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Title: The New "Increasing Protections Employment Contract" As A Measure Enacted By Italian Government Against Precarious Work and Unemployment

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1. The right to work in the European and International Charters

Fundamental Charters declare existence of a right to work.

Universal Declaration of Human Rights of 1948 states, "Everyone has the right to work and other social rights, to free choice of employment, to just and favourable conditions of works and to protection against unemployment".

Article 15 of the Charter of Fundamental Rights of the European Union states, "Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation; and paragraph 2: "Every citizen of the Union has to seek employment, to work, to exercise the right of establishment and to provide services in any Member State".

At the same time, article 145 of the European Treaty provides that, "Member States and the Union shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union."; and article 147: "The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action; and paragraph 2 of the same article: "The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities".

How it is highlighted by these statements it is difficult to give a unique and comprehensive definition of the right to work, because it includes a right to pursue an occupation, but also free choice of an employment, the right to a decent work and protection from unemployment[1]. This composite nature of the right to work makes it imprecise in this meaning, impracticable, hybrid and just instrumental because it is aimed at obtaining other rights as right to life or other welfare values[2].

Furthermore, beneath, the right to work is recognised in the most important Charters right to work remain very difficult to be pursued. For this reason it is not built by law as a "claim-right", in other words as a right that can be directly enforceable. It does mean that there is not a correlative duty on government to provide work to the citizens, even because full employment is an "utopia": no one government can guarantee a job to everybody: right to work is "a right in a weak or *manifesto* sense"[3].

At the same time nobody can compel persons to carry out a job, because social right of working includes negative right to choose to not gain a job[4].

From this "state of art" Bob Hepple, in an article that is a classic on this topic[5], argued that right to work can guarantee only the "right of individuals to equal treatment and equal respect"[6] and for this reason the law on racial, disability, sex, age discrimination, to guarantee equality and equal opportunity in the job must be made stronger.

Furthermore according to Bob Hepple, protection in case of unfair dismissal by procedural controls and trade unions consultations about the choice to dismiss could be improved to guarantee a right to work.

However, right to work is very important for economic and social reasons and always actual[7]. Working is a means for self-realisation, self-respect or self-esteem and a means to live for a person who has no private income for sustenance[8].

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[1] H Collins, *Is There a Human Right to Work?,* in *The Right to Work, Legal and Philosophical Perspectives*, edited by Virginia Mantouvalou, Hart Publishing, Oxford and Portland, 2015, 21.

[2] H. Collins, *Is There a Human Right to Work?,* in *The Right to Work, Legal and Philosophical Perspectives*, edited by Virginia Mantouvalou, Hart Publishing, Oxford and Portland, 2015, 22, 25, 26, 27; H. Collins, *Employment Law*, Oxford University Press, 2010, 253.

[3] J. W. Nickel, *Giving Up on th Human Right to Work*, in *The Right to Work, Legal and Philosophical Perspectives*, edited by Virginia Mantouvalou, Hart Publishing, Oxford and Portland, 2015, 142.

[4] H. Collins, *Is There a Human Right to Work?,* in *The Right to Work, Legal and Philosophical Perspectives*, cit., 21.

[5] B. Hepple, *A Right to work*?, Ind Law J (1981) 10 (1): 65-83.

[6] B. Hepple, *A Right to work*?, Ind Law J (1981) 10 (1): 82.

[7] F. M. Cirillo, *Comment to article 4 of the Italian Constitution, Diritto del lavoro* edited by G. Amoroso, v. Di Cerbo, A. Maresca, Milano, Giuffrè,2013, 63.

[8] H. Collins, *Is There a Human Right to Work?,* in *The Right to Work, Legal and Philosophical Perspectives*, cit., 28-35.

