The Evolving Structure of Collective Bargaining in Italy (1990-2004)*

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1. The Regulatory Framework of Collective Bargaining

1.1. The evolution of the legal basis of collective bargaining

The system of industrial relations in Italy has evolved alongside the economic, social and institutional history of the country. At the turn of the last century, a new legal reality emerged from industrial conflict, featuring a series of autonomous regulations of contractual rather than statutory origin: the rules were not laid down by legislative provisions but by other sources which had the same abstract and general regulatory function. The aim of these agreements was the collective regulation of work relationships, especially in the metalworkers' sector. A novelty in Italy at that time, it was not by chance that these new agreements were called "tariff agreements" because they were basically confined to collectively regulating the price, or tariff, of labour.

This historical process of gradual affirmation of trade union law in dialogue with the national legal system but fundamentally autonomous with respect to civil law, due to the fact that it had germinated spontaneously from the action of organised groups of workers, was interrupted during the Fascist era. The interruption was caused by the corporative regime (1926-1943). In the system which derived from this regime, trade union law became a minor ranch of public and administrative law. Trade union law, the law of groups and spontaneity par excellence was entrapped within the rigid framework of public law: collective, or "corporative" bargaining as it was then called, was part of a rigidly hierarchical system of state sources; the trade unions recognised by the regime were considered to come under the jurisdiction of public law. At the same time, regulations governing collective bargaining by these trade unions – "corporative collective agreements" – were granted a juridical status, as far as their personal scopes was concerned, equal to that of a law, and in the hierarchy of sources only came second to actual laws and regulations. They were considered to be acts regulating the national economy rather than an expression of free self-regulation of professional and labour interests.

1.1.1. The post- Constitutional legal framework

Following the Fascist defeat in 1943 and approval of the Republican Constitution in 1948 the foundations were laid for a new trade union system which was very different from the "corporative" one in that it was based on assertion of what had hitherto been denied: trade union freedom (and therefore pluralism) (Art. 39, clause 1, Italian Const.) and the right to strike (Art. 40 Italian Const.).

Art. 39 of the Constitution, in particular, sets forth three principles:

- Trade union freedom, and thus pluralism, as the foundation of industrial relations;

- The public registration of trade unions, with a democratic statute, as a basic requirement in order for them to acquire the capacity to stipulate (national) collective agreements applicable to all workers belonging to the categories to which the contracts referred (*erga omnes* effect);

- The direct attribution of this bargaining capacity to bodies representing the registered trade unions, formed according to their respective numbers of members.

The provision was the result of a compromise: on the one hand, it asserted the principle of trade union freedom, but on the other it introduced a State control mechanism which immediately led to a diffident attitude on the part of the unions.

When the Constitution came into force, whereas the principle of trade union freedom guaranteed by Art. 39, clause 1 immediately became a cornerstone of the union system, the remaining part of the provisions set forth in Art. 39, clauses 2, 3 and 4 was not implemented. To be operational, in fact, this part required a series of specifications by state legislation, which – thanks to increasing opposition by the unions themselves, alarmed at the prospect of State intervention – never arrived.

By denying trade union relationships any direct regulation, the failure to pass a law on union activity was of particular significance and consolidated the principle whereby the State was not to interfere with the autonomous activities of social groups.

In the absence of specific public regulation, union activity came under the jurisdiction of private law. Collective bargaining was considered to be an expression of self-regulation of the interests of private individuals and thus regulated by the civil code. With no special law to regulate bargaining activity by the unions as provided for by Art. 39, clauses 2, 3, and 4, trade union law progressively developed around the concept of collective autonomy: just as private individuals could freely enter into exchange agreements via activity regulated by the civil code regarding contracts, so was it considered legitimate for this to occur in the case of groups and labour representation organisations, by virtue of the specific constitutional recognition of this autonomy: the principle of trade union freedom.

Although it did not concern the effects and modalities of collective bargaining, legislative regulation which was to strengthen the presence and role of the trade unions in the workplace was introduced in 1970 with the Workers' Statute (Law no. 300, 1970). This law was confined to externally supporting and promoting collective bargaining: it strengthened, but neither regulated or limited, trade union power. The Statute legislation granted unions a series of rights and functional guarantees supporting union action and its effectiveness in industries, thus legitimising them as contracting parties having the faculty to bargain with single employers (promoting the role of company-level bargaining) and, more generally, as political interlocutors with the State. This significant corpus of regulations did not, however, provide mechanisms whereby the personal scope of collective agreements could be extended: the strengthening of collective bargaining was only indirect.

1.1.2. The legal framework in the public employment sector

Slightly different regulation of collective bargaining in Italy was, however, achieved in the state employment sector, which comprises the various areas in which public administration operates (ministries, schools, regional and local authorities, the health service, public bodies, universities, etc.). Collective relations in this sector were for a long time regulated by the logic of public law, although this was gradually attenuated over the years: despite formal regulations set down in laws and rules, in practice bargaining relations were in some ways inspired by the principle of autonomy.

In the early '90s, in a climate of serious economic, political and institutional crisis, the government decided to introduce a radical reform of public administration (the so-called Bassanini Reform) which continued in various stages throughout the '90s.

The reform also affected the trade union law system. Unlike what had occurred in the private sector where, as we have seen, the prevailing principle was one of non-intervention by the state

in trade union representation, in the public sector the state intervened on a major scale to regulate the system of representation and collective bargaining, justifying its actions by the public and general significance of the interests involved: the control of inflation and public expenditure, the need for equal pay in the various departments, and the promotion of effectiveness and efficiency in public administration in general.

As will be seen below, Arts. 40-50 of the current law, Legislative Decree no. 165, 2001, set forth precise regulations governing the structure of agreements, the national and local trade union actors entitled to take part in collective bargaining, a single body legally authorised to represent the Public Administration sector (which the law establishes as being ARAN – "Agenzia per la rappresentanza negoziale delle pubbliche amministrazioni"), the various stages of the bargaining procedure, and finally the effectiveness of collective agreements stipulated in the public sector.

