Economic Crisis and Labour Law Reforms in Italy

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1. Italy's economic scenario

Italian economic indicators provide us with a very worrying picture, even though it is shared by many other European countries. The recession seems not yet on the wane while stable growth cycles are far away, also due to the strong constraints linked to the *Stability and Growth Pact*, which, as we all know, imposes annual budget deficits not exceeding 3% of GDP (gross domestic product) and a public debt at 60% of GDP for EU's Member States, and to the *Fiscal Compact* which has bound participating countries to add in their Constitution the mandatory attainment of budgetary equilibrium (in Italy through Constitutional Law n. 1/2012, in amended articles 81[1] and 97[2] of the Constitution). As the recourse to public deficit as an expansionary measure for economic growth supporting the aggregated demand would be impossible, and the public debt set to cover the deficit of the State's financial requirements is expected to rise above the maximum threshold set by the EU (this as well concerns the majority of European countries, although with differing values), individual countries are prevented from implementing policies of growth and investment in struggling or strategic sectors, thus impacting on public national policies, including welfare. However, beside efforts made by some important European countries, at the moment changes or departures from the present situation and approaches of strictness and financial austerity promoted by the European Commission and Council do not seem realistic; therefore betting on a loosening of said constraints would seem quite infeasible, at least in the short run.

Italy's economic situation, as seen in July 2014[3], may be summarised with the help of a few key parameters: sluggish GDP at -0.1%, national budget deficit at 2.7% of GDP (produced in almost its entirety by the interests payable on the debt, as paid in the last 8 years in a much more consistent entity than in France and Germany, while the primary balance - the difference between debit and credit - is positive, and likewise Italy's private debt over the GDP is one of the lowest in Europe at 126% of GDP); industrial production at a yearly base +0.4%; consumer prices +0.2%; 12.3% unemployment rate (resulting from 11.5% for men and 13.4% for women, with a marked geographical difference: 8.4% in the North and 20.3% in the South of Italy); employment rate at 55% with 22 million and 360 thousand workers, a 0.3% drop in a year; amount of contractual wages

1 "The State shall guarantee the balance between revenues and expenditures in their budget, by taking into consideration the adverse and favourable phases of the economic cycle. The recourse to indebtedness is allowed only in order to take the effects of the economic cycle into consideration and in the occurrence of exceptional events, and all subject to the favourable vote expressed by the absolute majority of the two Houses of Parliament."

2 "Public administrations, consistently with European Union's regulations, ensure the balance of their accounts and the sustainability of public debt".

3 V. http://www.istat.it

+1.1% on a yearly basis (Italy's tax wedge is one of the highest in the Eurozone countries[4] and the average value of salaries is less than half that of Germany and two third that of France); export value 2013 -0.1% but with an increase in trade surplus from 9.9 to 30.4 billion Euros and a slight increase in Italy's market share with respect to world exports, equal to 2.8%.

The above description outlines a stand-off situation where, after two years of on-going recession (from 2007 to 2013, Italy's GDP contracted by 8.7% and the average per capita income dropped by around ten percentage points), the needed change in terms of economic and employment recovery seems hard to come by.

2. Effects of macroeconomic European surveillance on domestic social policies

This situation, perhaps excessively emphasised in the 2014 country-specific recommendation of the European Commission[5], has drawn great attention on Italy, with an unusual stress on the need to carry out structural reforms regarding Italy's labour market[6]. European institutions, in fact, seem to have clearly grasped the link between the functioning of the labour market, the flexibility in dealing with labour relations, bargaining contract decentralisation, removal of minimum wages at national level, and improvement of economic and balance figures. This close correlation, involving not only Italy but also all Member States, whenever – within the framework of the European Semester - a macroeconomic surveillance has been envisaged through the macroeconomic imbalances procedure (MIP)[7], extended to all *domestic employment and social policies*[8], has brought about a strong conditioning pressure by European institutions in the definition and assessment of social policies with an uncommon meddling by European agencies also in matters falling outside the legislative sphere of competence of the European Union (e.g. industrial relations and minimum wage). On the other hand among EU institutions there is the widespread understanding that "*labour law acts as a distorting factor in the operation of the single market and currency union*"[9].

4 http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Wages_and_labour_costs

5 European Commission, COM(2014) 413 final, Assessment of the 2014 national reform programme and stability programme for Italy.

6 See M. Decaro, *Dalla strategia di Lisbona a Europa 2020*, Fondazione Adriano Olivetti, Roma, 2011.

7 See, for an analytic reconstruction of the institutional framework, M.P. CHITI, *La crisi del debito sovrano e le sue influenze per la* governance *europea, i rapporti tra Stati membri, le pubbliche amministrazioni*, in Riv. It. Dir. Pubbl. Comunitario, 2013, pp. 6-25.