2. The implementation of the right to work in Italy

For this reason even in Italy in the Constitution, right to work is introduced within the fundamental principles. But right to work provided by article 4 of Italian Constitution is a programmatic principle. Beneath article 4 provides that "Republic recognizes right to work and promotes conditions to make effective this right", this provision does not allow an employee to claim against the Italian state to get an occupation, because this provision does not create a contractual obligation to guarantee work but it is only an invitation by the state and to the public institutions to guarantee an occupation to all Italian citizens. In other words right to work is a project that must be fulfilled by the Italian state. But what in case this project is not realized? Is there a sanction against governments failing in the attempt to ensure work for every citizen? Being article 4, just a programmatic provision the only sanction applicable is political and social and it consists in the public disapproval about the policy carried on for ensuring right to work. So right to work is a very weak right[9], because it is not enforceable[10].

However, work is the most important value in our Constitution. This is demonstrated also by article 1 of the Constitution itself where it is declared that Italy is "a democratic republic founded on work". In the idea of the Constitution, work is the principal activity to improve material and spiritual well-being of the society, but also work is the way to attribute a role to the person in the society: they are not the privileged backgrounds or hereditary positions to place man in society but work[11].

This last concept creates a remarkable linkage with the Catholic culture, even because the Catholic culture shapes meaningfully our law system and our Fundamental Chart[12].

But States cannot guarantee full employment to everybody. For this reason article 4 imposes only a program, an activity to introduce proactive measures to create works but does not impose the result to give a job to everybody, because this result is clearly an "utopia".

From these considerations it is possible to understand why in Italy the right to work principle provided by article 4 of the Italian Constitution has been implemented with the introduction of the public bureau for employment. In particular placement activity was taken away from

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[9] G. U. Rescigno, *Il progetto consegnato nell'art. 3, comma 2, della Costituzione italiana*, *L'attualità dei principi fondamentali della Costituzione in materia di lavoro*, Jovene, Napoli, 2009, 63.

[10] O. Mazzotta, *Comment to article 4 of the Italian Constitution, Commentario breve alle leggi sul lavoro,* ed. By Grandi- Pera, Cedam, Padova, 2013, 15

[11] R. Nania, *Riflessioni sulla "Costituzione economica" in Italia: il "lavoro" come "fondamento", come "diritto", come "dovere"*, ed. by E. Ghera, A. Pace*, L'attualità dei principi fondamentali della Costituzione in materia di lavoro*, Jovene, Napoli, 2009, 63.

[12] G. Loy, *Una Repubblica fondata sul lavoro*, ed. by Ghera-Pace, *L'attualità dei principi fondamentali della Costituzione in materia di lavoro*, Jovene, Napoli, 2009, p. 11, se also Toniolo, *Il concetto cristiano di democrazia*, Roma, 1945, 19.

trade unions (that were in the fascist era the main subjects doing this activity) and given to the public offices. In the opinion of the government trade unions would have facilitated more members of trade unions and less of another job seekers who were not members, thus going against the freedom of association. For this reason placement activity has been committed to public offices (see law 29th of April 1949) and trade unions had only the possibility to participating in the public institutions aimed at placement activities[13]. But the public bureaus have failed their activities: very few persons were hired by them. First signals of the failure of public placement activity was the passage from the numerical to the nominal call and the finally passage to the direct hiring by article 9bis, par. 1 of the law n. 608 of the 1996. Contract of employment is not reached through an administrative procedure which is carried out by public offices but directly by employer with employee and there is only a duty to send the contract and documentations requested by the law to the public offices[14].

At the another side, labour market rigidity induced public institutions and trade unions to concentrate all the protections within the employment relationship. Under the consideration that if it is very difficult finding a new job it is better to keep the job you have ![15]

Except in case of dismissal for gross misconduct (art. 2119 Code civil = "giusta causa di licenziamento") to dismiss an employee, for the employer the period of notice was only mandatory whose length is indicated by national collective agreements (art. 2118 Code civil).

For this reason between 1960 and 1970 Italy introduced a number of provisions giving protection to the employee within employment relationship.

Law 15th of July 1966, n. 604 imposes on employers justification to dismiss (article 1); dismissal communication in writing; burden of proof is on the employer and not on the employee; article 4 of the same law declares void the discriminatory dismissal.

