2014 – modified the rules regarding apprentices stabilization, training duty and individual training plan, and wage.

As for the apprentices stabilization – i.e. their hiring with an open-ended contract, at the end of the apprenticeship period –, the duty, repealed in the previous text of the Law Decree, was reintroduced and subjected to limitations for stabilization rates and unemployment level of obliged employers: 20% of apprentices and 50 employees (before the proportion for the hiring obligation was 30% of apprentices and 10 employees).

As for the training duty, the law established that the employer has to recur to the public training system, except when the Region does not comply with the obligation to communicate training proposals within 45 days after the apprentice hiring. As for the duty to provide the individual training plan with a written form, excluded in the Law Decree previous text, this is now limited to a simplified version of the training plan (even using forms provided by collective agreements or by bilateral bodies).

Lastly, the qualification apprenticeship wage is related to actual working and training time, equal to 35% of total time.

The apprenticeship reform *ratio*, aimed – as the so-called Jobs Act – to fight unemployment and economic crisis, is clearly described by the words of Labour Ministry Secretary General who said that the flexibility introduced by the reform "will allow companies to hire with more security and less bureaucracy".

5) *Self-employed work with economic dependence*

The demand for fewer regulatory rigidities in the employment, coming from companies and made more urgent by the economic crisis, led the legislator to introduce substantial doses of flexibility in the labour market, considerably expanding the field for contracts other than dependent standard work. In recent times, because of the lower cost in term of both fees and social security contributions and also regulatory constraints, the *collaborazioni coordinate e continuative* (coordinated continuous collaboration relations) have become particularly desirable. Such working relationship are mostly personal and of non-subordinate nature pursuant to Article 409, no. 3, Civil Procedure Code, that is a procedural rule by which in 1973 they entered our system (but a reference was already contained in Law no. 741/1959). However, behind the screen of an independent work done in functional connection with the activity of the client, durable and, therefore, characterized by conditions of socio-economic dependency (hence the scholarly name of "Para-subordinate work"), there were often hidden relations which could be placed in the area of subordination. Legislative Decree no. 276/2003 is characterised by an anti-fraud view. By introducing the "*lavoro a progetto*" (coordinated continuous collaboration relations based on a project work - Articles 61-69), such law, - with the exceptions set by Article 61, paragraphs 1, 2, 3 and with the exclusion of the public sector

– provided that such collaborations shall be referred to one or more specific projects, work programs or phases of it, as elements that can, at least in the intention of the legislator, ensure their authentic nature of non subordinate relationships.

Subsequently, Law. no. 92/2012, with an even more markedly anti-elusion aim, sought to strengthen the indices of the project worker's autonomy through the formalization of data considered relevant for this purpose, also on the basis of well-established case law. This explains, on the one hand, the repeal of the ambiguous reference to "work programs or phases of it. On the other hand, the legislature of 2012 carefully indicated that the project has to be functionally linked to a specific end result and cannot consist in the mere repetition of the enterprise activity, nor can it involve the performance of merely executive and repetitive tasks.

The centrality of the project is also clear from the provision concerning the written form of the contract (Article 62). According to Law. no. 92/2012, indeed, the contract shall contain the description, with the identification as well as its characterizing content, of the end result that is to be achieved. Similar considerations apply to the updated Article 67, paragraph 2, which grants the client the right to terminate the contract *ante tempus* in the presence of objective profiles of professional unsuitability of the independent worker which could make impossible the realization of the project. The importance of the project is clearly shown by Article 69, paragraph 1, according to which collaborations established without the identification of a specific project are to be considered *ex tunc* open-ended employment relationships. Taking a stand into the long-standing debate on the nature, absolute or relative, of the presumption laid down therein, the Law. no. 92/2012, with a rule of authentic interpretation, defines, in fact, such a feature as an essential element to the validity of the contract. This does not, however, eliminate the doubts raised by the provision, especially in terms of compliance with the constitutional principle of reasonableness under Article 3 of the Constitution, given the risk that truly independent relations also appear affected, although devoid of a project.

The present Article 69, paragraph 2, resorts to a presumption - but this time a relative one, evidence to the contrary by the client being allowed - for which the coordinated continuous collaboration relations, even those based on the project, shall be deemed contracts of dependent employment since the date of constitution if the activity is carried out in a manner similar to that of the employees of the company, without prejudice to the performance of highly professional services which can be single out even by collective agreements.

The presumptive mechanism is also used in the new Article 69-bis, which introduces a specific protection for independent work performed by a person holding tax position for the purposes of value added tax (the "VAT numbers"), provides that they are to be considered - unless proven otherwise by the client or by the fulfilment of one of the cases excluded under paragraphs 2 and 3 - coordinated continuous collaboration relationship, when at least two of the following assumptions are true (evidently considered ratios of economic dependency). The first one is that the collaboration with the same client has a total duration superior to eight months a year for two consecutive years. The second one is that the resulting payments amount to more than 80% of the total annual income received over two consecutive calendar years. The third assumption is that the self-employed worker has a stable working station at the headquarters of the client. In this case, the entire discipline on *lavoro a progetto* is applied, including Article 69, paragraph 1, with the consequence - doubtfully compliant with the constitutional principles - of the conversion into employment relationship of the "VAT numbers" not referable to coordinated continuous collaboration relations based on a project work.

Highly significant with the view of reducing the cost differential between *lavoro a progetto* and dependent work is, in addition to the gradual increase in the contributory rate (Article 2, paragraph 57, Law no. 92/2012, and subsequent amendments), Article 63, Legislative Decree no. 276/2003. This provision, after the changes done in 2012 on the basis of previous interventions, states that the fees paid to project workers cannot be inferior to the minimum set by collective agreements specifically for each area of activity, possibly articulated for typical professional

profiles and in any case on the basis of the minimum wage applied in the same sector to comparable tasks performed by employees. In the absence of specific collective agreement, the time span being the same for the task object of the activity, fees cannot be fewer than the minimum wage set by the collective agreements applied in the referred sectors to the professionals whose expertise and experience are similar to those of the project worker.

The impact of the crisis can be recognized in the choice of Law. no. 92/2012 (Article 2, paragraphs 51-56) to strengthen, from 2013, the *una tantum* allowance for the case of absence of work, already introduced in 2008-2009 in favour of self-employed workers enrolled exclusively in INPS separate social security system that are operating for a single client, provided they meet the income and contributory requirements prescribed.

6) *Individual dismissals*

In recent years, two legislative measures have deeply affected the previous regulatory framework of the individual dismissal, in order to mitigate the employment consequences of the economic crisis,.

On the one hand, during the fourth government led by Mr. Berlusconi (2008-2011), Law No. 183 of November 4, 2010 was approved. This law, while covering many different subjects, affected mainly judicial proceedings. The procedures for the opposing the dismissal were in fact reformed: in particular, the time limit to apply to the employment tribunal was shortened, in order to increase the certainty in legal relations, mainly in the interest of employers, and to reduce the duration of trials.

On the other hand, Law no. 92 of 28 June 2012 (the so-called “Fornero reform) was enacted after the fall of President Berlusconi Government and the appointment of the "technical government" headed by Prof. Monti. This government was in charge to contain the worsening of the financial crisis and to implement the consequent measures suggested by some institutions such as the European Central Bank (with a letter signed by Trichet and Draghi on August 5, 2011). This law includes a number of measures that reorganise structurally the labour market, by insisting on flexibility. As concern exit-flexibility, the Fornero reform reduced the scope of reinstatement in the workplace in case of unlawful dismissal, amending the text of art. 18 of the Workers' Statute (Law no. 300/1970). However, the rule of the mandatory justification for dismissals, introduced by Law no. 604/1966, was not affected – except in limited cases already permitted – so that notions of just cause (art. 2119 cc) and justified reason, subjective or objective, to validly terminate the contract of employment (Article 3, Law no. 604/1966) remained unchanged as well.

With regard to the rules for opposing the dismissal, Article. 6, paragraph 1, of Law no. 604/1966, as amended first in 2010 (Article 32, paragraph 2 of Law no. 183/2010) and then in 2012 (Article 1, paragraph 38 of law no. 92/2012) provides that the worker must oppose it in writing – even with extra-judicial acts – under penalty of invalidation, within 60 days from the receipt of its communication.

In order to expedite dismissals disputes (in the cases regulated by art. 18 of the Workers' Statute) a special urgent legal procedure has been introduced (Article 1, paragraphs 47-69 Law no. 92/2012). As an alternative to action before the employment tribunal, workers may notify the other party a request for conciliation or arbitration (Articles 410 et seq. Civil Code).

Other changes, always provided by Law no. 92/2012, must be highlighted.

In order to prevent legal disputes a new preventive mandatory settlement procedure in front of the Territorial Employment Department has been introduced: however, this new instrument applies, only to dismissals for objective justified reason adopted in establishment exceeding the threshold of 15 employees or businesses employing overall more than 60 workers (Article 1, paragraph 40).

It was then confirmed that the notice of dismissal must be in writing under penalty of ineffectiveness; in contrast with what was originally stated, the notification must now specify the reasons for the dismissal (Article 1, paragraph 37). Finally, within 15 days from the written

opposition of the employee, the employer may withdraw the dismissal. In this case, the employee is entitled to reinstatement in the workplace and all lost wages.