8 The targets in the social sphere taken up by the system of specific recommendations for the European Semester in terms of employment and social policies are: Labour market participation, Active labour market policy, Labour market segmentation, Education and training, Poverty and social inclusion.

9 S. DEAKIN, *The Sovereign Debt Crisis and European Labour Law*, in Ind. Law Journ., 2012, 41, p. 253.

The result has been a progressive deterioration of working conditions in exchange for the primary protection of national economies and the stability of financial markets[10]. In Italy consequences have been even harsher with respect to other European countries not solely for the EU's mistrust regarding our public debt, but also for the truly limited scope of action for the Cabinet, forced to look at employment protection measures as focus of their legislative action, given the fact that extensive actions at the level of public support in favour of employment and income would be untenable (due to insufficient budget and the need to avoid a further expansion of public spending) as well as attempts to curtail wages, already below the European average and subject to a tax and contributory burden which cannot be reduced as well, otherwise there would be an unbearable increase in the public deficit. Therefore the adoption of liberal-type reforms even by centre-left Cabinets has resulted inevitably, in the understanding that reducing the costs for companies linked to regulations and protection measures for workers would be necessary in order to foster the recovery of industrial production and employment.

On the basis of the double (and in any case controversial) axiom wanting that the GDP would measure the wealth of a country with certainty (but in reality how can one take effectively into account the shadow economy, illicit activities, public services, etc.), and that labour law and trade union regulations would restrain economic and employment development[11] (but perhaps there are other public policies, regulations, and practices which truly hamper the economy – taxation, the judiciary, infrastructures, public administration, just to mention a few), in the European Union an extraordinary emphasis has been placed on the need not only for the modernization of public policies for job promotion in our country, but also for the redefinition of workers' statute of rights and industrial relations laws in order to permit a lowering of the social cost of employment, thus making the internal regulatory environment (the so-called *business environment*) more attractive for investments and new business venues.

In this way, however, supposing that protective regression might produce an improvement in economic wealth for the State and a job increase, cornerstone values of the European Union's regulatory system would be affected irreversibly, such as human and professional dignity, the right to a good and stable employment, the right to job safety, the right to trade union actions and pluralism and to collective bargaining[12]. In brief, sustainable and socially fair growth would not be

10 Already in 2012 Catherine BARNARD (*The Financial Crisis and the Euro Plus Pact: A Labour Lawyer's Perspective*, in Ind. Law Journ., 2012, 41, 114) remarked how "*labour law is on the menu ... There is a threat to national labour law as we know it and that threat is driven largely by the EU*".

11 See Document of Economy and Finance (D.E.F.) 2014, Italian Ministry of Economy and Finance: the reference to the macro-economic impact of programme measures provided for by l.d. n. 34/2014, and quantified as an increase in GDP, private consumption, employment and even gross fixed investment in the next five years, seems quite relevant (p. 51).

12 Article 151(1) of the Treaty on the Functioning of the European Union (TFEU) provides that "*The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have*

created, but presumably just growth, thus giving priority to capital and finance to the detriment of employment and its value-laden dimension[13]. In this way we would revert to the very beginning of the Community law system, having as its aim the creation of a free-trade economic space, but with the aggravating factor that now we have shifted from the original aloofness towards social matters to a marked meddling on Member States' internal laws governing workers' protection measures in order to downplay or even destroy them[14].

It is against this background that today in Italy the season of labour law reforms is necessarily following the direction pointed at by the EU[15], leaving aside the social achievements reached in the second half of last century and the efforts made in the last decade to attain a shared reconciliation between the rightful demands for flexibility in the management of human resources by companies, and the safeguarding of decent employment, enabling the full expression of workers' personality.

3. Short excursus *on the past decade of Italy's social legislation*

The 21st-century labour market legislation in Italy found its first source of inspiration in a programmatic document, drafted in 2001 by a team of scholars headed by Marco Biagi: the White Paper on labour market - *Proposals for an active society and quality employment*. The White Paper, which was in its turn based on the European Employment Strategy from 1997, formulated a series of reform proposals aiming at job growth, improvement of job quality and the widening of social cohesion, to be pursued through a substantial re-distribution of protection measures and enhancement of the role of the labour market.

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as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion".

13 Regarding the previous European social seasons concerning harmonisation, open method of co-ordination, the Social Charter of Fundamental Rights, the Lisbon Strategy up to the Europe 2020 Strategy, with the well-known target of 75% of the 20-64 year old to be employed, see F. CARINCI, A. PIZZOFERRATO (ed. by), *Diritto del lavoro dell'Unione Europea*, UTET, 2010, pp. 1-981. See also S. SCIARRA, *Experiments in the Open Method of Coordination: Measuring the Impact of EU Employment Policies*, in Riv. It. Dir. Lav., 2011, I, p. 475 ss.