Art. 8 law n. 604/1966 imposes re-engagement of the employee unfairly dismissed or a payment of the allowance between 2, 5 and 6 months of salary.

By introduction of the "Statuto dei lavoratori" (Law 20th of May 1970, n. 300) the dismissal law arrived to the maximum rigidity: in case of unfair dismissal in every productive unit with more than 15 employees, employees unfairly dismissed had to be reinstated in the same position with the payment of an indemnity that covered all the years from the dismissal until the effective return to the service (article 18, par. Law n. 300/1970).

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[13] O. Mazzotta, *Diritto del lavoro*, Giuffrè, Milano, 2002, 328.

[14] By numerical call persons were chosen for job without watching to their names and in this way it was guaranteed a balanced distribution of the job opportunities between all unemployment persons, nominal calls guaranteed hiring by name but now the main rule is the direct call: employer hires employee and after must communicate to the public office the contract of employment conclusion.

[15] G. Loy, *Una Repubblica fondata sul lavoro*, in Ghera-Pace, *L'attualità dei principi fondamentali della Costituzione in materia di lavoro*, cit., 41.

According to a recent opinion the fact that protection has been concentrated on dismissal has been caused also by the fact that Italy is a Catholic country and the family institution is central. For this reason, the family is more protected if employment is permanent, especially when the employee is only the man[16].

Furthermore excluded trade unions from labour market activities concentrated their actions to achieve more protection within the employment relationship[17].

According to recent studies this situation has created a vicious circle: because dismissal is very difficult or almost impossible, the labour market becomes static, as the labour market is static, sanctions for dismissal become more serious to protect employees already having a job, and this situation made it more difficult to find available work positions for new employees and so on[18].

The employment relationship has been protected by a sort of "job property rule" regime, instead by a "liability rule" regime: employees often have got restitution of employment relation by the reinstatement as employment relation is a "property good". Furthermore case law shows that reinstatement in Italy has caused that employee to be immovable from the job-place[19] and this situation is particular evident in the Italian public sector.

3. The years of flexibility: the multiplication of the typologies of jobs and the "duality" of the labour market.

Since 90's on forward globalisation, economic crisis have change the way to produce and consequently the labour market[20]. Firms have started to fight against global competition with two main measures at organisation level: outsourcing and flexibility. By outsourcing, enterprises have reduced the organisation dimension concentrating the costs on the core business of the economic activities. Main instruments to outsource are the transfer of undertaking ruled in Europe by the Directive n. 2001/23/CE and the service provision change. The last frontier of outsourcing is the delocalisation as cross-border transfer of activity that create many questions of protection.

Another effect caused by globalisation is flexibility.

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[16] G. Rodano, *Il mercato del lavoro italiano prima e dopo il Job Act*, "Sapienza" Università di Roma 29th of April 2015, 14.

[17] G. Rodano, *Il mercato del lavoro italiano prima e dopo il Job Act*, "Sapienza" Università di Roma 29th of April 2015, 14.

[18] P. Ichino, Il lavoro ritrovato, Mondadori, Milano, 2015, 36.

[19] The decisions are quoted by P. Ichino. Il lavoro ritrovato, cit., 7-17.

[20] In general on globalisation see K. De Feyter, *Economic globalisation and Human Rights*, edited by W. Benedek – K. De Feyter – F. Marrella, Cambridge, 2007, p. 3; C. Kauffman, *Globalisation and Labour Rights*, Oxford and Portland, 2007, p. 7.

According to Munck[21] there are four typologies of flexibility: "internal numerical flexibility", (when hours of work are adaptable to the employer organisation), "external numerical flexibility" (when the number of workers is adaptable), "functional flexibility" (when work duties can be modified), and "wages flexibility" (when salary is variable).

All the four kinds of flexibility has been introduced but particularly the "external numerical flexibility" by introducing different flexible works.