1.2. Trade union pluralism

The Italian system is based on the principle of trade union pluralism, which can be considered an effect of the principle of trade union freedom enshrined in Art. 39, clause 1, of the Constitution. The article states, in fact, that "Trade union organisation is to be free".

As mentioned above, the union system is not regulated by a State law establishing the requisites for an organisation to be legally classified as a union, nor by a law which imposes an ideology or scope, as happened under the Fascist regime. The State is to take no interest in the internal affairs of the unions, for example whether they comply with principles of democracy or not; individuals and groups who form coalitions that can be classified as unions – above all in relation to the collective protection of economic and professional interests – can thus do so for various reasons, which may be not only professional but also ideological, cultural, religious or based on ethnic and territorial identity.

Art. 39, clause 1 does not, however, only ensure organisational freedom. Its historical and political rationale is also that of asserting freedom of contractual action by trade unions.

The provision affirms the principle of "voluntary" and "representative" self-regulation, which means that access to bargaining and the stipulation of collective agreements is in no way subject to external control but granted exclusively by "mutual recognition" of the parties involved.

This freedom must not, however, be taken to mean that a general trade union entitlement to bargain for the stipulation of a collective agreement obliges employers to take part in bargaining: the initiation and result of bargaining procedures depend on the power relationships between the parties.

1.2.1. The concept of "Representative union" and its selective function for collective bargaining "derogating from the law"

Despite the freedom of action trade unions are granted by the Italian system, various instances of legislative intervention since the '80s have attempted to reserve the right to stipulate certain types of collective agreement for certain trade unions. In many cases, in fact, the law has assigned collective bargaining the role of supplementing, derogating from or substituting existing regulations, in the belief that certain aspects of industrial relations and/or the labour market could be better regulated by collective agreements rather than the law.

There have been various instances of remittal to collective bargaining; to mention just a few particularly significant examples of legislation in the '90s it is possible to recall the task the unions were assigned of establishing the criteria whereby workers were to be chosen for mobility schemes or dismissal in the event of collective dismissal due to reductions in staff numbers; of derogating from certain guarantees individual workers were legally entitled to (for example, the ban on assigning workers to less qualified jobs in the event of application of the worker mobility schemes provided for by Law no. 223/1991); of smoothing certain forms of rigidity existing in the legal regulation of flexible work (or "negotiated flexibility", as in the case of part-time work, training contracts, fixed-term contracts, temporary agency work, etc.)

In cases like those mentioned above, where collective bargaining was given the task of supplementing, derogating from or substituting for the law, legislators established certain criteria to identify the unions entitled to carry out this role and stipulate these particular kinds of collective agreements. Faced with a social situation in which trade union pluralism is often excessive (given the fragmentation of the unions), they had recourse to the notion of "representativeness", which was used as a criterion to choose between unions in situations where pluralism needed to be concentrated or to some extent reduced.

The notion of representativeness, used to operate a selection among the various unions, was not, however, unique. It changed, in fact, over the years according to the various contexts in which it was used. The law did not always refer simply to "union representativeness" (in fact it rarely did so); the noun almost always became a modifier, for example in expressions like the "most representative association (or confederation)", or the "comparatively most representative trade union association".

Beyond these more or less equivalent formulae, the problem posed by the notion of representativeness is basically that of its measurability. Although the notion is widely used by legislators, no attempt has been made to specify its meaning, that is, to indicate the criteria by which it is to be measured. When legislators confine themselves to reserving a certain contractual role for the comparatively more representative unions, they in practice neglect (and thus leave to others) the task of establishing, on either a general and abstract or concrete plane, who is comparatively more representative than anyone else, and who is not. It has thus been the task of scholars (*dottrina*) and practical jurisprudence to work out a series of indexes to measure the representativeness of a union or make a comparison between the most representative unions, taking into account elements such as the number of members, their presence in various production sectors and geographical areas, or the effectiveness, continuity and systematic nature of their bargaining activity. In reality, it cannot but be observed that the formula of a comparatively most representative union is highly ambiguous, given the objective difficulty of comparing entities that are only commensurable by assumption: there are no reference indexes and the levels the comparison is related to (territory, worker category, confederation, etc.) may vary. What is also lacking is a system agreed on between the parties for certifying union members and electoral data. It is thus a formula which implies a comparison but does not provide the technical tools for this comparison to be made.

Despite the objective difficulties of establishing clear criteria for the legitimisation of representative unions, it should be pointed out that the technique of assigning collective bargaining the task of supplementing, derogating from or substituting for legislation is widely used in the recent reform of the labour market introduced by Law no. 30/2003 and the subsequent Legislative Decree

no. 276/2003. This legislation, in fact, frequently mentions collective bargaining: at times the remit is merely to supplement and/or derogate from a collective agreement by means of either an individual contract or, more importantly, bargaining at a national, company or territorial level. This recent legislation frequently assigns functions to "comparatively most representative national or territorial trade unions" (for example to regulate aspects of new types of contract which introduce greater flexibility into the labour market), thus implying that to introduce broader margins of flexibility in management of the workforce it is not necessary to gain the consent of "all the representative unions": consent by "only some of them" is sufficient as long as they are comparatively more representative than others.

In establishing regional legislative competence for "job protection and security", the recent reform of Title V, and in particular Art. 117, of the Constitution, by means of Constitutional Law no. 3, passed on 18 October 2001, indirectly contributed towards diversifying the modalities for recognition of union representativeness, by involving unions in decentralised public functions regarding the labour market and employment services at a regional and provincial level.

1.2.2. The selection of representative trade unions in public sector employment

Unlike the private sector, legislators have intervened in the public sector to regulate the criteria governing legitimisation of the trade unions entitled to take part in the stipulation of collective agreements. To this end, well-defined measurable criteria have been introduced to link the notion of the representativeness of a union to pre-established objective measurement data. In the public sector, therefore, a union is not only assumed to be representative; nor are third parties called upon to decide which unions are to a greater or lesser extent representative, on the basis of discretionary assessment criteria.