14 See A. SEIFERT, *European Economic Governance and the Labor Laws of the E.U. Member States*, in Comp. Labor Law & Pol'y Journal, 2014, 312: "*Recent European developments, which have taken place in the wake of the current financial and economic crisis, cast a very dark cloud over these uncontested achievements of European social policy and risk to affect social policy in Europe. As a matter of fact, the mechanism of European economic law, in particular those adopted during the crisis, invade more and more the national labor and employment laws of the E.U. Member States and put pressure to liberalize their labor markets. The reforms imposed or "recommended" may imply profound and far-going changes of the national collective bargaining system (e.g., the restriction of extensions or the decentralization of bargaining levels), the existing system of dismissal protection or the national wage policy. By this, the autonomy of European Social Policy is challenged, and the center of gravity of European Social Policy shifts increasingly to the economic and financial Policy of the European Union*".

15 See F. CARINCI, *Il diritto del lavoro che verrà (in occasione del congedo accademico di un amico)*, in Arg. Dir. Lav., 2014, 3, p. 655 ss. which remarks how the multilateral economic surveillance implemented during the European semester has impacted heavily on our Government "*forced to act under scrutiny by Brussels, as if it were so to speak on probation, forced to follow a strictly predetermined economic and financial route, to the point that the well-tried difference between centre-right and centre-left has been blurred, as shown by the fact that in the «Second Republic» the alternating centre-left and centre-right Cabinets have not shown any discontinuity in terms of labour policies*."

The following year, social partners (with the exclusion of CGIL) signed the Pact for Italy, by which they undertook to provide a concrete response to requests coming from Europe, which also proposed detailed reforms of the labour market, social security and taxation. In particular, actions on the labour market were based on the Community idea of "*welfare to work*", and therefore on the idea of creating a welfare State for employment capable of assuring citizens' employment and transforming the Italian system into a modern and competitive system, also at international level.

Regulatory actions on employment in the following years have moved in the direction of making employment more flexible as an incentive for hiring.

In primis, delegated decree n. 30/2003 and legislative decree n. 276/2003 for the "*putting into effect of delegations in the matters concerning employment and the labour market*", the so-called Biagi Act, have brought about a thorough reviewing, by the introduction of a plethora of atypical and flexible contract forms: project-based employment, job sharing, job on-call, training contracts, agency work. These came to be added to fixed-term employment, whose regulation had been defined two years before by legislative decree n. 368/2001 according to an approach aiming at including temporary employment into the regulatory system, although bound by the presence of specific production or organisational reasons for the drawing up of this kind of contract.

The 2003 decree has undergone many and repeated changes and integrations till the present day. Of these, the *Protocol on social security, employment and competition for equity and sustainable growth*, of 2007, the so-called Welfare Protocol, followed by the welfare Law n. 247/2007, is particularly relevant. The text made reference to the social security system, unemployment benefits and labour market, although stepping back from entry-level flexibility, through a restriction in the access to fixed-term work, a review of part-time work, the elimination of open-ended agency work and the abolition of on-call jobs.

The recession started soon after that, bringing Italian law-makers to open the season of measures "against the crisis" with decree law n. 112/2008, enacted as law n. 133/2008, attempting to secure employment by focusing again on flexible work.

Soon after that, decree law n. 185/2008, enacted as law n. 2/2009, and correlated decree law n. 5/2009, enacted as law n. 33/2009, have focused the attention on the need to strengthen the economic system supporting families and the unemployed, and have widened the access options and the scope of unemployment insurance.

The well-known law n. 183/2010, the so-called Collegato Lavoro – Employment Annex - , may be considered part of the legislation "against the crisis": in fact, it has taken up the ideas of the White Paper for employment protection; it has intervened on fixed-term employment and also introduced the institution of certification, as well as conciliation and arbitration as systems of dispute

resolution in the matter of labour law, in order to solve the problems of heavy backlog for labour courts, strongly increased by disputes arising from flexible contracts.

As the economic crisis continued, the technical Cabinet just sworn in offered right away another contribution with its pension reform, implemented with decree law n. 201/2011, enacted as law n. 214/2011, specifically aiming at reducing pension expenditure by increasing the requisites needed to be entitled to retirement benefits, and by curbing the system of automatic equalization.

In August 2011 the European Central Bank sent the Italian government a letter in which it practically placed the country under the guardianship of the European institutions. As regards the national labour law system, the Central Bank demanded a review of the structure of collective bargaining, so that company-level contracts defining wages and work conditions according to the company's specific needs could be signed, also derogating from other bargaining levels; it also demanded a review of provisions regulating the hiring and dismissal of employees, by establishing a system of unemployment insurance and a set of active policies for the labour market capable of facilitating the re-allocation of resources towards companies and more competitive sectors.