Italy as well as the most European countries have introduced many typologies of flexible work to tackle economic crisis: it is well known how flexible work is more advantageous for firms for many reasons: hours of work are less than standard work, work is temporary and so it does not involve a permanent cost to employers, but these kinds of works cause precariousness[22].

European directives have introduced as main protection for precarious workers (temporary, part-time, fixed-term workers) principles of equal treatment and non discrimination in the sense that precarious workers are entitled to the same rights as applied to the standards employees (article 5 Directive 2008/104/Ce; Clause 4 of the Framework Agreement on part-time work implemented by Directive 97/81/EC and Clause 4 of the Framework Agreement on fixed-term work implemented by Directive 1999/70/EC), but non discrimination principle is not an efficient protection for precarious workers[23]: precariousness affects not only economical treatment in employment relation but also further profiles beyond employment relationship as trade union membership, exercise of collective rights, participation in collective actions and in strikes, social security protection, exercise of judicial and extrajudicial protections; in other words some of the rights introduced by the Charter of Fundamental Rights of European Union and also in the ILO Conventions.

Furthermore, in the UK as well as in Italy the workforce has become segmented and fragmented (M. Weiss)[24].

In countries such as Italy these typologies of work have the function to bypass the rigid legal rules on dismissal (sanctions in case of unfair dismissal) as seen above.

This situation has been caused by the circumstance that project expressed in the "Libro Bianco" by Marco Biagi and inspired to the "flexicurity model" was abandoned[25]: according

[21] R. Munck, *Globalisation and Labour*, *The new "Great Transformation"*, London-New York, Zed Books, 2002, 72.

[22] A. Pizzoferrato, *Il percorso di riforme del diritto del lavoro nell'attuale contesto economico*, *Arg. Dir. lav*, 2015, 58.

[23] A different opinion is expressed by A.L. Bogg, *Only Fools and Horses: Some Sceptical reflections on the Rights to Work*, in *The Right to Work, Legal and Philosophical Perspectives*, edited by Virginia Mantouvalou, Hart Publishing, Oxford and Portland, 2015, 168.

[24] M. Weiss, *External Disintegration and the Scope of Labour law protection*, *Scritti in onore di E. Ghera*, II, Cacucci, Bari, 2008, 1337-1348.

to this model flexibility of the job must be accompanied by state support (with different kinds of measures) during periods of unemployment or partial unemployment. So in Italy only flexibility has been introduced without security, however flexibility has been introduced with a very low level of security and this caused precariousness and uncertainty.

In particular in Italy the labour market has been split into two parts: 1) the overprotected employees hired with subordination contracts covered by a very rigid law on dismissal: dismissal has to be justified and in case it is unfair the employees could have the reinstatement that in very simple words means the return of the employee into the same position of work like the dismissal has not been happened; 2) Precarious workers are less protected because they are hired with temporary contracts.

This situation is not only in Italy but in every country that in Europe introduced flexibility, as it has been stated very well by the "Green Paper" entitled "Modernising labour law to meet the challenges of the 21st century". According to the Paper there were some "detrimental effects associated with the increasing diversity of working arrangements" caused by "the risk part of the workforce who get trapped in a succession of short-term, low quality jobs with inadequate social protection leaving them in a vulnerable position".[26] Furthermore, the Green Paper itself highlighted that the stringent employment protection legislation tends to reduce the dynanism of the labour market, worsening the prospects of women, youths and older workers" and that "deregulation at the margin" while keeping stringent rules for regular contracts largely intact and tendend to develop a segmented labour markets with a negative impact on productivity". For all the reasons above a "well designed unemployment benefit system, coordinated with active labour market policies seem to perform better as an insurance against labour market risk"[27].

The Green Paper has introduced the flexicurity model and this pattern of protection being, in effect, a execution of the Lisbon strategy. According to this new European Union trend, protection must not be in the employment relationship but in the labour market.

Employers to be competitive need a more flexible organization but in the same time employees must participate more actively in the labour market "by ensuring that employees possess new skills" to find a new job. So much emphasis is put on training workers, giving them incentives to be competitive in the labour market[28]. In conclusion "social justice at EU

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[25] See *Libro Bianco sul mercato del lavoro in Italia*, Roma, ottobre 2001, 12.