The major changes, however, affect the remedial system in case of unlawful dismissal. The "Fornero reform", indeed, has amended the text of art. 18 of the Workers' Statute (Law no. 300/1970), which applies in establishment exceeding the threshold of 15 employees or businesses employing overall more than 60 workers. Instead of the unique regime of sanctions based on the reinstatement of workers unlawfully dismissed in the workplace and on the full compensation for damages suffered by them, a new four-tier remedial system has been introduced. Now the consequences of dismissal unfairness depend on the gravity of the violation of dismissal rules by the employer.

In particular, reinstatement into the workplace (with full compensation for damages, consisting in all lost wages, subject to a minimum of 5 months) is still provided, but limited to specific situations, identified only in the most severe cases of unlawful exercise of the power of dismissal, and regardless of the number of workers employed by the employer (Article 18, paragraph 1). This regime of "full reinstatement" applies to null and void dismissals (as in case of discrimination, or in the case of dismissal ordered for reasons related to marriage, or in violation of the prohibitions regarding maternity and paternity, such as in the case of dismissal resulting from an illicit reason pursuant to art. 1345 cc) and in the case of oral notice of dismissal. In such cases, the worker is permitted by law to ask, as an alternative to reinstatement, a compensation of 15 months wages, in addition to the compensation for damages. This request determines the termination of the contract of employment (Article 18, paragraph 3).

The reinstatement of the worker is also provided, albeit with a cap on compensation for damages equal to 12 months of salary ("weak reinstatement"), when the acts upon which the disciplinary dismissal is based were not committed or when, according to collective agreements, the contested fact should have been punished with milder disciplinary sanctions (suspension, fine, or reprimand). Moreover, this reinstatement without full compensation is granted to the employee in cases of dismissal for an objective reason: (a) when the alleged physical or mental inability of the worker was non-existent; (b) in the eventuality of breach by the employer of the rules protecting employment stability in case of worker illness; (c) lastly when the fact at the basis of the objective dismissal is "clearly non-existent" (Article 18, paragraphs 4 and 7).

In all other (and less serious) cases where the court declares that the dismissal (for subjective or objective reasons) is unjustified, the employment relationship is terminated; the employer who dismissed without a valid reason shall only pay to the worker a compensation for damages to the worker of varying amounts ("full monetary compensation for damages"), and in any case between 12 and 24 months of salary (Article 18, paragraph 5). In the event of dismissals with formal or procedural defects a reduced compensatory amount ("weak compensation for damages"), between 6 and 12 months of salary, is provided (Article 18, paragraph 6).

Finally, the remedial system against unfair dismissals applied in establishment under the threshold of 15 employees or businesses employing overall less than 60 workers, has not been changed. In this case, the employer is free to choose whether to re-engage the worker, thus establishing a new employment relationship, or opt for a compensation for damages (which is determined by the court between 2.5 and 6 months of salary, increased up to 14 depending on length of service of the worker and the dimension of the business).

7) *Collective dismissals*

The Italian system was brought into line with the Community provisions by Law No. 223/1991, which regulated the matter by the law for the first time, hitherto left to collective bargaining. Following the denouncement by the European Court of Justice of Italy's failure to incorporate EC Directive No. 75/129 into national law, the Law No. 223/1991 introduced the first organic framework of collective dismissal.

The regulatory framework has undergone, more recently, an amendment by Law No. 92/2012, which has also modified the discipline of social security system to reduce public spending.

In order to understand the impact of the amendments on the legislative provisions, it is useful to describe the main features of the discipline of collective dismissal.

The employer may order staff reduction in case of redundancy due to restructuring processes or, more generally, in situations of economic crisis for the company.

In order to be classified as "collective" a dismissal must meet a number of numerical, temporal and spatial requirements, enucleated by Article 24, l. n. 223/1991. Indeed, the dismissal must involve at least five employees, over a period of one hundred and twenty days, for reasons connected with a reduction or change in activity or work, within the same production unit or more production units located on the territory of the same province.

The activity reduction or transformation may be due to various hypotheses, related to changes in production techniques, organizational structures, or introduction of new technologies.

The collective dismissal's notice for closure of the enterprise falls also in this case.

The role recognized to workers' representatives in managing redundancy is at the core of the discipline. In order to make effective the involvement of social partners in the process of collective dismissal, a duty of information and consultation is imposed on the employer. When dismissals are a collective issue, they need to be dealt with through collective information and consultation rights. Regulating through procedures the power of the employer is not simply a limit to the power itself, but it also provide for a mechanism of consensual management of the crisis.

The procedural requirements must be fulfilled towards RSA/RSU (see § B.3), that better than others know the business dynamics and the severity of the crisis, and of their respective trade union representatives.

The information relates to the reasons that have brought about the labour surplus, the reasons why it is not judged possible to take alternative measures to the intended dismissals, the number and job classification levels of the surplus employees, the dates when the dismissals are to take place and any measures that are planned to mitigate the social consequences of the collective dismissal.

Within seven days following the information the workers' representatives may request a joint examination procedure, which aims at proposing alternative solutions to promote the re-absorption of redundant workers through a firm-level specific collective agreement. The alternative solutions can be flexible arrangement of working time and, possibly, the downgrading/de-skilling of the surplus employee, posting of workers, solidarity collective agreements, which distribute on all the employees, even those not affected by the dismissal procedure, the sacrifices associated with the crisis (in terms of reduction in working time and pay).

If the parties failed to reach an agreement, the next step is a conciliation phase conducted by the Labour Office.

At the end of the procedure the dismissal must be notified to each worker in writing and in respect of the period of notice specified in collective agreements.

The employer selects the workers to dismiss applying the criteria set in the firm-level specific collective agreement or (if no agreement was reached) laid down in the Law (seniority, family commitments and technical, production and organizational requirements).

In addition, the list of redundant workers must be communicated to the Regional Labour Office for registration on the mobility lists. Being included in the lists of mobility gives to the workers more opportunities to find another job, because the employers who hire them obtain advantages in terms of tax relief and reduction in social security contributions.

Law No. 92/2012 introduced a period of time between the concluding communications of the procedure; Article. 4, paragraph 9, in the pre-existing formulation, stated that they had to be contextual. Currently there is a period of seven days between the notification of the dismissal to the workers and the communication for administrative purposes.

The most important change introduced by the 2012 reform concerns the remedies in case of failure to follow the procedure properly.

The previous legislation distinguished between ineffectiveness and annulment of collective dismissal; the former was provided for lack of written form or violation of the procedural requirements and the latter in cases of violation of the selection criteria, both sanctioned with the application of reinstatement, pursuant to Article 18 of the Workers' Statute.

As is the case for individual dismissals, the new Art. 5, paragraph 3, L. 223/1991 (as amended by Law no. 92/2012) produces a fragmentation of the protection of the worker against the unlawful dismissal by introducing three different types of remedies:

a) Reinstatement and compensation for damages from the date of dismissal to the effective reintegration, for the lack of written notice of the dismissal (but, even if not required by the norm, should be the same in case of null and void dismissal for discrimination or in violation of other mandatory provisions of the law);
b) Reinstatement and compensation for damages not exceeding twelve months' for the violation of the selection criteria;
c) Compensation for damages between a minimum of twelve and a maximum of twenty-four months, for the violation of the procedure of information and consultation of RSA/RSU and trade unions.

As far as this last hypothesis is concerned, Article 4, paragraph 12, L. 223/1991 (as amended by Law no. 92/2012) provides that the dismissal adopted without respecting the information and consultation procedure is ineffective, but admits its validation by the agreement concluded by the social partners in the context of the dismissal procedure. The formal errors of communication, therefore, do not preclude a fair dismissal where the information gaps have been filled in the joint examination and the intention to validate is clearly expressed in the text of the agreement.

The solution adopted by the law in case of breach of the procedure of information and consultation of the workers' representatives is very questionable, and introduces serious contradictions. Providing for compensation as the only remedy is in contrast with the strict interpretation of the duty to inform and consult workers' representatives as an instrument to balance the employer's freedom to organize the means of production.

In any case, the role of workers' representatives in managing the restructuring of enterprises comes out strongly reduced by the entire legislative operation. Furthermore, the amendments concerning the social security system are opening a season in which the impact of collective redundancies will become more critical.

B) TRADE UNION LAW AND COLLECTIVE BARGAINING·

1) *Introduction*

As will be discussed hereafter, Italian trade union law and collective bargaining are influenced by the current worldwide economic crisis as regards the two types of systems governing them. The sources of trade union law have traditionally been both legal and contractual since the Constitution entered into force in 1948.

As far as the contractual sources are concerned, the economic crisis caused the breakdown of the 'unity of action' among all the major trade unions, which had been for years at the root of the factual trade union system (see § B.2). The so-called 'FIAT case' (referred to FIAT, the most important Italian automotive company) is emblematic of that, since the company, because of market difficulties, requested changes in work conditions and such changes were provided for in new collective agreements that the major trade union refused to sign.