Italy responded promptly (although criticised in literature[16]) to the letter from the Central Bank with art. 8 of decree law n. 138/2011, enacted as law n. 148/2011, the so-called Financial Bill of Ferragosto/Mid-August, assigning the power to derogate from many points of the regulation governing employment relations both at higher contract levels and in the law itself, in favour of the "proximity" collective bargaining, in order to meet a series of goals, including employment growth.

The new reform of the labour market has been implemented with law n. 92/2012, the so-called Fornero reform. It revolves around three guide lines: mitigation of flexibility at entry-level; stressing flexibility at exit-level; anchoring of unemployment benefits to corporate reversible crises, and review of active labour policies. Once again, law-makers have impacted on the matter of fixed-term contract by stressing at first the open-ended labour contract, which was identified as "*common form of employment*", while at the same time releasing the recourse to temporary employment from the constraint of having specific technical motivations. The reform enabled in fact to sign an initial temporary contract without the obligation to specify its motivation ("acausale"), with a duration not exceeding twelve months, and assigned to collective bargaining contracts signed by those workers' trade unions and employer's associations which were comparatively more representative at national level, the power to provide for – at inter-union level or, through delegating at decentralised level - the signing of temporary contracts without any specific motivation, as long as they fell within an organisational process initiated to launch a new product or an innovative service, for the carrying

16 See F. CARINCI, *Il lungo cammino per Santiago della rappresentatività sindacale: dal Tit. III dello Statuto dei lavoratori al Testo Unico sulla Rappresentanza 10 gennaio 2014*, in Dir. Rel. Ind., 2014, 2, pp. 338-341.

out of a relevant technological change, for the completion of an additional stage of a relevant research and development project, or for an extension of an important manufacturing order. This provision has come to overlap what would be envisaged in the later law n. 221/2012, enabling innovative company start-ups to sign temporary contracts without motivations, for a period of four years from their creation.

As a counterpoise to the extending of the possible recourse to the fixed-term contract, the Fornero reform has envisaged the increase in its costs by assigning to employers an additional contribution on the taxable pay, aiming at financing the «Social Insurance for Employment (Aspi)», the support measure against involuntary unemployment linked to it, and set up to replace the previous unemployment and mobility benefits, with an extension of the recipients' categories.

Law n. 92/2012 has also intervened on the institute of apprenticeship, despite the recent adoption of the Single Text, by the legislative decree n. 167/2011. Apprenticeship has been considered the main access route to employment for young people and a minimum duration has been introduced; the hiring of new apprentices has been linked to the stabilisation of a given percentage of apprentices already working for the employer, at the completion of the training period; a maximum ratio has been set between the number of apprentices and that of skilled workers in the company.

The new rules have shown from the start a shortcoming in the matter of employment stability. Therefore they have been accompanied by the passing of the decree law n. 83/2012, the so-called Development Decree, enacted as law n. 134/2012, comprising other supporting measures for companies, as well as a long series of explanatory – but *de facto* corrective - circular letters and ministerial notes, on the contents of the reform.

One year later the law-makers intervened on the matter with decree law n. 76/2013, the so-called Employment Package, enacted as law n. 99/2013. In essence it has envisaged three measures for employment promotion: incentives offered to companies hiring, by June 30th 2015 and with open-ended, even part-time contracts, workers aged eighteen to twenty nine, who have been unemployed for at least six months, or are without high-school or vocational school diploma; provisions concerning self-employment and business start-up partially consisting in the re-financing of measures introduced with legislative decree n. 185/2000; incentives to employers for the hiring of workers benefiting from Aspi.

In recent months, also following the renewed mistrust of EU institutions concerning the reform measures applied by Italy, we have seen a new surge of legislative actions.

As regards the first regulatory actions launched by the Renzi Cabinet, we may mention here the much-debated decree law n. 34/2014, later enacted as law n. 78/2014, falling within the wider programme for employment promotion, called “Jobs Act”[17].

[17] See P. ICHINO, Report to the Parliament, 6th of May 2014, http://www.pietroichino.it/?p=31020.

The regulation has envisaged measures for employment relaunch and simplification of procedures for companies, in its dealing with fixed-term employment, as well as with the provision of temporary work, apprenticeship, the "de-materializing" of the single Document for contributory compliance (DURC) and the strengthening of the role of collective solidarity-based contracts in situation where the fall in industrial productivity may put jobs at risk.

As regards specifically temporary work, a substantial liberalisation has been applied to the fixed-term contract, which may extend to a maximum duration of three years without any causal motivation, and be subject to five extensions, within the above-mentioned time frame, in comparison with the single extension contemplated in the previous regulation, and to an unspecified number of renewals.