[26] *Green Paper on "Modernising labour law to meet the challenges of the 21st century",* 22nd November (COM) 2006, 708 final, 8.

[27] *Green Paper on "Modernising labour law to meet the challenges of the 21st century",* 22nd November (COM) 2006, 708 final, 8.

[28] C. Barnard, *European Labour Law*, Oxford University Press, Oxford, 2006, 59.

level is no longer conceived in terms of creating ad hoc rights for those who are already economically active (workers) but extends to removing obstacles to labour market participation from socially excluded groups"[29].

In other words, in the new conception of labour law in Italy as in other European countries, employees will get protection not inside employment relationship but in the labour market through a system of public and private support aimed at supporting him or her to find another job position.

4. The new "employment contract with increasing protections"

Jobs Act is aimed at realising for the first time in Italy the flexicurity model that complies with the European project expressed by the Green Book on the modernization of labour law (2006) and other European policies[30], but it does this using new instruments.

First of all, flexibility is not realised anymore by the introduction of many typologies of work but with the flexibilization of the dismissal in the permanent contract by the introduction of the "employment contract with increasing protection"; security is realised by the introduction of measures including an early identification need, job search assistance, guidance and training: these activities are carried out under the coordination of the new National Agency for the Active Policies for Labour (see par. 5); security of the unemployed job-seekers is ensured by the new system of benefits and subsidies during the unemployment periods (par. 6); by the new contract of replacement, which is quite a new feature in Europe amongts the active labour market measures (par. 7).

According to the idea to put back together the two parts of the labour market, the new Italian Government led by Matteo Renzi has introduced the new feature of "employment contract with increasing protections"[31]. The contract provides a reduction of the protection against dismissal: the reinstatement provided by the law is substituted by an economic indemnity that is commensurated with the length of the service (minimum allowance is 4 months of salary and it will increase up to 24 months after 12 years of service) (see article 3, par. 1 decree n.23/2015). Reinstatement is imposed only in case of discriminatory dismissal or in case of disciplinary dismissal when breach of contract does not occur and in other cases expressly determined by law (article 3 decree n.23/2015).

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[29] C. Barnard, *European Labour Law*, Oxford University Press, Oxford, 2006, 61.

[30] A. Alaimo, *Ricollocazione dei disoccupati e politiche attive del lavoro. Promesse e premesse di security nel Jobs Act del Governo Renzi*, W.P. C.S.D.L.E., "Massimo D'Antona". IT – 249/2015, 4.

[31] A. Pizzoferrato, *Il percorso di riforme del diritto del lavoro nell'attuale contesto economico*, *cit.*, 63.

It means that in the most parts of case of dismissal, employees unfairly dismissed will get just an economic allowance in a similar way to what in the UK is called redundancy payment.

The new law allows reinstatement only in marginal cases and, so, Italian law on dismissal changes its "ratio": it passes from a "property rule" regime to a "liability rule" regime[32]. According to the property rule regime the job position is untouchable as a good: everybody must to abstain from every behaviour that can disturb the use of the good and in case of subtraction good must be returned to the owner. Instead by a liability rule regime unfair dismissal gives only right to get a payment for damage caused by breach of contract.

By article 18 law n. 300 of 1970 costs of dismissal was uncertain for the employer: indemnity amounted to all the salaries from the dismissal until the effective reinstatement of employee in the same job position. Because in Italy trials are long and uncertain: a trial for unfair dismissal can arrive at the Supreme Court decision even after 12 years when judges recognise employee has been unfairly dismissed and costs becomes very high. For this reason new reform is aimed at reducing and making certain the unfair dismissal costs for the employer.

It is also true that new law makes more uncertain continuation of the job for employee because even if dismissal is evaluated by a judge as unfair, the employee has just a right to an economic allowance.