Trade unions have recently tried to revitalise the unity of action by reaching some important frame and consolidated agreements (the last one was signed in 2014). Those agreements provide for some innovations concerning many important issues, such as trade unions' representativeness, employee representation bodies, the structure of collective bargaining and union peace clauses.

The 'FIAT case' is strictly related to the economic crisis also for another reason. The conclusion of separate agreements led to a situation where the major trade union within the automotive sector, which was also the trade union with the highest rates of affiliates within FIAT' s workforce, did no longer meet the statutory requirements to establish an employee representation body (RSA). This event triggered the State intervention, although through the judiciary. As a matter of fact, according to the Constitutional Court, regardless of the conclusion of a collective agreement, in order to establish such an employee representation, unions must have taken an active part, as workers' representatives, in the negotiation that led to the signature of the agreement.

State legal order intervened in the crisis also through the law. Article 8, Decree Law no. 138/2011, a very controversial provision, introduced a particular type of territorial and firm-level collective bargaining, which had (and still has) the power to derogate from the law and national collective agreements. At that time, the legislature was convinced that relaxing inflexible statutory provisions through collective bargaining was the means to increase the employment rate. Nowadays the results deriving from the application of Article 8 are quite uncertain.

This is another reason why some commentators have been suggesting that it is time to provide for a general law concerning trade union law and collective bargaining. Nevertheless, the contents of this forthcoming law are still blurred.

2) *Representation and representativeness*

Moving on to some key issues, the notions of representativeness and representation in Italian trade union law and collective bargaining are crucial indicators of the effects of the current crisis. In particular, since the former concept has a sociological root, it has been influenced by the crisis much more than the notion of representation, as it will be explained hereafter.

Firstly, it is worth reminding briefly the characteristics of Italian trade union law and collective bargaining. The story begins with the decision not to implement Article 39, Part II, of the Constitution through a specific law in that matter which was never enacted. As a consequence, the State legal system provides for no rules concerning the legal vest of trade unions, the selection of the negotiating parties and the drawing up of collective agreements, i.e. all that is provided for in Article 39. Another consequence is that general civil law provisions must be applied to trade unions

· Massimiliano Delfino (University of Naples Federico II) wrote § 1 and § 2; Iacopo Senatori (Marco Biagi Foundation - University of Modena and Reggio Emilia) wrote § 3; Michele Faioli (University of Rome 'Tor Vergata') wrote § 4; Daniela Comandé (University of Milan) wrote § 5, while Alberto Lepore (University of Roma Tre) wrote § 6.

and collective bargaining. According to those provisions, trade unions are unincorporated associations and collective agreements are not universally applicable (i.e. there is no erga omnes effect). As a matter of fact, the power of the union to conclude a collective agreement is based on voluntary representation, i.e. the individual, by joining the union, confers on it the mandate to perform acts on his/her own behalf. This inevitably raises the problem of the inadequacy of the legal solution outlined with respect to the needs and characteristics of the trade union phenomenon.

Also for those reasons, in 1960 Gino Giugni, one of the most prominent Italian labour law scholars, elaborated the theory of the trade union system, by focusing on the relations and rules that the social partners give each other in their autonomy and mutual interest. According to Giugni's theory, the observation level is the reality, what actually happens. Simplifying, we can say that the usual route is reversed: from the perspective of the trade union system, the reality generates rules. In short, following the above mentioned theory, the big associations, Confindustria, on the employers' side, and CGIL, CISL and UIL, on the workers' side, have given rise to a real production system of rules and institutions for their interpretation and administration as well as for the settlement of related disputes. A body of rules aimed at ensuring a dynamic balance between the interests of the parties, which Giugni inserted in an autonomous regulative system, independent of the State, i.e., as previously mentioned, the trade union system. The cornerstone of such system is the 'mutual recognition' of the parties, each of which entitles the other ones in the role of spokesmen for the entire frame of reference. Therefore, the collective interest expressed by labour unions that are 'recognised' by the counterparty expands. Taking into consideration the national context, it tends to encompass the interests of the whole sector. In order to better understand what it has just been said, you have to consider that on workers' side there is (or, better say, there was: see later) unity of action and condition of equality among the three major labour associations. Therefore there is (or, better say, there was) a compact union front with a marked potential of aggregation of workers' consent.

In this context the notion of representativeness is relevant, since it refers to the ability of the union to interpret the interests of workers and to bring them back to unity, thus acquiring consent. The counterparty recognises the other as its interlocutor whenever it is certain that it is able to ensure compliance with the agreed rules. This measures the strength of unions to 'drive' the circle of their potential stakeholders (employers and workers): in short - it is worth repeating - the ability to build and gain consensus. Obviously, the issue of representativeness is only important in a system that guarantees trade union pluralism, because it is in a context characterised by competition between unions of different inspirations that the problem of selecting the most representative unions can be considered.

In spite of the above, the factual trade union system has come to our days.

By the end of the first decade of the new century, the scenario changed radically. At the time when the crisis began, the critical industrial relations and the weak legal framework could not keep up with the pressing economic problems, particularly with reference to the 'FIAT case'. In the early months of 2009, some 'separate' agreements were concluded without the consent of the CGIL. At that time, in order to face the strong competition coming from an increasing globalization of markets, FIAT requested changes in work conditions (shifts, worker's duties, illness, industrial peace), threatening otherwise to relocate some plants in other countries. The demands translated into collective agreements at company level, which Fiom-CGIL refused to sign. The story is exemplary. The joined front of the big labour unions broke down, although that front had been the linchpin of the 'mutual recognition' between the social partners and of the self-regulation of labour relations. This resulted in a loss of balance between the different interests at stake. In September 2010 Confindustria withdrew from the previous national collective agreement dated 2008. Its aim was to meet the demand of FIAT, which had pressed for greater freedom of negotiation at the company level.

Against this background, FIAT decided to get out of the collective agreement system. The intent was achieved by: A) setting up new companies. B) Reaching, for each of those, a new

collective agreement at plant level, always without signature of CGIL. C) Bringing to an end its relationship with Confindustria in January 2012.

The social partners understood that the trade union system could no longer be based on the 'unity of action'. This unity became just a possibility and as such could no longer be the hinge of self-regulation. In other words, trade unions realized that a framework of rules on representativeness and the conclusion of collective agreements - which was essential to compensate for the loss of that unity - could no longer be postponed.

The social partners tried to solve these problems through the Frame Agreement of 28 June 2011 and the Protocol of 2013, concerning the conclusion of collective agreements (respectively, at firm level and national level), this time signed also by the CGIL, as well as by Confindustria, CISL and UIL. The attempt to recover the unity of action was renovated through the Agreement of 31 May 2013 and especially through the consolidated agreement ('Testo Unico') on trade union representation, which was signed on 10 January 2014 by all the mentioned parties.

The latter agreement deals with the representativeness of trade unions, which is measured as the average of the number of members (percentage of affiliates) and the electoral data (percentage of votes that trade unions received during the elections of RSU, the bodies of union representation at plant level: see § B.3). The representativeness so measured is necessary for admission to the negotiations for the conclusion of national sectoral collective agreements. The unions which have, within the scope of the national agreement to be concluded, a representative average of not less than 5% are entitled to negotiate.

Through these agreements the social partners have tried to revitalise the factual trade union system, the goal being to rediscover the ability to 'manage' labour relations. All that is true, but it is also undeniable that such rules identify procedures for the conclusion of collective agreements. As a matter of fact, the social partners naturally are no longer able to find that unity of action, which in the past had often led to the signature of collective agreements. It is too early to see whether these new procedures will give big confederations the ability to once again build consensus and regulate labour relations. Nevertheless, it is worth reminding that it is thanks to such ability that in the past decades the workers' confederations were recognised by the employers' union as its interlocutor within the factual trade union system.

A completely different approach has been traditionally used in the public sector. Notwithstanding the privatisation of the contract of employment that has occurred since 1993, representativeness in that sector is very different from the private one, as it is governed by the law and for that reason is independent from the trade union system. The Act n° 165/2001 provides that, on the employers' side, the ARAN (National Agency for Negotiating Representation) legally represents all the public administrations for the drawing up of national collective agreements, and, on the workers' side, only trade unions that exceed a given percentage (5%) are admitted to the negotiations for the conclusion of national collective agreements. This percentage is measured as the average of the number of members (percentage of affiliates) and the electoral data (percentage of votes that trade unions received during the elections of RSU), so that, as you can see, the "Testo Unico" of 2014 drew its inspiration from the law concerning the public sector. All the mentioned provisions together with some other ones - such as those according to which public administrations fulfil their obligations under collective agreements and they ensure equal treatment and treatments not lower than those provided for by the respective collective agreements – guarantee that national collective agreements in the public sector are universally applicable.