The decision to regulate trade union entitlement to bargaining rights goes back to the '80s and was confirmed by the radical reform of employment relationships in public administration launched in the '90s (delegatory law no. 421/1993, which was followed by Legislative Decrees nos. 29/1993 and 396/1997). According to the current regulations, set forth in Art. 43 of Legislative Decree n. 165/2001, in the public sector a union is classified as representative by means of a formal legally regulated procedure to ascertain real indexes of its representativeness – and thus of the worker support it has. The purpose of this ascertainment of the actual representativeness of a union is to identify which unions will be allowed to take part in bargaining for the stipulation of collective agreements relating to certain areas of public administration (called "comparti" – department -, for example the health service, schools, ministries, etc.), which unions will be entitled to sign these agreements, and which will be allowed to trigger off the process of constitution of working councils (Rappresentanze Sindacali Unitarie) which will enjoy union rights.

This means that to take part in collective bargaining, to sign agreements (and also to enjoy other union rights) unions have to compete with each other to reach a sort of minimum threshold for access to representativeness. In this case representativeness is measured using specific indicators of worker support for the various organisations that wish to take part in the bargaining procedures and sign agreements. Worker backing is in particular measured on the basis of the number of members (associative criterion) and the results each union obtains in trade union elections, that is to say, elections for what are called the RSU or "Rappresentanze Sindacali Unitarie", (electoral criterion).

More specifically:

- *to take part in national collective bargaining* relating to a "department", unions have to have a minimum of 5% consensus. This percentage is obtained by calculating the weighted average between the number of members in the "comparto" referred to and the votes won in union elections;

- *to be entitled to sign national collective agreements*, the various unions backing the agreement have to represent at least 51% of workers, calculated as the average between the electoral and associative data for that department or contractual area, or at least 60% of the electoral data in the same context. This is the only example in the Italian trade union system of the law subordinating the juridical validity of collective agreements to prior verification of the existence of a procedural consensus requirement, even though *it is ascertained indirectly* on the basis of the electoral or associative backing enjoyed by the organisations stipulating the contract and *not directly*, on the basis of acceptance of the agreement by the workers involved (e.g. by means of a referendum).

According to Art. 46 of Legislative Decree no. 165/2001 public administration is represented in bargaining procedures by a special technical body: ARAN (Agenzia per la rappresentanza negoziale delle pubbliche amministrazioni). This body has five members, experts in trade union affairs and personnel management, who are appointed by a Decree issued by the President of the Council of Ministers (or Prime Minister) (on this point, see § 2.3.2. below).

In conclusion, the model of measured representativeness adopted in the public employment sector has a series of advantages that can be briefly summarised as follows: it makes it possible to link the representativeness requirement to certain worker support, in the sense that it is measured, thus reducing any discretionary element in recognising a union as being representative and consequently the risk of litigation. In addition, in the model excogitated by Italian legislators, consensus is measured by both the number of union members and the amount of votes the union wins in union elections. Measuring the degree of representativeness by means of both associative and electoral data is thus a reasonable trade-off between two different models and aspects of union representation: the associative model of the union, which represents above all its members; and the model of general representation, whereby a union represents the interests of workers, irrespective of which association they belong to.

1.3. Area in which collective bargaining takes place and trade union freedom

A further corollary which derives from the principle of trade union freedom enshrined in Art. 39, clause 1 of the Constitution, which states, as mentioned previously, that trade union organisations are free, is that the State is not allowed to interfere by legally establishing the territorial or subjective reference area in which the union is entitled to act. The State, that is, cannot decide that collective bargaining by the union is to be held at a national or regional or only company level; it cannot establish that is only to concern certain categories of products or workers, nor that only some issues and not others can be bargained for at the various levels. This constraint laid upon the State is the negative side of the positive contents of the principle of freedom.

And yet there is, in the Italian system, an exception to this general ban: once again it refers to public sector employment. Here it is the law (Art. 40 of Legislative Decree no. 165/2001) which establishes – by means of agreements between ARAN and the confederations representing public

sector workers – the areas (or national "comparti") in which collective bargaining is to take place, which issues can be negotiated at the various levels and the consequences of any violation of this setup (see § 3.3.1. below). As said above, this exception is accounted for by the fact that in public sector bargaining the interests that come into play are undeniably public and general and this external conditioning of the exercise of collective autonomy justifies intervention by the law in areas in which it is not normally allowed. In this case, to use more sophisticated terminology, collective bargaining is said to be functionalised, submitted to or conditioned by purposes that are alien to the interests it normally protects.

1.3.1. Models of collective bargaining

Various elements have contributed towards characterising the models of collective bargaining in the Italian system, due to the fact that it takes place in different areas and between parties with profoundly diversified interests.

In relation to these models, it is possible to examine collective bargaining vertically on several levels, which usually correspond to the organisational levels of the bodies talking part in the bargaining procedures (see also §§ 3 and ff. below).

The predominant, if not the only, model of collective bargaining in the period immediately following World War 2 was inter-confederate collective bargaining, that is, between confederations of employers and workers referring to "single categories of products" (industry, commerce, agriculture). This model, which in the public sector is called an inter-compartmental agreement or framework agreement, is still used in cases where the social partners consider it useful or necessary to have uniform regulation for several categories of workers (see § 4.2. and 5.2.1. below).

Following the particular development of the various sectors of the economy and production, from the '50s until the present the prevalent model of national collective bargaining has been represented by the "contratto collettivo nazionale di categoria" (or sector-wide based collective agreement) in the private sector and the "contratto collettivo di comparto" (or public department-based collective agreement) in the public sector, both pre-eminently structured according to the type of activity carried out by the enterprise or administration involved. In Italy, as in much of Europe, the national sector wide-based contract was the cornerstone of industrial relations in the Fordist organisation of labour: it regulated the minimum wage and conditions applicable to individual employment relationships in each category/sector, as well as industrial relations between the stipulating parties and their respective organisations (see § 4.1. and 5.2.2. below). Today, however, this central role appears to have been undermined by both an upward, European-level, drive and a downward drive caused by the shift towards a regional re-organisation of the State (Constitutional law no. 3 of 18 October 2001). The greater the decentralisation, with State powers regarding institutional competencies directly or indirectly affecting (and this differentiating between) salaries, the labour market, tax policies and welfare passing to local authorities, the weaker the capacity of the nation sector wide-based contract to regulate, standardise and equalise.