In other words, flexibility in the employment relation is accompanied by the reduction of the flexible typologies of job. The recently approved decree 15th June 2015 n. 81 has deleted many of the flexible works typologies and did an operation of simplification on the other ones. Without analisying all the huge last reform of the flexible works[33] what it is an important highlight is the architecture of the reform: it is the reduction of the flexible works and the putting in the centre of the labour market the permanent employment contract.

5. The contract of replacement

In the labour market an employee dismissed must find a vast range of support to find a new employment including economical supports such as economic subsidies that accompany an employee during the unemployment period. Among active measures, contract of replacement represents something really new for Italy.

The contract of replacement is the feature that expresses more than any others the new active employment policy that moves protections from employment relationship to the labour market.

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[32] P. Ichino, *Il lavoro ritrovato*, Mondadori, Milano, 2015, 73.

[33] On which see M. Tiraboschi, *Prima lettura del d.lgs. n. 81/2015 recante la disciplina organica dei contratti di lavoro*, in *ADAPT Labour Studies e-Book series*, n. 45.

For the first time with contract of replacement agency (it can be a public or private authorized by the government) has duty to find a place of job to the employees dismissed or for the first time job-seeker.

According to article 17 of the decree n. 22/2015, an unemployed person "has a right to receive from public or certified private services an intensive activity of support in looking for a job by the conclusion of a contract of replacement".

At the same time the unemployed looking for a job has the duty to participate in the procedure for the creation of his or her profile aiming at his or her employability.

Only after this he or she can receive a "voucher" defined as "an individual endowment for the replacement". This will be cashed by the work agency if and when the person is employed. So this subsidy provided by the state and, in particular, by the National Agency for the labour active policies (see below par. 6) is a stimulus for the agencies and public body to find a job for unemployed persons and, at the same time, vouchers are a good allocation of public resources because they are obtained by the agencies only when a position of job is available.

The amount of endowment is proportional to the employability of the person who is looking for job: the more difficult it is to find a job, the higher will be the amount of money provided by the state.

The mechanism as described above is governed by the principle of conditionality: only if you do a certain activity imposed by law you can have a reward.

Same principle must rule unemployed person behaviour: he or she must be an active subject in the initiative when it is being carried out by the agency; has right and duty to participate in the research of the job position, take professional vocational training aimed at find positions coherent with the labour market demand; as organised and arranged by the appointed agency (art. 17, par. 4 decree n. 22/2015). Only if he or she participates in an active way as described he or she can be supported in the job-seeking and subsided by the state.

If the job seeker does not comply with his or her duties, he or she does not participate to the initiatives run by agency or he or she does not accept a job offer without justification he or she will lose the endowment. He or she will loose endowment even in case he or she will find a job autonomously loosing unemployment status (article 17, par. 6 decree n. 22).

Whereas an employee is obliged to get a job that the agency will find him/her (except a fair justification to refuse), the agency must carry out its activity in favour of the jobseeker with professionality and the best technique in the sector of the employment agencies.

So, for the first time, the provision is not just programmatic but it becomes enforceable by single job-seeker when the agency does not carry out its activity. The provision on contract of

replacement is a more favourable treatment for employees than article 4 of Italian Constitution.

In other words, the contract provides, on one side, obligations on the operator that materialize in "research, training and retraining"; on the other hand, the duty of the employee is to play an active role to cooperate in all activities of the operator. The individual dowry may be collected only by the operator when it has a "result obtained employment" and if the employee is employed. Again reform hinges on the requirement of cross-compliance: only if and when public or the private entity authorised finds a job for the unemployed jobseeker can it cash the voucher.

Now, by this provision, law has introduced an enforceable right to work[34]. This suggests that the agency can be sued because there is breach of contract unless the worker is replaced. No less, however, it is not an obligation of result as only an obligation of means: as well as in all professional activities require that the mediation is conducted in a diligent way but the agency does not have to guarantee the result. This is also consistent with the right to work that cannot, by the way, be guaranteed to everybody.