3) *Employee Representation Bodies*

Among the trends that the global crisis has triggered or boosted in developed Western legal orders, at least three have had a relevant impact on the Italian regulatory system as far as employee representation bodies are concerned: the increase of uncoordinated decentralization of collective bargaining, which has led in some circumstances to the establishment of single-employer

bargaining structures (see § B.4 and § B.5); the loosening of long-lasting ties between companies and employer associations; the centrality of contractual claims related to productive needs raised by the companies in a framework of a sharpened power imbalance (to the disadvantage of workers), which in turn is related to the increasingly concessive nature of collective agreements and to the growing conflicts that arise, as a consequence of the former, between unions and companies as well as within the union front. At the crossroads of such trends stands the "FIAT case", which, as seen, is the origin of recent changes in the configuration of the regulatory system of collective representation.

The sources of such regulatory system are twofold: legal and contractual.

As for the legal sources, first of all it should be pointed out that the basic right to establish and join a trade union association at the workplace, as well as to perform union activity, is granted to all the workers and protected by a web of anti-discriminatory provisions (Articles 14-17 of Act nr. 300/70, hereinafter 'Workers' Statute').

Furthermore, under the same Act, certain bodies, named 'Rappresentanze Sindacali Aziendali' (hereinafter RSA), are entitled to a set of additional prerogatives that are meant to support the mobilization of workers at the workplace, such as, for instance, the right to convene an assembly or call the workers for a referendum. Adding on such prerogatives, the same players have then been entitled, by means of a fragmented and stratified set of legislative and contractual provisions, to the legitimation as bargaining agents at the company level, sharing this quality with other players such as the local trade union branches. In this sense, the Italian system has increasingly been configured as a *sui generis* single channel.

Pursuant to Article 19 of the Workers' Statute, RSAs 'can be established, at the initiative of the workers, in the context of trade unions that are signatories of collective agreements which are applied in the plant', regardless of the level at which such agreements have been signed. This rule represents the outcome of a referendum, held in 1995, that changed the original wording of the norm. It was originally stated, in fact, that RSAs could be established in connection with the most representative inter-sectoral unions (of which no clear definition was given, and that case-law mainly referred to the major confederations CGIL, CISL and UIL) or within those unions that had signed collective agreements at the national or local level that were applied in the plant.

The legitimation criteria laid down in Article 19 have the effect of denying several unions the enjoyment of the peculiar prerogatives laid down by the Workers' Statute, thus raising questions of compliance with the constitutional principles of equality, non-discrimination and trade union freedom (respectively Article 3 and Article 39). Nonetheless, until recent times the norm had been repeatedly upheld by the Constitutional Court, both in its original version and in the one that came out of the referendum, on the grounds that the resulting differentiation was lying on reasonable grounds.

The main issue in this respect was represented by the alleged risk that, yielding to a certain reading of the condition based on the signature of a collective agreement, the rule might result in making a union's entitlement to those rights conditional upon the employer's approval. Such a risk was deemed to be even sharper under the newest text, since the company level arena is the one where power imbalances and the contingent (economic and productive) situation can exert a stronger pressure on workers and unions to sign a contract. Nevertheless, the Court set up a twofold barrier against such interpretation. On the one hand, it held that the agreement whose signature enables the union to establish a RSA should belong to the category of 'regulatory contracts', i.e. those contracts that lay down an organic regulation of the individual employment relationship. On the other hand, the Court affirmed that to be considered as a signatory party the union should have taken an active part in the negotiation, hence ruling out the legitimation of those unions that had only ratified an agreement that had been negotiated by others. Provided that such conditions were met, according to the Court, the signature of a collective agreement represented a sound evidence of the strength of a certain union, expressed by its capacity to impose its will upon the employer.

The pressures exerted by the crisis, summarized before, have prepared the circumstances that led to a change in the Court's approach.

Back in 2011, as it has been already said, FIAT terminated its relationship with Confindustria and the related collective agreements, and offered the unions to sign a new company agreement tailored on its peculiar productive needs.

The unions entered into negotiations and all of them accepted the proposal and signed the contract with the exception of the CGIL-affiliated FIOM. This circumstance entailed the effect that FIOM did not meet any longer the requirements laid down in Article 19 of the Workers' Statute; hence the employer lawfully refused to recognize the RSA established by that union.

However FIOM, which happened to be the player with the highest rates of affiliates within the workforce, challenged the company's behaviour in Court, claiming it to represent an unfair labour practice. The dispute was brought before the Constitutional Court that, with the ruling n° 231/2013, reversed its long-established position. The Court held that Article 19 draws an unreasonable discrimination by denying the right to establish an RSA to a union that is undoubtedly representative, on the sole grounds that it did not sign a collective agreement. According to the Court, the requirements provided for by Article 19 are met also by unions that, although not having signed a collective agreement, have nonetheless taken an active part, as workers' representatives, in the negotiation that led to the signature.

The changed industrial relations scenario that arose from the crisis is central in the Court's reasoning. It is maintained in this regard that, against an economic and social background that can likely lead the different unions to adopt conflicting, although equally lawful, bargaining strategies and companies to 'individualise' their own industrial relations systems in order to meet their special productive and market requirements, Article 19 may produce the effect of discriminating unions not on the grounds of the relationship they have with their constituencies, as the original meaning of the rule would dictate, but in respect of their relationship with the employer. Furthermore, the exclusion from the enjoyment of the RSA's prerogatives in the current scenario would count as an unlawful penalization of union dissent, hence infringing the constitutional right to trade union freedom and the entailed protection of pluralism in the union front.

The Court's ruling has raised some critical remarks and left some interpretative question unresolved.

Among the former, it has been maintained that the original purpose of Article 19 is not to support any representative union but only those 'responsible' players that, in the end of the bargaining process, are available to assume a contractual commitment.

Among the latter, it remains unclear under what circumstances, in practice, a union should be deemed as having taken part in a negotiation. Some argue in this respect that the employer's power of approval, which the Court's ruling meant to pre-empt, has only been anticipated to an earlier stage, as the employer is not bound by any legal duty to enter into negotiation with a certain union. Others believe that any union activity aimed at mobilizing the workforce, for instance the organization of a strike against an agreement, should be considered as an involvement in the bargaining process.

The social partners, with the consolidated agreement ('Testo Unico') on trade union representation of 2014, have put forward a customary interpretation of that formula, but a large majority of commentators believe that only an Act of Parliament can provide a decisive solution to the problem.

Shifting to the employee representation bodies regulated by contractual sources, reference should be made to the 'Rappresentanze Sindacali Unitarie' (Unitary Representation Bodies, hereinafter RSUs). Such bodies have been established by an inter-sectoral agreement among the main social partners in 1993, and reformed by the 2014 consolidated agreement. The aim was to lay down a more reliable criterion to measure the unions' representativeness than the one prescribed by the Workers' Statute. RSUs, in fact, are formed pursuant to a general election among the workforce. The unions compete in the election and are represented in such unitary body proportionally to the

votes they have received. Unions that agree to take part in the electoral process undertake not to establish their own RSAs: hence, the latter are totally alternative to the former. Consistently, under the RSU system it is provided that such bodies replace RSAs in the enjoyment of all the prerogatives that the law attributes to them. Moreover, RSUs also enjoy the legitimation as bargaining agents.

Whereas under the original body of regulation it was stated that a share of the members of the RSUs should be appointed by the trade union bureaucracy, the aforementioned consolidated agreement repealed that quota provision. The latter, in fact, resulted to be inconsistent with the mechanism put in place by the 2014 agreement that aims at counting the received votes as the measure of the representativeness of trade unions competing in the RSU election for the purpose of qualifying such unions as bargaining agents. This circumstance confirms the emergence, among the most recent regulatory developments in the field of trade union representation, of the increasingly tight interferences between functions of general representation and bargaining-related ones over the same bodies.

4) *The structure of collective bargaining*

The Frame Agreement of 28 June 2011 and the related agreements of 31 May 2013 and 10 January 2014 are the current core of the Italian Labour and Industrial Relations system. The 1993 Frame Protocol was partially subject to a recast by the Frame agreement dated 22 January 2009. In the 2011-2014 Frame Agreements the main red flag items are the following: (i) unions representativeness measurement schemes, (ii) the 5% minimum threshold, (iii) the validity of collective bargaining and the majority principle.

Erosion and renewal of collective bargaining associated with these developments makes forecasts difficult on Industrial Relations in Italy. The development will depend largely on the way the collective bargaining the main actors will act (CGIL, CISL, UIL and Confindustria). The traditional Italian system of industrial relations is based on national collective bargaining agreements ("NCBA") and a quasi-controlled decentralized collective bargaining.

A law to fill in the gap of the union representativeness system could be introduced. The law could define the union representative requisite set forth in Article 19 of Workers' Statute by referring to the guidelines included in the 2011-2014 consolidated agreement of 2014 in a more detailed manner.

The strategy of firm-level and participatory collective bargaining can be expected to have considerable effects on the development of collective bargaining in Italy.

The shift in the balance of power in favour of firms resulting from recent law reforms (Article 8, Law no. 148/2011: see § B.5) can be mitigated, at least to some extent. Firms seeking to derogate from collective agreements also have to make compromises. Firms' interest in maintaining industrial peace acts as an incentive to recognize and take account of the other side's interests, based on a strengthening of the union's decentralized power. At the same time, this strengthening is also making the employers' associations attractive again to firms as bodies representing their interests. The employers' associations and the related unbound tendency phenomena are increasing.