Above all at the beginning of this century, Italy saw the spread of new ad hoc "sector-level" national agreements. The road towards this new type of contract was essentially opened up by telecommunications companies with a contract signed on 28 June 2000, which was a significant innovation as it applied at a category level to about 300 thousand employees working for tele-

communications and/or telephone service providers, as opposed to the traditional national "company-level" contract (concerning about 100 thousand Telecom Italia employees). "Sector-level" agreements of this kind, originally company agreements and subsequently transformed into national agreements, were also signed in 2003 in the energy sector (essentially via extension of the ENEL – or national electricity board – company contract) and the railways (originally stipulated exclusively for employees of the Ferrovie dello Stato, or national railway company).

Another element that has profoundly influenced the birth and evolution of the models of collective bargaining in Italy is the difference in the economic and social development that has characterised the various geographical and territorial areas of the peninsula. Some territorial situations in both the south and north of the country have, in fact, developed a marked tendency towards territorial bargaining, which has led to a diversification in employment conditions, above all pay, according to the various spheres of reference. Collective territorial agreements are thus a historically important point of reference, even in production and service sectors (especially in the south of Italy) that are usually considered to be of secondary importance (see § 4.4. and 5.2.5 below). In recent years local and territorial bargaining, as promoted by EU institutions, has been enriched by the presence of other institutional actors, thus giving rise to decentralised concertation procedures. Territorial concertation in Italy has taken the name of "negotiated planning" and has been achieved via specific forms of territorial intervention such as territorial pacts, area agreements, planning agreements etc., governed by specific regulations introduced in the second half of the '90s (see § 2.4.2.).

Another element significantly influencing bargaining models is the size of companies: historically, collective bargaining was not widespread in small or very small enterprises (even in areas where the acceptance of such agreements was greater). It was only in the early '60s, following the economic boom, the growth in employment and the expansion of mass production that the model of company-level collective bargaining spread. Initially it was not even formally recognised, being a sort of "submerged" phenomenon brought into being by what were called internal committees, and mainly dealt with salary issues. This kind of bargaining, initially constrained by rigid objective and subjective rules laid down by the nation wide-sector -level agreement, mainly developed in the late '60s and early '70s, at a time when company-level bargaining was becoming the driving force behind innovative union policies (see also § 4.3. and 5.2.4.). In the public sector, on the other hand, the model of decentralised bargaining was represented by the "contrattazione integrativa", or supplementary bargaining, in the single administrative unit (see § 4.5. and 5.2.3).

Finally, it was only in 1983 that tripartite agreements began to appear in the system of industrial relations in Italy, that is, collective agreements stipulated by the largest union confederations and formally subscribed to by the government. These agreements, based on the well-known concertation method (see § 2.3.3. ff. below), are almost unanimously seen by scholars (*dottrina*) and the courts (see Constitutional Court ruling no. 34 of 7 February 1985), as lying beyond the traditional activity of collective bargaining, due to both the diversity of the actors involved (who included representatives of public institutions), and the peculiar nature of the issues and contents the concertation addressed (economic and incomes policies, employment and welfare policies etc., which only indirectly affect the regulation of individual employment relationships).

1.4. The problem of the personal scope of collective agreements

From the very beginning, collective bargaining has evolved in parallel with the problem of determining the exact personal scope of collective agreements.

Under the corporative regime collective agreements were essentially considered to be equivalent to a law, even though they were formally subordinate to the law from a hierarchical viewpoint. As the law explicitly stated, they applied to all who belonged to a specific category of products or jobs (be they employers or workers).

As seen above (§ 1.1.1.), following the defeat of the Fascist regime Art. 39 of the Constitution foreshadowed an architecture, or rather an institutional path, that presupposed activation by ordinary legislation and that would allow free, autonomous unions to stipulate collective agreements with an *erga omnes* effect. In order to obtain the power to stipulate binding *erga omnes* collective agreements, unions had, however, to submit to certain procedural rules (as established by Art. 39, clauses 2-4, Italian Const.).

This extension of personal scope of collective agreements, as mentioned previously, never took place and collective bargaining was considered to be an expression of self-regulation of the interests of private individuals and thus regulated by the civil code provisions regarding contracts. According to the 1942 Civil Code, the general rule governing contracts was that they only applied to the contracting parties, or to third parties (principals) who had entrusted those stipulating the contracts (proxies) with an explicit mandate, the latter being able to accept commitments on behalf of the former in that they represented them and therefore had the power to make binding agreements on their behalf. In the presence of this rule, the problem was therefore how to allow a private, *sui generis*, act, which normally only applied to the contracting parties, to extend its effects beyond the narrow circle of the "natural addressees", that is, only employers and workers who were members of the associations which signed the collective agreements.

If, as social experience in Italy shows, collective agreements ended up by extending their effects to workers and employers who did not belong to any trade union or employers organisation, and who thus had not given anyone a mandate to act on their behalf, from a strictly juridical viewpoint the legal tools and/or interpretative practice whereby this occurred remains to be explained.

1.4.1. The legislative attempt to achieve an *erga omnes* effect of collective agreements in the late '50s

An initial alternative to the provisions of Art. 39 of the Constitution was given by a law – no. 741/1959 (called the Vigorelli Law) – with which the Italian Parliament delegated the government to issue a series of decrees covering the "private" collective agreements then in force. In this way the private nature of collective agreements was formally respected, but by means of a legally binding decree which conferred *erga omnes* effect on them, thus avoiding the problem of activating the complex procedure provided for by Art. 39 of the Constitution.

It was, however, only a temporary solution because the legislative expedient which definitively "sidestepped" the precept laid down by Art. 39 of the Constitution was held to be illegitimate by the Constitutional Court in the early '60s.

Since then, the collective agreement has asserted its current physiognomy as a "private-law contract", the personal scope of which is formally limited to members of the organisations stipulating

the contract.