As regards instead the apprenticeship contract, both the legislative decree n. 167/2011 and law n. 92/2012 have been modified in several parts, and simplified modes of drafting the apprentice's individual training plan have been introduced, on the basis of forms and documents identified through collective bargaining or bilateral agencies. Employers' obligations from the previous legislation have also been reduced, in particular concerning the stabilization of apprentices, with a lowering of the percentage of stabilizations conditioning the new hiring of apprentices and the scope of application of this constraint in larger-size companies.

The 2014 law is set to be implemented shortly via the next enactment of the bill delegated to the Cabinet, now being examined in the Parliamentary commission (Bill n. 1428/2014), aiming at carrying out a review of unemployment benefits and active policies, besides employment regulations. In its being complementary to the measures adopted through the previous decree, the bill makes the focus of the delegating power to the Cabinet the matter of unemployment insurance, the simplification and streamlining of procedures and provisions relating to the management of employment, the reorganisation of the types of labour contracts, the review of measures concerning maternity protection and all forms of reconciliation between work and private life.

Italian law-makers had thus to accomplish – as following the EU's recommendations - new and additional reforms of the labour law and labour market characterised by flexibility and simplification of the regulations, in order to lift constraint and regulatory costs for companies. However, as it could not adopt reductions of wages (already quite low in comparison with the rest of Europe, and in any case controlled by art. 36 of the Constitution imposing a remuneration proportionate to quantity and quality of work being carried out and in any case sufficient to ensure workers and their family a free and decent life), nor the reduction of the tax wedge for the consequences on the deficit it would entail[18], the only remaining margin has consisted in the

18 With the exception of dependent work earning a gross annual salary below 24,000 Euros, to which an 80 Euros monthly bonus has been granted.

reduction of regulatory costs and a better anchoring system covering income support for involuntary unemployment and the search for new employment.

4. Italian labour market and the new tools ready to take off

The Jobs Act launched by the Renzi Cabinet is based on four pillars: the first is represented by the liberalisation of the fixed-term contract; the second by the introduction of a new type of contract with a growing degree of protection; the third by the review of the system of unemployment insurance; the fourth by the experimentation of a contract of employment outplacement called "contratto di ricollocazione professionale". In the promoters' intentions, the purpose of the package of measures consisted in not only reducing costs and increasing job flexibility to foster production recovery, but also in solving the problem of strong segmentation of the Italian labour market and its lacerating dualism of protection measures between insiders and outsiders, between employed and self-employed workers, between full-time employees and atypical workers with temporary and uncertain jobs, between workers of medium-large sized companies (more than 15 employees in the production unit) and workers in small companies. Undoubtedly these are the two main evils of our system, incapable as they are, on the one hand, to bring irregular workers towards stability in the short-medium term, and on the other hand to downplay differences in treatment, by envisaging progressive and incremental regulations.

The first goal has been certainly reached via: i) the increased flexibility at entry-level in the labour market, considered that - although in the presence of stable employment needs - the employer is allowed to hire workers with fixed-term contracts and keep them for 36 months (maximum duration established by the law), with repeated extensions (up to 5) and multiple renewals (in compliance with the minimum interval of 10 or 20 days, respectively, according to whether the contract exceeds six months or not), or for a longer time period authorised by collective bargaining, also at company level, or following a mere factual change of tasks carried out after the first three-year period. All this without any possibility of lodging a claim against the recourse to the temporary contract, and therefore also in clearly unlawful hypotheses, which are punished only if exceeding maximum legal thresholds (20% of employees working in the company) with an administrative pecuniary sanction set as a percentage of paid remunerations and the number of incurred infringements[19]; ii) increased flexibility at exit-level via the adoption of an open-ended labour contract with growing levels of

19 See the claim filed by CGIL, the man Italian trade union, with the European Commission on 7 August 2014 for the infringement by the Italian l.d. n. 34/2014 of Directive 1999/70/CE, together with art. 30 of the Charter of the Fundamental Rights of the European Union and art. 24 of the European Social Charter, and Directive 2000/78/CE in the matter of equal treatment in the access to employment and fight against age discrimination: "*It is therefore easy to predict that the fixed-term labour contract will become the "common form" of employment, thus completely overturning the aims and the specific approach pursued by Directive 1999/70/CE, and thus engendering that form of "casualisation of workers" that the Court of Justice has deemed to be in stark contrast with the source of European Law*".

protection[20] which for the first three years of enforcement does not provide for the application of the regulation governing dismissals for economic reasons or actual business needs, but only for a progressively increasing *firing cost* pre-determined before-hand, with possible contribution by the employer toward the payment of the public involuntary unemployment benefit received by the workers after their dismissal, without any kind of judicial control whatsoever on the incurred termination of employment, unless the dismissal has taken place for discriminatory reasons[21]; iii) the increased flexibility of employment via the derogating use of the plant collective level; iv) the increased flexibility in the management of public service via the review of the regulations governing mobility, posted work, outplacement without opposition following redundancies established through the spending review, temporary hiring, prohibition to retain in service workers after they have reached their retirement age, beside a relevant cut in expenditure following the freeze on turnover, on the national collective bargaining agreements, and on wages which have not been adjusted since 2010.