Monitoring unions' tasks in connection to decentralized collective bargaining could determine a deep investigation on unions/employers interests in the negotiation and derogations in industry-wide collective agreements.

5) *Article 8, Decree Law no. 138/2011 (Proximity Bargaining) and derogating Law*

Despite the on-going evolution of its structure, Italian collective bargaining continues to take place at three levels. First, there are inter-sectoral agreements, which may take the form of a tripartite policy accord or a bipartite agreement between social partners, depending on whether or not the outcome is also signed by the government. Secondly, there is sector-level collective

bargaining. This was the keystone of the industrial relations system until June 2011; it aimed to safeguard minimum wage and a range of matters regarding working conditions, such as working time, information rights and work organisation. Finally, there are decentralised agreements, which may be signed on a company, district or regional basis, and enable the parties to agree detailed arrangements for such matters as productivity, innovation and work organisation that reflect the immediate context. Furthermore, in recent years a good deal of conflict among trade unions and between government and trade unions (in particular CGIL) has revolved around proposals to relax the law on dismissals and allow scope for local workplace agreements. The decentralisation process has started.

In 2011, a new set of provisions was introduced permitting further negotiated derogation (known as 'proximity bargaining', Art. 8, Decree Law no. 138/2011, converted with amendments into Law no. 148/2011) both from the provisions of sectoral agreements and from certain aspects of statute law, provided the changes accord with the Italian constitution, EU-level requirements, and international obligations (EIRO 2012).

This new provision (Article 8 entitled "Support for proximity collective bargaining") call into question the relationship between national and company bargaining, which now seems to be developing towards a decentralization of the system, strengthening the role of company agreement; in particular, it questions for the first time the previous leading role of law and national collective agreements in regulating labour relations. The regulatory type of intervention (direct regulation) – as opposed to auxiliary or promoting support, in the article's inscription – gives company and local agreements a power of derogation with a binding effect for all the workers (*erga omnes effect*), which, as seen in § B.2, national contracts still lack. In fact, Article 8 gives effect to company collective agreements on important labour law themes (such as workers' main tasks, flexible contracts, working time, some aspects of employment procedure, employment relations and dismissals - paragraph 2) as long as broad economic policy objectives are taken into account and it is signed in accordance with the majority principle for representativeness (paragraph 1). As a consequence, proximity bargaining could be the means to increase employer's power by relaxing inflexible statute law on relevant aspects of employment relationship for the purpose of increasing the employment rate or merely making employer's organization more efficient.

Even if this mechanism seems to guarantee autonomy of collective actors it involves a lower level of bargaining and it is prerogative of law to identify wide margin of action with a binding effect for all the workers. Hence, the legal derogation model to enforce 'proximity bargaining' could be defined as a legal model for regulative deregulation through the *erga omnes* effect. It strengthens the role of legal norms to regulate industrial relations (and consequently employment relations) even beyond a broadly shared social norms system and, recently, has been applied many times at company level even clashing with the social norms set by national collective bargaining. As a consequence, decentralised collective bargaining has become increasingly important thanks much more to a legal choice than a collective ones.

By using (or abusing) proximity bargaining each company is able to agree on several working conditions according to functional flexibility choices made at this lower level, such as different wages according to different productivity or work time adjustment on production cycle (so-called 'plant saturation'). Before Article 8, Decree Law no. 138/2011, the boundaries of company level concession bargaining were contained, after Article 8 work organization and employment relations because of the excess of rigidity could be entirely bargained by decentralised agreements with respect to functional flexibility.

Giving a specific normative competence (in particular concerning efficacy and functions) to collective autonomy at company level has increased the importance of this level of bargaining. The debate, albeit in different terms, is focused on the contrast between the faculty of company agreements to freely adopt concessive disciplines (with regard to national agreements) for employment relations and the revival of strengthened policy coordination, which is more or less technically justified.

The conceptual layout of decentralized agreements has developed through a specialization of their functions in comparison with those carried out by sectoral bargaining, by paying attention to specific workplace features (organizational, technological, productive, etc.). This trend leads to company agreements which diversify their areas of intervention compared to those of national collective agreements. However, diversification cannot be the only justification for the existence of two levels of collective bargaining. In fact, because of the variables (economic, political, etc.) that affect the structure and dynamics of collective bargaining, the diversification of functions can produce overlap or even a total absence of coordination between the two levels of bargaining and generate conflicts within the social norms area.

6) *The right to strike*

Article 40 of the Italian Constitution recognises the right to strike. Nevertheless, this Article has never been implemented by the law except the case of Act no. 146 of 1990 concerning the right to strike in public essential services.

The Supreme Court and the Constitutional Court ruled in the past years on the right to strike especially by reducing the limitations of strike provided for during the Fascism. According to the case-law, the right to strike cannot be limited internally and no criminal sanctions (introduced during the Fascism qualifying the strike as a criminal offence) can be imposed on employees.

Moreover the reconstruction of strike as a right implying that the employer is submitted to its exercise or as a subjective public right inferring everybody's abstention whenever it is exercised by the employees has facilitated the expansion of such right.

Because of the economic crisis and the rise in competition caused by globalisation, employers have recently begun to request new restrictive rules in order to reduce the impact of that right on the economic activities already remarkably harmed by recession.

Following the tradition according to which industrial relations in Italy generally are not regulated by law, social partners have concluded some collective framework agreements (see §§ B.1-B.5) aimed at giving more effectiveness to the clauses prohibiting the exercise of strike during the period when a collective agreement produces a binding effect (the so-called no-strike or union peace clauses).

This is a pivotal point to govern the exercise of the right to strike because evidence shows that often a strike occurs even when trade unions have reached a collective agreement. On the contrary, collective agreements should aim at guaranteeing peace between the employer and employees whenever such agreements are effective.

The Protocol of 28 June 2011 provides for the inclusion in the collective agreements of mandatory no-strike clauses. However, this provision lacks binding force since trade unions or employees who do not comply with the clauses cannot be sanctioned. Moreover civil law rules, such as those on the breach of contract or on extra-contractual damages, cannot be easily applied in the field of industrial relations.

The collective agreements concluded by FIAT provide for no-strike clauses too. These clauses seem to be more effective because in case of a breach of them some sanctions for trade unions and employees shall apply. The FIAT collective agreements declare that trade unions are liable in case the union peace clause has not been respected and also provides for some sanctions as suspension of trade union fees, allowances and leaves.

In addition, according to the same agreements, trade unions representatives and employers must meet to evaluate the causes of industrial conflict and to find a possible solution. They can meet twice and the evaluation period can be 10 days or even longer if so agreed by the parties. During this period trade unions cannot call a strike and the actions following this period have to be agreed after a communication to the business.

Furthermore, these collective agreements are binding also for single employees who can possibly be sanctioned with disciplinary measures in case of breach of application. As it has been

highlighted before, these collective agreements are applicable only to FIAT, while there is not a general rule for national-scale strikes.

CGIL, CISL and UIL have tried to introduce a more general regulation of strike in the consolidated agreement ('Testo Unico') on trade union representation signed in 2014, even though the implementation of it through national collective agreements is still missing. The fourth section of the consolidated agreement provides that the forthcoming collective agreements have to define no-strike clauses and conciliation procedures aimed at guaranteeing for all the parties compliance with the collective agreements and at preventing conflicts.

According to the consolidated agreement, collective agreements shall provide for sanctions in case of behaviours not in compliance with the same collective agreements. The consolidated agreement identifies two kinds of sanctions: 1) economic fees and 2) the suspension of trade unions rights or of other rights provided for by collective agreements.

The consolidated agreement provides also for the establishment of a temporary Arbitration Committee composed by members chosen by trade unions and Confindustria. This Committee shall identify the sanctions against employers and trade unions, which do not comply with collective agreements.

In addition, the 'Testo Unico' provides for the establishment of a permanent Committee composed of experts in labour law and industrial relations aimed at supervising on the application of the agreement and to manage settlement procedures of the strike.

Looking at the just-mentioned provisions, it is possible to say that the consolidated agreement is shifting the industrial relations system towards a wider ruling of the conflict, based not only on the no-strike clauses but also on arbitration procedures. If this agreement is implemented, some remarkable limits to the strike will be provided.

C) SOCIAL SECURITY LAW*

1) *Introduction*

When worldwide financial and economic crisis started to affect Europe in 2008, Italian welfare state already suffered from a number of imbalances, inherited from the past. First of all, public employment service (PES) was underfunded and quite ineffective: totally left to the regions' care, it lacked central coordination and provided very different standards of service across the country. Secondly, the protection against unemployment was fragmented and unequally distributed according to industries, firm dimension, employees' age and even the nature of the dismissal (collective or individual); moreover, the most generous protection was concentrated upon partial unemployment, by means of salary integrations in case of lay-offs and short-time (a public fund – «Cassa integrazione guadagni» – intervened when employers suspended their employees or reduced their working time for economic reasons). Thirdly, there existed no safety net for the poor: no basic income schemes were in operation at the national level, whereas some experiments were conducted only in a small number of regions. Fourthly, the pension system, though quite balanced after the main reform of mid-'90s, still allowed employees with long contribution seniority to get an anticipated pension well before 60 years.