6. Subsidies, benefits incentives against unemployment

A good system of protection in the labour market cannot work if it is not accompanied by a well organised system of economic subsidies and benefits that can help a job-seeker until he or she has found a new job.

The first subsidy, called NASpi (Nuova Prestazione di Assicurazione sociale per l'Impiego = New Allowance of Social Insurance for the Employment), just replaces the subsidy for the permanent contract of employment. Requirements by law are 13 weeks of contribution in the 4 years before the unemployment period and at the least 30 days of effective work within the year before the starting of the unemployment status. The subsidy is accorded also to the employees which employment cessation will be caused by constructive dismissal or consensual extinction (article 3 decree 4th of March 2015, n. 22).

From 1st of January 2017 the subsidy cannot be accorded for a period superior to 78 weeks. Another relevant new profile is that the indemnity is compatible with carrying out of another job if the income is inferior to the minimum salary provided by law. So in this case unemployment subsidy becomes a poverty subsidy.

However, NASpi will be reduced to 80%: the condition is if employee will communicate the new job within 30 days.

[34] M. Tiraboschi, *Jobs Act e contratto di ricollocazione: prime interpetazioni e valutazioni di sistem*a, Dir. rel. ind., 2015, 6.

This articulated system of subsidies has been extended to all the typologies of works and also to the self-employed workers. The DIS-COLL is, infact, a subsidy for coordinated and continuative collaborators, a feature of autonomous work today ruled by article 409 of code of civil procedure and not anymore by special law after the semplification pursued by the Renzi Government between the typologies of flexible work and the attempt to a *reductio ad unum*.
Conditions are: unemployment status according to the article 1, par. 2, letter c) law n. 181 of the 2000; 3 months of contribution or 1 month of contribution and 1 month of work before unemployment status started.
The duration shall be half of the months of contribution of the year before unemployment starts. So it is quite shorter if it is compared to the NASpi.
Furthermore, the introduction of the subsidy is experimental and only for 2015. However it is a good starting point that demonstrates the apparent will to cover not only the subordinated employees but all the workers. As well as it is demonstrated by the introduction of the Unemployment allowance (= assegno di disoccupazione) ASDI. This allowance will be accorded after the NASpi for 6 months and it is 75 % of the NASpi allowance. Main requirement is the economic situation of the family of the employee certified with ISEE (a system of certification used in Italy to prove the family income). It is clear that the ASDI will be accorded only in cases where an employee's family receive a low income being the ASDI an allowance for poor families (art. 16, par. 6 decree n. 22 of 2015).
All the allowances above described are under the requirement of the conditionality: unemployed person must participate actively to the initiatives to find a job otherwise he or she will loose the economic subsidy. Furthermore subsidies will be lost if unemployed person refuses without a valid justification the new job (article 7 decree n. 22 of 2015).
Furthermore, Government subsidises considerably employers hiring with the new contract (up to € 8060 euro per year for each employee). This new labour policy is aiming at increasing permanent occupations and going beyond flexible employment deemed as a cause of precariousness and social insecurity.

7. The National Agency for the Active Policies for Employment

The decree on active policies for labour and the constitution of the National Agency for the Active Policies fro Employment (ANPAL) is still not approved. This is one of the pivotal points of the last reform of labour law in Italy. This body will have function of coordination

between public and private subjects operating in labour market. This specific part of the reform will equalize Italy to others European countries such as Germany and the UK[35].

According to the scheme of the decree in approval, maybe, the next autumn Agency will cover many functions as development of professional vocational training for employees (article 10); organisation of active policies for employment in the regions and the autonomous provinces (article 11); accreditation of private bodies (article 12); creation of the unique information system for the labour policies and of the electronic folder of the employee (article 13); coordination of the informative systems (article 14); constitution and safekeeping of the National Register of the bodies authorised to do vocational training (article 15); supervision and evaluation on the results reached by public and private subjects carrying out active policies for the employment (article 16).