The second goal still remains to be demonstrated, instead, and only the lesson of facts will provide us with clear indications. For the time being, we can just remark that it is hard to understand why a company should forgo the opportunity to manage in total freedom the many and repeated fixed-term contracts in order for them to hire workers through a contract with increasing protection measures which, although more convenient than the typical model of employment, would be in any case costlier than the temporary contract (at least if applying the fixed-term contract below the maximum duration). In any case today in Italy the consensus around the adoption of fixed-term contracts for new jobs exceeds 70%, and as the percentage will inevitably grow, and quite relevantly with the reform, which concrete space would then remain for the growing-protection contract? The segmentation and dualism could therefore remain unchanged, with the risk of worsening circumstances for young people, seemingly all fated to hold temporary and unstable jobs forever. However, the fragmentation of contract models used in Italy in order to regulate the different forms of hiring to the advantage of companies (including - besides the employment contract - also the contract for professional services, the agency agreement, the partnership agreement, the contract of coordinated and continuous collaboration, the project-based contract, the contract of association in participation, the franchising agreement, the contract of business procurement) does respond in the first instance, and in their physiological dimension, to real needs of the companies, in their pursuing the economic interest of adopting a specific contract type. As a consequence, the removal and *reductio ad unum* of possible contracts, far from engendering a

20 The idea was born in France around the mid-2010s: see A. PERULLI, *Il diritto del lavoro tra libertà e sicurezza*, in Riv. It. Dir. Lav., 2012, I, pp. 272-275.

21 See D.E.F. 2014, Section three, part I, p. III.

simplification and operational streamlining with subsequent drop in administrative operating costs, would cause organisational stiffness and operational difficulties for the management by objectives and in the project management.

Thus the model of flexisecurity tends to dim in Italy, both for the tilting of the regulatory centre of gravity towards the first of the two terms – flexibility -, and for the only partial success, taking place in a limited number of Italian Regions, of public active employment policies, in terms of job creation and guidance, specialised training and on-the-job training, as well as job placement[22]. Forms of labour market protection have been experimented for vulnerable groups (women and young people[23]), aiming - in the distribution of state and regional resources - at initiatives for the protection of gender parity and self-employment, for the support of youth and women's employment via economic bonus and tax and social security incentives, the issuing of vouchers for high-level and professional learning, but the majority of resources have been earmarked for income protection in case of company's crises, both within and without the workplace. The introduction and generalisation of the "Redundancy Fund in derogation" and Aspi have brought about the universalisation of welfare protection within the framework of dependent work. However, in general, the difficulties in providing adequate active and passive protection to workers in transition from one job to another are clearly shown by data reporting growing unemployment rates in Italy, 0.8% higher than the European average and with a strong gender-based gap, and forecasts exceeding 40% for the second quarter of 2014 for young people (15-24 years-of-age bracket) (although this figure is linked to the high level of illegal and/or irregular work by young people in Italy).

The contract of regional outplacement, still to be legally implemented, pursues instead the purpose of providing incentives for the re-employment of dismissed personnel, thus enabling to exercise an effective control over the use and destination of public resources. In particular the Job Centre would identify the level of *employability* of the person who has not been able to find a job on his/her own, and provide full information on the contract contents. The person would choose the *outplacement agency* among those registered, which will be compensated with a regional *voucher* linked to the difficulty in placing the subject to the local and national production setting. The *voucher* is payable only after the *successful placing*, namely when the person involved has found a job lasting at least six months. The outplacement contract establishes the obligations of the person

22 On the difficulties concerning to shift from job security to labour market security, via the definition of the needed guarantees of employability to accompany the worker from one stable job to another, see M. BROLLO, *Il Diritto del mercato del lavoro postmoderno*, in Arg. Dir. Lav., 2012, 4-5, p. 856 ss.

23 Italy has implemented the Youth Guarantee via the adoption of an articulated model of State and regional initiatives with the participation of around 120,000 young people aged 15 to 29; the measure is based on the support provided for experiences of guidance, internship, work (hiring contribution), apprenticeship, participation in Master's or high-level learning courses , for young people who have just left the "formal" education system. The aim is obviously that of reducing the number of NEET - Not *(engaged)* in Employment, Education or Training-, by facilitating their access to the labour market or to job-qualifying training courses (http://www.garanziagiovani.gov.it).

and assigns to the *tutor* (the *job advisor* named by the agency) a power of control and reporting for the possible groundless rejection of a post (or the required activity to find it) by the person involved, with consequent reduction or interruption of the unemployment benefit.