In the first wave of the crisis Italy did not start any overall reform in the aforementioned fields: it simply reacted, as most European countries, to the steep fall in the economic activity by letting go automatic stabilisers. In particular, the Government, owing to derogatory powers conferred on it by the Parliament, used salary integrations and mobility indemnities well beyond legal requirements in order to protect firms and avoid mass unemployment.

Anyway, the situation has completely changed since 2011, when the financial and economic crisis turned into a sovereign debt crisis. Following the advice contained in the ECB letter of 5th August 2011 to Italy, the Monti's Government endeavoured to reform in depth welfare state with the aim of addressing its imbalances and cutting public spending. Fornero's Law (Act n. 92/2012) rationalised and unified unemployment benefits, by creating a new allowance, called ASPI (see § C.4); however, it was not able to limit the scope and duration of salary integrations by concentrating them only on viable businesses, as it had been planned at the beginning (see § C.3). Also with regard to PES Fornero's Law could not make any major breakthrough (see § C.2). The Decree Law n. 201/2011 reformed the pension system: with the new rules it will be almost impossible in the future to retire before 60 years and in any case the retirement age and the amount of the pension are now strictly linked to social contributions paid and to life expectancies (see § C.6). Only a little was done in the field of the basic income (Decree Law n. 5/2012): it was impossible to find any money in the State budget for that (see § C.5).

Consequently, a look at the future reveals that in the field of social security law Italy still faces formidable challenges, of which the new Renzi's Government is at least partially aware: a) establishing a new PES, more centralised and able to operate according to a European-style welfare to work approach; b) reducing the duration of salary integrations and banning their use to save businesses that are no longer viable; c) softening some asperities of the pension reform and developing an encompassing strategy of active ageing; d) introducing a safety net for the poor, especially for people whose unemployed benefit duration has elapsed.

2) *Public Employment Service from the Fornero's Law to the Jobs Act*

In our country the State monopoly of job placement was set up still in fascist times, but after the Second World War it was confirmed by the new democratic institutions. In 1949 the Parliament

* Matteo Corti (Catholic University of Milan) wrote §§ 1-3; Enrico Maria Mastinu (University of Cagliari) wrote § 4 (translated into English by Matteo Corti); Fabio Ravelli (University of Brescia) wrote § 5; Davide Casale (University of Bologna) wrote § 6.

approved the Act n. 264, which hinged upon the three main pillars of the public monopoly of job placement, the state centralisation of its provision, and the obligation imposed on the employers to hire only people sent by the public employment office.

As a consequence, the labour market was strictly regulated: only local employment offices, which were branches of the central Department for Employment, were allowed to deal with job placement, whereas this activity was forbidden not only to private agencies, but also to trade unions and non-profit entities as well as to local authorities (like municipalities, provinces and regions). Moreover, in case of vacancies, employers were bound to request public employment offices to send unemployed people registered in their lists, without having the possibility of choosing the desired candidates: although there existed many exceptions from this rule (for instance, the employer was free to hire managers, or people who were not jobless, i. e. who already had a job), the whole system was a heavy burden for the business community and suffered from an extreme high level of ineffectiveness from the very beginning. The attempt to revive the State monopoly of job placement by making it even stricter (Act n. 300/1970, sect. 33-34) or by relaxing to a great extent the obligation to hire exclusively people sent by the public office (Act n. 56/1987) did not succeed in any way, and in the 1990s the entire organisation of the labour market was overhauled.

By the end of that decade, indeed, no one of the pillars which had held the Italian labour market for some 40 years was still in place. The freedom to hire the desired employee was fully established (Act n. 223/1991, sect. 25, subs. 1, and Act n. 608/1996, sect. 9-bis) and the public monopoly of job placement was officially taken away just a few days after the European Court of Justice had certified its inefficiency in the light of the antitrust rules of the European Community (ECJ 11 December 1997, C-55/96, case Job Centre II). The legislative decree n. 469/1997 did away also with the centralisation which had characterised the previous public job placement, and bestowed the power to organise the new public employment service (PES) on the regions, at the same time giving the provinces the task of concretely providing the service through newly established Job Centres. The constitutional reform of 2001 (Act n. 3) confirmed that the State and the regions share the legislative competence on labour market issues.

The legislative decree n. 276/2003 (Biagi's Law) gave a new impetus to private placement agencies and other private and public actors potentially interested in the placement business, such as trade unions, employers' association and their bilateral bodies, on the one hand, and municipality, university, chambers of commerce, on the other hand (sect. 6). The Biagi's Law, however, did not devote great attention to the Job Centres, leaving the task of organising their own regional PES to the regions. The only role conserved for the central State was the organisation of an information system on the labour market coordinated at national level, even though based on local networks (sect. 15-16): however, it took more than 7 years to get this online national job bank started! Anyway, the State set in the legislative decree n. 181/2000 the minimum level of service which Job Centres were (and still are) obliged to provide for jobseekers (sect. 3): for all of them, interview and counselling service within the first 3 months of unemployment; for some categories of jobseekers, an offer of personalised training, job insertion or other measures which can favour job insertion, either within the first 4 months of unemployment (young people, women in search of re-insertion in the labour market) or within the first 6 months of unemployment (other jobseekers at risk of long-term unemployment).

Italy entered the worldwide economic and financial crisis of 2008 with a very weak system of PES for a number of reasons. Firstly, the public monopoly of job placement was the most encompassing in Western Europe (it infringed also on the freedom to hire) and was given up quite late: therefore, public offices were prevented from developing modern services for jobseekers which in other countries they had started to provide still in the 70's of the last century. Secondly, the global overhaul of Italian PES began when economic resources of the State budget were already scarce, and so the service remained underfunded and undermanned: moreover, the staff were on average old and not very skilled, and the young skilled workers were often hired with precarious contracts of employment. Thirdly, the complete decentralisation of PES in a country with different

levels of economic and social development brought about a very uneven functioning of the service, with the poorest regions showing the most ineffective PES.

The first serious attempt to redress this situation was made by the Fornero's Law, the Act n. 92/2012. To say the truth, the deepest reform implemented by the Fornero's Law was the reorganisation and rationalisation of the system of unemployment benefits, which was very fragmented and unequal: the introduction of a new unified benefit for jobseekers (the ASPI) was coupled with a stricter application of the conditionality principle (see § C.4). In order to get a smoother functioning of the "welfare to work" approach, the Fornero's Law reinforced the services that Job Centres had (and still have) to provide for the jobseekers receiving an unemployment benefit: within the first three months of unemployment, interview and counselling service; between three and six months from the beginning of unemployment, collective counselling service coupled with training focused on job search; by the date of expiration of the unemployment benefit, a proposal of measures of job insertion (sect. 4, subs. 33). If jobseekers refuse without justification either the proposal of active labour market policy (ALMP) measures or the offer of a suitable job made by the Job Centre, they lose their unemployment benefit (sect. 4, subs. 41-45). It is worth noting that the concept of "suitable job" was made stricter, because now it is linked to the amount of the benefit (it is suitable every job paid 20% more than the benefit) and not of the previous salary (sect. 4, subs. 41 (b)).

As to the reorganisation of PES itself, the Fornero's Law was less ambitious: the first projects which aimed at creating a national employment agency were abandoned. The law provides instead for a system of distribution of economic resources which should push the Job Centres to be more efficient (sect. 4, subs. 34-36). The law also empowered the Government to enact a legislative decree on a deeper reform of PES, but the Monti's Government fell without having the possibility of realising this delegation (sect. 4, subs. 48-50).

The road towards a more powerful and centralised PES has been followed more decisively by the new Governments Letta and Renzi. The first one set up a strong central coordination in order to implement the European Youth Guarantee (Decree Law n. 78/2013, sect. 5), whereas the second one adopted a much more radical approach: the project of law n. 1428, presented to the Senate on the 3rd April 2014 (so called "Jobs Act"), gives wide delegation to the Government to reform in depth Italian PES (sect. 2). Not only does the project plan to establish a new national employment agency; it also intends to confer on the new entity all the competences related to active and passive labour market policies. The agency, participated by the State and the regions and put under the control of the Department for Labour, will involve social partners in the definition of its strategy. The new agency will both pay the benefits to the jobseekers and offer them placement service and other ALMP measures: if accurately implemented, this one-stop shop model will certainly lead to a better application of the "welfare to work" strategy, which is strongly recommended by the European institutions. Last but not least, the Jobs Act intends to clarify the role of private placement agencies in order to strengthen the synergy between them and the new national agency: this appears really opportune, because the regional models of PES adopt very different approaches in this field, from the cooperation between Job Centres and private actors led by the first ones to the open competition between the two.

3) *Salary Integration for Lay-offs and Short-time: From Discretionary Concession to the New Solidarity Funds*

In the Italian civil law economic difficulties do not allow employers to suspend employees or to reduce their working time: if the problems are only short-term, employers are obliged to pay the whole salary; if the crisis of the firm is more serious, they can resort to individual or collective dismissals for economic reasons.