1.4.2. Extension of the personal scope of collective agreements as interpreted by scholars (*dottrina*) and the courts

As seen above, the collective agreement of "private-law" – thus called because regulated by the general norms of the Civil Code concerning private contracts – only has a legally binding effect between the stipulating parties and their members. The collective agreement therefore does not (or should not) apply to third parties – be they workers or enterprises – who are extraneous to the contract either because they are not members of a union or employers' association, or because they are members of organisations or associations other than those which stipulated the contract.

This corollary has, however, been belied by enterprise management practice, whereby an employer belonging to an association which has signed a collective agreement almost always finds it easier to apply the contract to all his employees, irrespective of whether or not they are members of the union which stipulated it.

Beyond general practice, however, it should be stated that an employer who is not a member of an association and who refuses to accept the collective agreement applying to the sector his company belongs to, is not compelled by the rules regulating private-law contracts to apply it to his employees, even if they are members of the unions which signed the contract; and even more so if they are not members of any union or members of unions that did not sign the contract. But for reasons of social equity courts and scholars (*dottrina*) in Italy have been induced to "bend" the logic and rules of civil law by means of interpretations which have in fact led to a more or less general personal scope of collective bargaining in the Italian system.

Various arguments have been put forward in support of this extension. Here we will only mention the argument which has gained interpretative prevalence over the years. Since the late '50s the so-called "master argument" has allowed the salary provisions of national collective agreements to be extended to any workers who asked for them, irrespective of whether their employer belonged to the association which signed the relative contract.

With the support of scholars (*dottrina*), judges have extended the personal scope of collective agreements regarding salary issues on the basis of Art. 36 of the Constitution, which entitles all workers to salaries featuring proportionality (to the quality and quantity of the services rendered) and sufficiency (to ensure the worker and his/her family of a free and respectable standard of living), and also on a Civil Code provision (Art. 2099) which, despite the fact that it was drawn up in a different context – that of the Fascist regime – allows judges to establish the salary a worker is entitled to on the basis of a fair assessment. By virtue of this provision, a judge can therefore rule in favour of a fair adjustment of an individual contract to constitutional principles, thus effectively applying the right to sufficient pay enshrined in Art. 36 of the Constitution. On the basis of these two premises, a judge has to identify a yardstick, a point of reference with which to establish a sufficient salary for a given worker, and in doing so the pay schemes contained in collective agreements have been seen as providing this parameter, this balance between conflicting interests, that can provide a reasonable point of reference for a fair ruling.

In the Italian system, therefore, judges are not legally obliged to apply the pay standards of collective agreements; they only do so for reasons of fairness, considering the contracted pay levels

to be socially the most adequate and fair reference parameters, and remain free to depart from these parameters, in their actual assessment, both *in melius* and *in peius*.

In conclusion, it should be stated that this interpretative solution only refers to the standard pay covered by collective agreements and does not have effect beyond actual litigation brought before employment tribunals.

1.4.3. Legal obligations to apply collective agreements

Italian legislation also contains legal mechanisms that in a sense reflect the solution proposed by the "master argument" analysed above.

The prototype of this legislative intervention is Art. 36 of the Workers' Statute, whereby public administration is obliged to include a clause in provisions granting financial benefits or awarding contracts for public works, requiring the beneficiaries or contractors to offer their employees pay and employment conditions that are not inferior to those holding for the collective agreements that apply to the worker category or area involved. It is evident that this is not a legal mechanism to extend the personal scope of a collective agreement of private-law nature but merely an obligation to respect such a contract: it is, in fact, one thing to automatically and obligatorily apply the legal effect of an *erga omnes* agreement, and another to require certain beneficiaries of public funds or contractors to respect certain private agreements or lose out: the sense of the provision is that if the enterprise wishes to take advantage of the benefit it has to apply the collective agreement.

The recent reform of the labour market contains a similar provision: Legislative Decree no. 276/2003, Art. 5, clause 2, letter *d)* states that temporary employment agencies or those engaging in staff leasing are required to "respect the obligations set forth by the national collective agreement applying to labour supply agencies". Here again, re-applying the technique used in the Workers' Statute to extend the personal scope of civil law collective agreements, companies (or, in this case, certain companies) are granted legal facilitations or benefits (authorisation to supply labour), on condition that they apply the relative collective agreement – as regards, that is, pay and employment conditions – to all their employees.

1.4.4. The personal scope of company-level collective agreements

In Italy, the personal scope of company-level collective agreements is slightly different from that of national collective agreements. The difference mainly lies in the difference in contents between company-level and national agreements and the different functions company-level agreements often perform (see also § 5.1. below).

Both on the initiative of the parties stipulating them and in compliance with legislative provisions, company-level agreements are used with increasing frequency to regulate situations not covered by the traditional incremental-acquisitive function of national agreements (new rights and better pay). There are two types of company-level agreements that do not have an acquisitive function:

- "sacrificial" company-level agreements", also called "*concession agreements"*, usually stipulated in periods of company crisis and possibly allowing broader margins of flexibility in the management of human resources;

- the so-called *management-plant level* agreements, used to regulate issues and situations in which the employer in any event has unilateral decision-making powers (e.g. agreements establishing which workers are to be transferred to another company in the event of transfer of undertakings, or collective agreements establishing the minimum amount of work that has to be guaranteed in the event of a strike by public or private sector workers providing services the law recognises as being essential and involving constitutionally significant values and interests (human life, health, education, etc. (Art. 2, clause 2, Law no. 146/90).

The problem of the personal scope of such agreements is exactly the opposite of what normally happens with wide sector-based national agreements or, more generally, agreements defined as granting ameliorative rights and treatment: in cases like the two above-mentioned agreements, legal action is taken by individuals or groups of workers who, by virtue of the common entitlement rule - either because they are not union members or because they belong to unions that have not signed the contract – reject the clause in the collective agreement, often because they disagree with the unions' decision to stipulate a "sacrificial" contract , which places constraints on private individual autonomy. In such situations the arguments and solutions excogitated by scholars (*dottrina*) and the courts to justify the extension of private collective agreements, beyond their natural boundaries, obviously change their tenor. Justifications are based on various types of logic. It is not, in fact, an issue of finding a juridical rationale for an operation inspired by principles of social equity, but of justifying the coerciveness of what, despite its collective origin, remains a contractual tool, towards private individual autonomy, which is clearly in dissent.