As we have seen just now, the Agency will be competent for the active policies; instead INPS (National Social Security Institute) will be competent for the passive policies for labour (subsidies, benefits, economic supplies).

Some problems remain unresolved as, for example, 1) how the two bodies will be coordinated so each other can pursue their results; 2) how public and private subjects will interact; 3) if authorisation system already introduced in Italy (article 7 of the decree 276/2003). Will this work in the new labour market or must it be modified?

However, the idea of the new law is creating a sort of "direction cabin"[36] for ordering on all the Italian territories the activities aimed at matching the offers and demands of work.

8. Conclusions: Some open questions

Now in Italy employment protection inside employment relationship is lighter but protection is stronger in the labour market. The introduction of the "employment contract with increasing protections" is accomplished by the "contract of re-placement". The contract obliges agency work and employee both to seek work, in the same time by a combined range of instruments as support to find a new job, professional training programs, and, most important provision, the constitution of an "endowment" by the State that will be "cashed" by the agency when the employee obtains the new job position (art. 17 d.lgs. 7th of March 2015, n. 23). This new law is similar to the law implemented in the UK under Blair administration,

[35] A. Alaimo, *Ricollocazione dei disoccupati e politiche attive del lavoro. Promesse e premesse di security nel Jobs Act del Governo Renzi*, W.P. C.S.D.L.E., "Massimo D'Antona". IT – 249/2015, 9.

[36] The expression is used by A. Alaimo, *Ricollocazione dei disoccupati e politiche attive del lavoro. Promesse e premesse di security nel Jobs Act del Governo Renzi*, W.P. C.S.D.L.E., "Massimo D'Antona". IT – 249/2015, 9.

"turn over a new leaf": the move from the regulation of employment relations to labour market regulation.

It is evident that good results from the system of protection will depend by the available economic resources and by the efficiency of the coordination between the administrative bodies that will operate in the activities of placement and replacement of job seekers.

However, with the Jobs Act the way to conceive the right to work is completely changed: protections are not anymore within the employment relationship but they are allocated in the labour market by supporting measures which are carried out by the public and private bodies that are accorded on the conditionality.

This new construction of the labour law in Italy has been brought in to avoid the dualism in the labour market between permanent and precarious workers.

On this perspective Jobs Act has introduced a new conception of "permanent work": according to the Jobs Act permanent work does not mean the same job for all life but many different job for all the workers career, whereas continuity is guaranteed by accompanying measures in labour market.

In this way new government wants to guarantee well-being and effective participation in the society of larger groups of workers by deleting the division between "super-protected", "serie A", and no protected workers "serie B"[37], that, until now, are precarious and marginalized in the labour market.

In other words, new reform has introduced in Italy the flex-security model that promotes flexibility combining it with employment security, inspired by the Lisbon Strategy, but the new reform arises some questions:

1) Is the new law in compliance with the Lisbon Strategy? Can the new law reduce labour market segmentation and precariousness? Can the new law ensure inclusive labour markets, enhance work attractiveness and improve matching in the labour market?
2) If the answer to the first question is affirmative, can this pattern be extended to the other Member States or not? In other words, can the Italian model of labour market regulation be useful for European policies aimed at ensuring more employability and social inclusion?

   An important and quite recent book analyses the dismissal in the main European countries (France, Spain, Portugal, Germany, Great Britain): these countries have tendency to avoid

[37] As well as in Italy there are football teams in class A and in class B: the second ones can be awarded only if they pass to the class A.

reinstatement and to privilege, instead, economic compensation especially when dismissal is for economic reasons.[38].

And so, today, the same questions above related on the can be extended to almost all the European countries, and about the answer we say in Italy: "*Il tempo è galantuomo*" ="Time will tell".

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[38] See M. Pedrazzoli ed., *Le discipline dei licenziamenti in Europa, Ricognizioni e confronti*, Angeli, Milano, 2014, and *in particular* M. Pedrazzoli, *Licenziamenti in comparazione. La "flessibilità in uscita" nei paesi europei e la recente riforma italiana*, 319-343.

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