In order to avoid an unnecessary burden upon the employers and to limit dismissals for economic reasons, Italy set up after the end of the Second World War a special public fund («Cassa

integrazione guadagni»), financed with contributions of employers, employees and the State, which guarantees part of the income lost during lay-offs and short-time. In exchange, after having consulted trade unions, employers can suspend employees or reduce their working time in cases of: a) temporary market difficulties and difficulties due to *force majeure* (ordinary intervention); b) restructuring, reorganisation or reconversion of the firm; economic crisis; bankruptcy or liquidation of the firm (extraordinary intervention) (Acts n. 164/1975 and n. 223/1991). The salary integration replaces up to 80% of the wage loss within a maximum ceiling; blue-collar, white-collar workers and cadres are concerned. The ordinary intervention of the fund lasts for 3 months, but it can reach 12 months with prolongations; the duration of the extraordinary intervention varies according to the reasons of lay-off or reduction of working time, extending from a minimum of 6 to a maximum of 48 months.

The system is far from being generalised: the ordinary intervention covers only the industrial sectors; the extraordinary one applies to industrial units employing more than 15 employees and to commercial firms employing more than 50 employees, although throughout the decades its field of application has been steadily enlarged on a case by case basis. Apart from the agricultural and building construction sectors, where separate funds with different rules are in operations, it is mainly the service industry which has no salary integration system at all. In the mid-90's, when the economic crisis started for the first time to affect some protected sectors of the service industry, like banking and insurance, the Parliament passed a law enabling the social partners to set up through collective agreements sectoral funds managed by the same parties under ministerial control (Act 662/1996, sect. 2, subs. 28). Although the costs were entirely born by the employers and employees of the sectors concerned, the system proved to be quite successful. In particular, funds were established in the banking and in the insurance sectors. Not only do they provide salary integration for employees; they also pay indemnities more generous than unemployment benefits to allow older workers to resign and reach the retirement age.

During the first decade of the new century the system of salary integrations did not formally undergo any crucial changes, but it lost its coherence. On the one hand, the legislation kept on extending the field of application of the extraordinary intervention just to manage the crisis of specific industries (for instance, in 2004 airlines were included basically to save Alitalia, the Italian flag carrier). On the other hand, all Budget Laws used to empower the Government to concede salary integrations for lay-offs and short-time, and even special indemnities in case of dismissal, to employees belonging to sectors not covered by the extraordinary intervention. This derogatory use of the tool had the goal of quickly reacting to sectoral crises, and through the years social partners and local authorities (especially the regions) were increasingly involved in the process of concession. During the financial and economic crisis started in 2008 the field of application of the salary integrations system was de facto generalised by means of derogation powers conferred on the Government: this allowed our country to avoid mass unemployment, but at the price of the explosion of the costs and of the related public spending.

When the second wave of the crisis, the sovereign debt one, came to Italy in the middle of 2011, it was already clear that the system of salary integrations had a number of shortcomings: first of all, it had become unequal and discretionary because of the derogatory powers conferred on the Government; secondly, it was simply too generous, by allowing firms to survive even if they were not viable any longer; last but not least, it had become too expensive and unsustainable for a country plagued by the debt crisis. In the letter addressed by the ECB to the Government of Italy on the 5th August 2011 it was suggested facilitating the transition of employees from outdated and inefficient industries and firms to the modern and efficient ones: changes in the salary integrations system were clearly requested.

However, the challenge proved extremely difficult because the salary integrations system was very comfortable both for trade unions and employers. This is the reason why, by contrast to the first drafts, the Fornero's Law did not overhaul the legislation on salary integrations: the field of application was enlarged a little; the phasing out of the extraordinary intervention in case of

bankruptcy or liquidation of the firm was scheduled for 2016; the end of derogatory powers bestowed upon the Government was planned for the end of the crisis (Act n. 92/2012, sect. 3, subs. 1-3). On the other hand, for the sake of the equality principle, the salary integrations system was generalised by means of solidarity funds (bilateral bodies) that should be set up by industry-wide collective agreements in the sectors not covered by the legal provisions (Act n. 92/2012, sect. 3, subs. 4-49). Since the costs are entirely born by employees and employers of the sectors concerned and the crisis is still biting very hard, social partners are not particularly active in the establishment of these funds. This is the reason why since the 1st January 2014 a residual public fund has been in operation for sectors still not covered by collective agreements (Act n. 92/2012, sect. 3, subs. 20-bis).

In conclusion, the necessary reform is only half-way: therefore, the new Renzi's Government is planning a more radical approach, which should rationalise the system and reduce the maximum length of the extraordinary intervention, by exploiting the possibility of temporarily reducing working time provided by collective agreements (Draft Bill A.S. 1428, sect. 1).

4) *Protection Against Unemployment in Italy*

When the world economic crisis hit Italy and Europe, in autumn 2008, the Italian system of protection against unemployment was affected by two major imbalances. Overall, compensation provided was quite limited in comparison with other forms of social security protection, especially old age pensions: if looking at EU average, Italy spent on unemployment benefit 5% less (2% against 7%), whereas it spent on pensions 12% more (51% against 39%). Secondly, these payments differed sensitively in quantity and length, depending on a variety of factors: the dimension of the firm, the industry to which it belonged; employee's age and seniority.

There existed four types of benefits:

a) Agricultural unemployment benefit, for people working in the agricultural sector;

b) Special unemployment benefit, for people working in the building construction industry;

c) Mobility indemnity, for people working in the application field of salary integrations (extraordinary intervention) (see § C.3);

d) Ordinary unemployment benefit, for all other workers.

Most of these benefits were characterised by limited amount and duration. Only mobility indemnity granted adequate protection. However, this happened in a disproportionate way in comparison with the other ones: it amounted to more than 60% of the wage and, for workers aged more than 50 years, it could reach the length of 48 months.

The reasons underlying this odd situation were different in nature. The political ones were probably the most influential: our political system used to be instable and permanently in search of the electors' consent, so that it preferred to spend all available economic resources on avoiding unemployment rather than on helping people who had lost their job.

The result of these policies are two peculiar social security instruments: anticipated pensions, i. e. pensions directly depending on seniority rather than on age; salary integration in case of lay-offs and short-time), i. e. a mechanism allowing the firms to suspend the productive activity without dismissing employees, by shifting the burden of their salary towards the social security system sometimes for very long periods of time (see § C.3).

Thanks to anticipated pensions a large number of workers aged just more than 50 were able to leave the working life without being officially unemployed. Thanks to the salary integrations system millions of workers could preserve their status of employed people, although, in actual fact, they were not working and so not active any longer.

Economic crisis pushed Italy to correct imbalances of the protection system against unemployment. In mid-2012 the Italian Parliament passed an important reform Act: Law n. 92/2012. As to its main features this law represents an attempt to shift resources from protection

against old age (pensions), which in Italy is among the most expensive in the world, towards protection against unemployment, which in Italy is among the poorest in Europe.

The four different types of unemployment benefits were cut down to two. Only agricultural unemployment benefit survived. The others (mobility indemnity, special unemployment benefit in the building construction industry and ordinary unemployment benefit for everybody else) were substituted with a unified social security benefit labelled "social insurance for employment" (in Italian: "Assicurazione Sociale Per l'Impiego" – ASPI), enjoyed by all the workers of the private sector of the economy who have lost their job in an involuntarily way.

The law provides for two kinds of ASPI: the major one and the minor one.

A) The major one, simply defined "ASPI", is provided to the workers that registered at the National social security authority (INPS) at least two years before becoming unemployed, and paid social contributions for at least a year within the two preceding the job loss. The benefit amounts to 75% of the lost wage, provided that the employee was paid less than 1,192.98 Euro a month; if the employee was paid more than this sum, he is entitle to receive further 25% of the sum exceeding the threshold. However, the maximum ceiling of the benefit is pitched at 1,152.90 Euro. Moreover, the benefit shrinks progressively (15% after six months, and further 15% after 12 months). Both thresholds are indexed for inflation. The length of the benefit varies according to the age of the worker: once the transitional regime has elapsed, i. e. from 2016 onwards, the duration will be 12 months for the unemployed aged less than 55 years; 18 months for the unemployed aged 55 and over.

B) Minor ASPI, defined "mini-ASPI", is provided to workers with a minimum social contribution of 13 weeks within the year preceding the job loss. Mini-ASPI amounts to 75% of the wage, within the ceiling of 1,152.90 Euros: its duration is equal to half the contribution weeks.

According to the best and most developed European experiences, the new law aims to encourage the unemployed to get a new job as soon as possible. So unemployed persons lose their eligibility to the benefit either if they refuse without grounded reasons to participate in an active labour market policy measure (basically internship and training), or if they refuse a job which is paid not less than the unemployment benefit plus 20%.

Thanks to the introduction of the ASPI the Italian social security system tried to correct some historical imbalances by adopting a more up-to-date and European-designed instrument of protection against unemployment. Fragmentation of the protection was basically taken away, and so also the unequal distinction between very generous and insufficient benefits was eliminated. However, two other major problems are here to stay: the scarcity of resources in the State Budget (this is the reason why the amount of the ASPI is still relatively low and some measures are coming into force between 2015 and 2017) and the inefficiency of public employment service (see § C.2).