Here again, various arguments have been put forward. Up to the present, the prevailing solution provided by the Courts (Court of Cassation Ruling no. 1403, 1990) has argued that, although the *erga omnes* effect of company-level agreements should be excluded as a general rule, whenever the law refers to such agreements as are drawn up by structures belonging to the most or comparatively most representative unions (see § 1.2.1.), the generalised personal scope of these agreements may be accepted. More specifically, the courts have proposed a distinction between cases in which the collective agreement is specifically referred to in legislation and those in which collective bargaining takes place independently of any specific legislative reference. Whereas in the latter case ordinary civil code principles should apply, in the former case legislative reference could assign collective agreements a binding effect on all employees working for a company.

In the current positive legal framework, the only hypotheses in which management- plant level agreements can reasonably be stated to have a generalised personal scope are those typified in legislation as "proceduralising" powers otherwise unilaterally exercised by employers (see, for example, Constitutional Court Ruling no. 268, 1994, regarding collective dismissals, in which the Constitutional Court ruled on the personal scope of an agreement which, in compliance with Art. 5 clause 1 of Law no. 223/91, established different choosing criteria of workers to dismiss from those established by law)[465].

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[465] Similar reasoning was followed by the Constitutional Court in confirming the *erga omnes* legal effect of collective agreements (not, however, always at a company level) that establish minimum services to be guaranteed during strikes by workers in essential public service sectors. The Court ruled that the subsequent (and legally established) transposition of these agreements into service regulations conferred a binding legal effect on all workers providing the service involved, as the regulations were to be considered as "the exercise (proceduralised and therefore of binding content) of directive powers by the employer" (Constitutional Court Ruling no. 344, 1996).

1.4.5. The personal scope of collective agreements in the public sector

As mentioned previously, the reform of employment in the public sector, which commenced in 1993 with Legislative Decree no. 29/1993 and was consolidated by means of subsequent legislation culminating in Legislative Decree no. 165/2000, radically reorganised public administration, establishing that employment in the public sector was no longer to be governed by administrative regulations, as in the past, but by collective agreements. Unlike the private sector, however, the peculiar nature of the interests involved induced legislators to impose a set of precise rules on the system of collective bargaining.

As seen above (§ 1.2.2.), public administration is obligatorily represented by a public agency – ARAN – which cannot enter into negotiations with whomsoever it wishes (unlike employers' associations in the private sector), but only with unions which possess the representativeness requisites provided for by the law, and are thus assumed to be reliable. The validity of collective agreements in the public sector, unlike those in the private sector, is subject to a condition; this means that in order to validly exercise their regulatory legal effect they have to meet certain legal requirements (see § 1.2.2.).

In this sector, the law also regulates the validity and personal scope of collective agreements: the generalised extension of a collective agreement is, in fact, achieved by means of a dual, indirect mechanism. A collective agreement stipulated by ARAN and the union organisations allowed to enter into negotiations does not in itself apply to all workers in the department or area the contract refers to. However, the law (Art. 40, clause 4, Legislative Decree no. 165/2001) obliges public administration to apply collective agreements stipulated by ARAN. By law, administrations are obliged to offer all their employees equal contractual standards, or at least to apply standards that are not inferior to those set forth in the respective collective agreements (Art. 45, clause 2, Legislative Decree no. 165/2001).

In public sector employment as well, therefore, the formal nature of collective agreements as acts of private autonomy is assured, but by means of an indirect mechanism, and without breaching Art. 39 of the Constitution the *erga omnes* effect of collective agreements is, in fact, guaranteed. These normative devices were considered to be legitimate by the Constitutional Court (Ruling no. 309, 16 October, 1997).

1.5. The institutionalisation of social dialogue in Italy

Social concertation in Italy has never been undertaken in a highly formalised institutional framework; it has never given rise to stable procedures and institutions like those in Austria, Holland or Scandinavia. Its evolution over the years has been linked to trends in politics and occasional choices made by political and trade union actors (see § 2.3.3. ff.).

1.6. The relationship between the law and collective autonomy: the possibility of imposing limits on bargaining

One of the issues most widely debated by scholars (*dottrina*) and addressed in the courts in the last twenty years has been the extent to which the law can intervene in issues normally dealt with by collective bargaining, as well as the even more controversial issue of the possibility of the law imposing strict limits on collective bargaining. The issue deals with the difficulties inherent in the search for a balance between the role of the law, which is statutorily to protect the interests involved in juridical employment relationships, and that of the organisational freedom of trade

unions, collective bargaining in particular, which is guaranteed by Art 39, clause 1 of the Constitution.

In the '60s, with the aim of organising economic planning activity, and above all in the '70s and '80s, in pursuance of an anti-inflation economic and social policy, the law frequently imposed unbreakable limits on collective bargaining regarding wage levels. The best-known example is that relating to a series of normative acts regarding the cost of labour[466], by which the law made strict provisions establishing upper bounds on salary increases determined by collective bargaining.

The issue has been addressed several times by the Italian Constitutional Court, which has been called upon to rule on the legitimacy of these constraints imposed on the principle of trade union freedom enshrined in Art. 39, clause 1 of the Constitution and consequently deny the State the right to interfere with the freedom of union organisations. The Court has ruled more than once on the compatibility between the imposition of strict limits on collective bargaining and the principles laid down in the Constitution[467]; however, as the Court itself has specified[468] – legislative intervention of this kind must be essentially exceptional and of temporary effect, such as not to give rise to a systematic, permanent violation of contractual autonomy.