5. *The near future of Labour Law: towards radical metamorphosis or mere re-styling?*

The reformist effort which is being pursued by the Italian Government in the field of constitutional and structural reforms is highly remarkable and having a prospective impact.

The Italian Parliament has passed or is still debating a number of statutory regulations in order to improve institutional governance (electoral law, reform of bicameralism), reduce costs in politics (abrogation of provinces, lowering the number of senators, eliminating ineffectual agencies), prevent corruption and reinforce the principle of legality, combat tax evasion and hidden work, privatise state-owned companies, and downsizing of state-owned real estate property, boost export as well as the *Made-in-Italy*, overhaul public spending, combat waste of money in public procurement and privileged remuneration received by some public servants, promote self-entrepreneurship, and reform civil and criminal justice systems.

These policies, as well as any consequential economic measures to rationalise collective savings and spending, incentivise new businesses, enhance highly innovative and strategic industries, increase efficiency in public utilities services and modernise domestic infrastructure are supposed to favourably affect Italy's economy and its competitiveness in Europe and across the world, in a significant manner and over the long term.

Social matters should be instead treated more cautiously firstly because no growth per se, and in whatever form, can be always positive and result in widespread welfare (e.g. the African continent whose growth rate over the years 2013-2104 was one of the highest across the world, +5.1% of GDP, but which is still afflicted by high poverty rate, unchanged still despite their economic growth). Secondly, any backtracking on job conditions due to contingencies dependent on failure to emerge gradually from the crisis would become structural and consolidated, while bringing a long term worsening of social inclusion and cohesion rate and ultimately influencing negatively democracy and participation in national development both at institutionalised and informal levels.

If it is true that the Italian government is undoubtedly required to enforce EU's measures also in the employment area, such measures were simply outlined by the European authorities and were not described in every detail, thus leaving sufficient room to alternative forms of implementation. We need not, therefore, be "more royalist than the king" by outperforming the EU through the implementation of liberal policies and flexibility. What we need, on the contrary, is taking a pragmatic and non ideological approach, while providing an appropriate amount of flexibility, which is to be proportional to crisis and pressures from other systems based on low labour costs and

limited social benefits, and safeguarding our social model and job dignity as well as the purpose and mission of labour law.

Two paradigmatic examples can be provided. Economic uncertainty, natural volatility and fluidity of business organisational environment have put indeed in jeopardy the reinstatement protection measures, thus the permanent waiver of the principle of restoring employees unfairly dismissed to their former job, duty and/or workplace, in case of unlawful transfer, is now likely to be taken into account. However, in the case of unfair dismissal, protection cannot be thoroughly nullified depriving law courts of every control whatsoever, not even by providing employees with standardised compensation measures. Unless the operation of awarding compensation is designed to restrain misuse of unfair dismissal; but in order to be so, compensation should be quite substantial and therefore generating additional and non-sustainable overheads for the company, especially when the dismissals are motivated by reasons of company's reorganisation and restructuring. Therefore a form of protection should be in any case always contemplated, together with its related legal control on its application, in order to avoid, on the one hand, that the social cost of dismissal would be borne exclusively by the company, and on the other hand that workers would end up by being exposed to the substantial inequality of the work relation through the liberalisation of the power to dismiss which, *de facto*, would fully freeze any existing employment protection measure. In alternative, balancing more equitably the gap existing in Italy between the protection in small-sized companies (compensation ranging from 2.5 to 6 monthly wages) and protection in medium-to-large-sized companies (except in cases of severe infringement, compensation from a minimum of 6 to a maximum of 24 monthly wages) would instead be more suitable, also through the adoption of other application parameters, besides the number of employees, such as the company's property assets, the amount of proceeds or operating profits.

On the other hand, the abrogation of existing types of flexible contracts (for ex. agency work, accessory work, project-based work, etc.) risks to reduce company's options and foster hidden work. Withstanding the opportunity to design a simplified labour code, also in pursuance of a final re-constructive systematisation, limiting existing contract types would be counterproductive; rather, the distribution of protection forms should be reviewed, with an overall loosening of measures within the framework of a regulatory *continuum* between a minimum and a maximum level, but without a complete dismantling of the discipline limiting dismissals.

In essence, if the high public debt and the European institutions called upon to provide the market with economic-financial stability demand a review of labour protection measures and policies according to the prism of proportionality and adequacy[24], vetoes cannot be put nor can prejudicial

24 On the principle of proportionality and balancing as judicial control tool of legislative constraints and reductions of fundamental social rights in time of crisis, see S.B. CARUSO, *Nuove traiettorie del diritto del lavoro nella crisi europea. Il caso italiano*, in WP CSDLE "Massimo D'Antona".INT – 111/2014, pp. 14-23

waivers or postponing delays be accepted; what counts is that the outlined backtracking measures, both regarding the protection regime, and that of public investments for the labour market, do not distort the essence and function of labour law regulations, and are implemented with their required gradualness and equity and with the direct participation of social players.