5) *Basic Income*

The Italian social protection system has always been characterised by the deep relationship between work and access to welfare benefits, as a consequence of two concurring elements: on one hand, the labour-based connotation of the Italian Constitution and, on the other hand, the 'bismarckian' imprinting of the Italian social protection system, mainly based on the social insurance organizational model and originally conceived for the protection of the ideal type represented by the 'male bread-winner'.

However the evolution of the Italian social protection system has not kept up with the remarkable transformations affecting the labour market (and, in general, the whole society). As a consequence, the system does not seem to be able to fully meet the needs of people any longer. It is well known that a significant fraction of the workforce – self-employed, atypical workers, workers employed by small enterprises, etc. – is excluded from a number of occupational social protection schemes and thus is not entitled to some social benefits (e.g. unemployment benefits).

Over the last years a growing consensus about the need to remedy the above mentioned lack of protection has been arising. In this respect, the introduction of a basic income scheme seems to be, currently, the most suitable solution (it is worth mentioning that in the EU area only Italy, Greece and Hungary have not introduced a basic income scheme yet).

Still it is not clear how such basic income scheme should be organized.

As said above, Italy has not implemented any national basic income scheme. An instrument provided for by national legislation that, to some extent, resembles a basic income measure is the so called 'social card' (or 'carta acquisti'), originally introduced as experimentation by Law Decree n. 112/2008 and later extended by subsequent legal provisions (see Decree Law n. 5/2012 and n. 76/2013). This 'card' entitles poor people – not only nationals but also foreign people legally residing in Italy – to access to some basic goods at a lower price (being the financial burden of such benefit posed on the State).

Proper basic income schemes are being (or have been) experimented, here and there, at the local level: see, for example, the basic income scheme provided for by Law of Regione Campania n. 2/2004 or the one provided for by the Law of the Province of Trento n. 13/2007.

However, national legislation has not taken much interest in basic income so far. As well as budget constraints, the main reason is to be found in the structure of the social protection system as designed by Article 38 of the Constitution. The idea of social security envisaged in Article 38 is based on two pillars: 1) occupational social security schemes addressed to workers 'in the case of accidents, illness, disability, old age and involuntary unemployment' (see Art. 38.2); 2) social assistance measures addressed to citizens (and, to some extent, foreign people) who are 'unable to work', due to old age or disability, and 'without the necessary means of subsistence' (see Art. 38.1). Therefore, *prima facie* Article 38 does not seem to leave much room for general basic income schemes, except for the case of those unable to work. However, if on the one hand Article 38 does not require the implementation of general basic income schemes, on the other hand it does not prohibit that. Some scholars point out that Article 38 is characterized by a certain degree of openness, thus allowing the introduction of any measure (included basic income) able to pursue the basic political goal of the social security system, i.e. the 'freedom from want'.

The debate, both political and academic, about the prospective introduction of a basic income scheme revolves around two possible instruments to be alternatively implemented:

1) the so called "reddito di cittadinanza", which refers to the idea, put forward by Philippe Van Parijs, of 'an income paid by a political community to all its members on an individual basis, without means test or work requirement';

2) the so called 'reddito minimo garantito' (RMG), i.e. a social allowance given to those who find themselves in a state of need, on condition that the beneficiaries meet some specific requirements in terms of individual activation, e.g. participation in active labour market policy schemes, individual job search effort, etc. In addition to that the 'means test' may apply.

It is to say that, at the moment, the former model is more of a utopia, although a very powerful and attractive one; the latter model is the one normally implemented in Europe.

Over the last period three bills have been submitted to the Italian Parliament: one by the M5S Party, one by the PD (centre-left) and one by SEL (left). The M5S's proposal is more focused on the idea of "reddito di cittadinanza"; on the contrary, the PD and SEL's proposals take into account the RMG model.

Moreover the Renzi Goverment, now in power, seems to be willing to reform the Italian social security system shifting from the social insurance model – still prevailing, although in a temperate form – to a more universal and inclusive one. At the moment, given the uncertain and unstable political situation, it is not clear if the government will be able to take action in this field and, in case, what the reformed social protection system would be like.

Should a basic income scheme be introduced in Italy, it would most likely implement the RMG scheme, and not only for financial reasons, but also for reasons of political acceptability as well as reasons of constitutional constraints: indeed, according to some opinions, the current

constitutional layout of social security (see, in particular, Article 38) seems to imply, whenever it is possible, a certain degree of activation of those who claim social benefits.

6) *Pension Reforms*

The Italian pension system is mainly public, private pensions being an additional and uncommon individual option, since 33% of employees' gross remuneration (or approximately 20% for other kinds of workers) is a mandatory contribution to public welfare. Nonetheless, private pension funds are increasing, due to legal facilitations and tax benefits introduced in recent years.

During the financial and economic crisis that involved Italy twenty years ago, the Italian Parliament approved the reform, which is still at the basis of the national pension system. At that time, rules were strongly harmonized among different categories of workers, public and private, also self-employed. With that reform, the long-term financial equilibrium of the Italian public pensions' system was pursued through a gradual increase in the retirement age and, above all, through a reduction in the salary/pension replacement rate. It must be noted that the mentioned reduction was strong, but applicable only to the cohort of workers who were at least 15 years prior to their earliest possible retirement date. That reduction in the amount of future pensions was obtained by eliminating the calculating method introduced during the economic expansion in the late '60s. That method, which was very generous (almost equating a pension's amount to the level of earnings reached in the last working years of each person), was replaced by one which takes into account the amount of contributions paid during the entire working life of each person.

It should be pointed out that this amount is still calculated as a virtual sum, the Italian pension system being unfunded, following World War II. Since no assets are set aside in this pay-as-you-go system, pensions (apart from occupational health benefits) are paid directly from current workers' contributions (and citizens' taxes, when needed, as in these years of financial crisis).

In the last twenty years, five more significant reforms were enacted but the major reform was recently triggered as a result of the recent financial and economic crisis. In January 2012 (the European Year for Active Ageing), new pension rules entered into force, approved in December 2011 as an urgent act by the Mario Monti Government. The previous Government had just fallen, mainly because of a sudden crisis of confidence by financial markets concerning the sustainability of Italian public debt.

The 2011-2012 reform left the general structure of the pension system almost unchanged. Nevertheless, it had profound effects on its numerical parameters, in order to achieve cost savings. These were pursued through an immediate increase of the legal age of retirement (which has now reached 66), together with a severe reduction of the options of retiring at an earlier age. As a consequence, the immediate increase of a minimum age was at least 3 to 5 years (6 years in some cases). The entering into force of said increased minimum age requirement is slightly slower for female workers, who previously were subject to lower requirements (except for female public workers, in regard to which the Italian Republic had to quickly eliminate any differentiation as compared to men, since it was convicted of gender discrimination by ECJ 13.11.2008 C-46/2007). This recent reform also raised the contribution requirement, which now is 20 years of payments to the public welfare Institute (or a number of years that have accumulated a total contribution equivalent to a monthly pension of 680 Euros).

An age limit increase also applies to the threshold beyond which the employee can be dismissed by his employer without any need to go through redundancy or disciplinary procedures. This threshold has been increased by five years, from 65 to 70 years.

It is interesting to note that the 2011-2012 pension reform was conceived not only as a strong legislative change, but also a definitive one. The new framework includes a general rule that links the numerical parameters to the official statistics regarding the expected lifespan of the Italian population. Every 2 years a decree will modify age and contribution requirements in measure equivalent to demographic changes registered by statistics. Since the average life expectancy in

Italy will increase by more than 1 month per year, this legal automatic adjustment mechanism entails that, for example, the above mentioned legal retirement age of 66 years will reach 70 years in 2050, without any need for further changes in the law.

These legislative changes are already resulting in a rapid increase in the average effective retirement age. In the first half of 2013 the average effective retirement age in the private sector was 61.4 years, with a 1-year increase compared to 2011. In the public sector the average was 60.6 years, with significant differences between categories (from a minimum of 54.8 years for police personnel to a maximum of nearly 71 years for judges, who are the employees, along with university professors, traditionally having a right to remain in service until a very high age, recently reduced to 70 years).

In the last two years, not only the unions but also employers' associations have complained that the reform is too drastic, since it demands a strong commitment in active aging policies by companies. An easing project is under discussion in Parliament. Some mitigating rules have already been approved for people who were unemployed when the aforementioned reform came into force, as well as for public employees (the average age of Italian public personnel is at the highest level among all OECD countries).

In order to cover the costs of possible mitigations of the last pension reform (and to produce additional savings in public expenditure), the political debate now includes the proposal to reduce the amount of each current higher pension, especially those calculated with the pre-existing method (which, as mentioned, offered annuities proportionally exceeding the overall amount of contributions paid during the working life). However there is no consensus on the threshold beyond which the cuts should be made, neither on their percentage.

In summary, in 2011-2012 the Italian pension system was modified to cope with the abatement of income from contributions due to unemployment. This reform was the occasion to introduce many changes with an immediate deep impact on the prospects of retirement. In any case, some mitigating amendments are being introduced since a critical reflection on these changes was launched.

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