1.7. Derogation from minimum standards by collective bargaining

In Italy, as seen above, there is no law regulating the normative effects of collective agreements. They are therefore considered, from the point of view of formal sources, to be regulated by the Civil Code provisions regarding contracts (see § 1.1.1). Hence, although the level of coverage of private-law collective bargaining is quite extensive, collective agreements are formally subordinate to the law. It should also be added that traditionally the legal norm regulating wages and employment conditions in Italy has binding effects that cannot be derogated from by collective agreements; this means that the standard or minimum working conditions introduced by law cannot legitimately be worsened by collective bargaining. In the event of a contrast between a legal norm and a contractual norm, the law prevails. Collective agreements can therefore only introduce ameliorative exceptions to the standards defined by the law.

It should, however, be stated that all this is on principle. Over the years, in fact, during the various stages of development of post-Constitutional labour law and due to the need to adapt the rigidity of labour law to new demands for flexibility in employment and the labour market[469], with increasing frequency special legislative provisions have been made to "authorise" collective bargaining at various levels to introduce mechanisms of flexibility and therefore working conditions and wages below the legally defined standard (e.g. in fixed-term contracts, work and training contracts, solidarity contracts).

Legislation has, however, never assigned collective bargaining a general, abstract, indeterminate faculty to establish working conditions below legal standards. The provisions have mostly been

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[466] See, for example, Law no. 91/1977, and also the subsequent Decrees nos. 10/1984 and 70/1984, the second of which was converted into Law no. 219/1984. See also Law no. 297/1982 regarding lump sum payments on retirement, which expressly prohibited any non-standard action, either ameliorative or pejorative, by collective bargaining.

[467] See Constitutional Court ruling no. 34, 7 February 1985.

[468] See Constitutional Court ruling no. 349, 23 June 1988, n. 349 and more recently n. 124, 26 March 1991.

[469] Caruso 2004a.

limited ether in time (contingency and/or emergency provisions) or subject, that is referring to specific issues. At an institutional level the regulatory powers traditionally assigned to the law have thus been devolved to collective bargaining and its resources of flexibility, adaptability and consensus. The result is a strategy to pursue flexibility in employment and the labour market that represents an alternative to deregulation.

Flexibility has thus been introduced into the Italian system in very small doses, trying not to undermine the general mechanisms of the legal regulation of labour; the tool of choice to loosen the normative rigidity and legal standards, especially in the '80s and '90s, was the collective agreement (preferably national) stipulated by the most, or comparatively most, representative unions (see § 1.2.1.) .

More recently, under the current centre/right-wing government, this strategy has been strengthened but has not altered radically, even though there appear to be some significant changes (see § 9 ff below).

In the '90s local social pacts (especially the so-called "area agreements") tried to pursue strategies of territorial competition and development by introducing derogations from legal and contractual standards. In the absence of specific legal authorisation, these strategies proved to be limited, both qualitatively and quantitatively, as they were forced to operate within the strict general constraints allowed by legislation and collective bargaining at a national level[470].

2. Actors in Collective Bargaining

2.1. Trade unions

As seen previously (§ 1.2.) the Italian system is based on the principle of trade union pluralism, which can be considered one of the effects of the principle of union freedom enshrined in the Constitution. Union pluralism in Italy features two main aspects: a) a more political aspect, despite its ideological origin; b) an organisational and professional aspect.

Ideological pluralism was inherited from the period following World War 2. The trade union split in this period reflected the ideological and political distinction between the protagonists of post-war reconstruction: a strong Catholic party (the DC, or Christian Democrats); smaller Socialist parties (the PRI, or Republican Party; the PSI, or Socialist Party; the PSDI, or Social Democratic Party); and a strong Communist party (the PCI). This distinction was broadly reflected in the divide between the three major trade union organisations: CISL, a Catholic-liberal union close to the party in power (but which also featured various internal elements, not least the influence of the ideology behind US trade unionism – highly pragmatic and focusing on company-level bargaining rather than general strategies); UIL, which was close to the Socialist parties and their reform strategies; and CGIL, close to the major opposition party – of proto-revolutionary inspiration but in practice certainly reformist. CGIL, CISL and UIL still have the largest number of members and are the most popular unions at a national level. The most recent data is that provided by the unions themselves[471], as there is no official body to certify the membership of the various unions, with the exception of the public sector. According to these estimates the three confederate unions have

[470] See Albi 2001, 417 ff.

[471] Data available on official websites of the three confederations (www.cgil.it; www.cisl.it; www.uil.it).

had a constant increase in membership since the second half of the '80s (see Table I), although there have been profound differences in the various regions of Italy.

Unions of lesser importance include CISNAL (now called UGL), a confederate union originally close to the Neo-Fascist MSI party but which later emancipated itself ideologically and became more independent of the party, not least due to the ideological overhaul which resulted in the formation of a new Right-wing party – Alleanza Nazionale – repudiating any historical and ideological ties with the Fascist regime and the party inspired by it.

A different concept from ideological pluralism is organisational and professional pluralism, as tangibly represented by a proliferation of aggregations, temporary coalitions and autonomous unions (in the sense that they are independent of official confederate unionism) which occurred from the '80s onwards. In this case, union pluralism is less inspired by ideals and more prosaically linked to the concrete issue of representing the interests of specific sectors. Although worker category-based unions had an increase in membership in the '80s and '90s, from data supplied by the unions themselves it emerges that in more recent years membership trends have been greatly affected by a reduction in the number of workers and the restructuring processes that have characterised certain sectors (see Tables II, III and IV).