In terms of relations with trade unions as well, a similar principle does apply: it is evident that economic margins for the implementation of policies agreed together by the three stakeholders (government, trade unions, business organisations) are no longer there or have been strongly curtailed, and likewise the contextual situation for an institutionalisation or *ex lege* legitimation of federate trade unions' practices is non-existent. However keeping open social dialogue channels would seem to be appropriate, as well as having preventive talks and exchanges with stakeholders highly representing the area of reference (workers on the one hand, companies on the other hand), in order to improve the efficacy and effectiveness of adopted measures through the sharing and involvement of subjects representing the interests of labour and business. And this not in order to stop reform initiatives, but to have the support and the exchange with experiences and analyses of qualified subjects in the world of labour. The issue of workers' participation in business *governance*, for example, would be perfectly suited to the exercise of social dialogue, whenever it is necessary to highlight business *best practices* to be promoted and supported (workers' shareholding, or appointment of independent advisors, or participation in the supervisory board, the setting-up of joint consultation bodies).

Unfortunately this has not always been the case (for example, the latest development, namely the 50% reduction in leave-taking for trade-union activities for trade unions with the highest representation of public servants, has taken place without previous information and consultation with trade union organisations – art. 7 l.d. n. 90/2014), and the responsibility does not always fall on politics, but the right way to proceed would seem to us that of involving stakeholders in projects and privileging bargaining approaches. Not to bring back trade unions to the political arena, nor to foster new season of consociativism, but to avoid that the elimination of the intermediate bodies would produce a depletion of the democratic process and a progressive detachment from collective bargaining, in particular at national level.

Therefore, although in the full understanding that cuts will have to be made on the existing statutory or collective protection of employees, caution would be necessary by recognising the role of associations and trade-union pluralism inside and outside the workplace, keeping trade-union organisations as essential interlocutors within a framework of more flexible – but in any case

(http://csdle.lex.unict.it/Archive/WP/WP%20CSDLE%20M%20DANTONA/WP%20CSDLE%20M%20DANTONA-INT/20140821-083212_caruso_n111-2014intpdf.pdf)

mandatory - legislative regulations[25], except for instances expressly provided for by the law, as well as the role of simplified public policies in terms of procedures, to be assessed according to whether they meet defined targets. At the same time our country cannot any longer postpone the implementation of a project which would envisage a serious reduction in the tax wedge, thus abating the accursed average 65-70% of indirect burden on labour costs making illegal work excessively appealing, and reducing – here certainly in a devastating manner – the expectations of growth in regular and stable employment. For sure, a loosening of the deficit constraint would be of help for this purpose, but a result of this kind should be pursued in any case quite decisively through domestic focused actions (from the reduction of public spending to the fight against tax evasion, to the battle against illicit trafficking by organised crime) and perhaps through a harmonising action by the EU in setting homogeneous parameters of taxation in the different Member States. This would avoid unfair practices of tax dumping (corporate localisation based on the criterion of the highest tax savings), which add up to the social dumping practices which have already taken place in Europe for decades, but also to set up in Italy a value of sustainable taxation for companies and labour, taken as a reference threshold for the entire EU.

If it is true that "*the erosion of social protections implies a reduced emphasis on the security dimension of flexicurity*"[26], and if it is likewise true that this is an unstoppable process in order to foster competition in the European business system, it should be equally clear that if we truly want to meet the goal set by the Lisbon Strategy to create "*the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion*", we cannot do it without labour law. A labour law that is renewed in its forms, techniques, protection contents, but looking upwards to achieve social justice. In order to make all of this possible, and to avoid the full mercantilization of employment, the idea of the inequality of contracting parties, and of the need to set a legal counterweight to the intensive exploitation of labour, can't be left. Labour law should persist as a living instrument for the protection of individuals, their physical integrity and moral personality, and continue to be the essential safety net of relations in the workplace."*Adelante, Pedro, si puedes*" … "*Pedro, adelante con juicio*"[27]; let us move forward then, but in the awareness of the system and the effects that any nullifying amendment would create on its overall application and, as a consequence, on people's lives.

25 See W. NJOYA, *Job Security in a Flexible Labor Market: Challenges and Possibilities for Worker Voice*, in Comp. Labor Law & Pol'y Journal, 2013, pp. 474-479.
26 J. HEYES, *Flexicurity in Crisis: European Labour Market Policies in a time of austerity*, in European Journal of Industrial Relations, 2013, 19, p. 82.
27 A. MANZONI, *I promessi sposi*, cap. XIII.