A new development is undoubtedly the recent emergence of new territorial confederate union structures whose members, above all at a territorial level, are the so-called "atypical workers": temporary workers, collaborators working on a single plan or project, occasional, semindependent or "*parasubordinati*" workers etc. (see also § 2.5.C). There have been growing numbers of these workers in various work environments (both private and public) since recent legislative recognition (and indeed promotion) of such types of employment (Law no. 30/2003 and Legislative Decree no. 276/2003). These various types of employment relationships have one feature in common: their temporary nature, that is, a lack of stability and therefore, from the union viewpoint, a substantial lack of security; it is this element which distinguishes these workers from the standard full-time permanent employees that unions traditionally proselytised and whose interests they defended. The organisational direction taken by the Italian unions in the last few years has consisted of creating associative structures (NIDIL-CGIL, ALAI-CISL, CPO-UIL) that operate at a territorial level and provide above all assistance and services to these kinds of workers, who often have the same experience of a non-job, poor income security, and great mobility between companies and sectors, involving serious social problems (such as difficulties in getting loans or signing rent contracts that require certain assurances, etc.). The organisation is territorial because it tends to associate workers on the basis of their "instability" in the labour market rather than that of stable, certain professional status, or a territorial projection of the same – which is just the opposite of Italian trade union tradition. It is the first example of a union trying to defend the group interests of workers who move about in the labour market, rather than in the employment relationship**.** The organisational weight and bargaining power of these unions is currently quite insignificant[472], due to the fact that the workers they represent are economically weak, are doing

[472] No official data is available concerning union membership of workers in what is called "co-ordinated and continuative", but not permanent, employment. The CISL, however, recently stated that ALAI, or the association of temporary workers and those in the new forms of flexible employment, had a 13,86% increase in membership in 2004 as compared with the previous year, reaching a total of

temporary jobs, and are easy to blackmail, and also that the protection afforded to workers in permanent employment (above all against unfair dismissal) does not apply to them. In these segments of the labour market there is also a prevalence of individual interests and forms of behaviour rather than collective solidarity.

An activity that has developed in the last few years is the stipulation of agreements concerning the regulation of minimum social rights in certain cases of specific protection provided for by law (wages, union rights, sickness and maternity leave, etc.)[473]. Of significance is the first framework agreement regulating employment in the non-profit-making sector, signed in 2000 ("Accordo quadro tra Federazione CDO "non-profit" e ALAI-CISL, CGIL–NIDIL, CPO–UIL).

Table I – CGIL-CISL-UIL membership from 1986 to 2004

CGIL-CISL-UIL MEMBERSHIP IN ITALY

	CGIL		UIL
YEAR		YEAR	
1986	4.647.038	1986	1.305.682
1987	4.743.036	1987	1.343.716
1988	4.867.406	1988	1.397.983
1989	5.026.851	1989	1.439.216
1990	5.150.376	1990	1.485.758
1991	5.221.691	1991	1.524.136
1992	5.231.325	1992	1.571.844
1993	5.236.579	1993	1.588.447
1994	5.247.231	1994	1.594.105
1995	5.235.386	1995	1.579.097
1996	5.209.296	1996	1.593.615
1997	5.215.288	1997	1.588.270
1998	5.249.010	1998	1.603.940
1999	5.286.973	1999	1.758.729
2000	5.354.472	2000	1.786.879
2001	5.402.408	2001	1.796.746
2002	5.460.532	2002	1.823.758
2003	5.458.710	2003	1.869.478
2004	5.587.307	2004	1.915.237

24.514 members. Of significance is the low numbers of voters in elections for the committee in charge of managing the separate welfare contributions fund, held in 2000. No more than 10.000 workers out of several thousands belonging to this category cast a vote. For a quantitative assessment of this category of workers following legislation to regulate their terms of employment, see Altieri, Oteri 2001, 3, 13 ff. Also INPS "*Primo rapporto sul lavoro parasubordinato*", March 2001. More recent data can be found in "*Terzo rapporto sul lavoro atipico in Italia*", IRES CGIL 2003.

[473] Cf. NIDL dossier, "*Nessun lavoro senza diritti e tutele. La contrattazione di NIDL-CGIL nel lavoro tipico*", 2003, for a description of certain emblematic cases.

CISL	
YEAR	
1986	2.975.482
1987	3.080.019
1988	3.288.279
1989	3.379.028
1990	3.508.391
1991	3.657.116
1992	3.796.986
1993	3.769.242
1994	3.752.412
1995	3.772.938
1996	3.837.104
1997	3.856.334
1998	3.909.796
1999	4.000.524
2000	4.083.996
2001	4.117.700
2002	4.153.139
2003	4.183.128
2004	4.960.937

CGIL CISL UIL	
YEAR	
1986	8.928.202
1987	9.166.771
1988	9.553.668
1989	9.845.095
1990	10.144.525
1991	10.402.943
1992	10.600.155
1993	10.594.268
1994	10.593.748
1995	10.587.421
1996	10.640.015
1997	10.659.892
1998	10.762.746
1999	11.046.226
2000	11.074.376
2001	11.316.621
2002	11.437.426
2003	11.511.316
2004	12.463.481

Table II – UIL membership 2004

REGION	UIL Membership 2004	CATEGORIES	MEMBERSHIP 2004
VAL D'AOSTA	2.485	UIMEC	48.656
PIEMONTE	136.514	UILA	145.650
LOMBARDIA	169.476	UILCEM (Chemical, Energy and Manufacturing)	80.140
TRENTINO ALTO ADIGE	21.519	FENEAL	128.881
VENETO	102.522	UILM	91.110
FRIULI VENEZIA GIULIA	32.603	UILTA	43.550
LIGURIA	51.519	UILCA (Credit, Tax Collection and Insurance)	42.605
EMILIA ROMAGNA	134.264	UILCOM (Graphics, Show Business, Telecoms.)	37.212
TOSCANA	68.123	UILPOST	29.393
UMBRIA	31.087	UILTUCS	90.073
MARCHE	43.837	TRASPORTI (Transport Workers)	*105.156*
LAZIO	161.110	UIL FPL (Health and Local Authorities)	188.473
ABRUZZO	41.081	OO.CC.	433
MOLISE	10.911	SCUOLA (Schools)	62.091

CAMPANIA	155.306	UILPA	68.218
PUGLIA	172.537	PENSIONATI (Pensioners)	532.653
BASILICATA	28.767	VARI (Various)	46.631
CALABRIA	102.426	IIª AFFILIAZIONE	174.312
SICILIA	187.046	**TOTAL**	**1.915.237**
SARDEGNA	41.161		
VARI (Various)	46.631		
II AFFILIAZIONE	174.312		
TOTAL	**1.915.237**		

Table III – CISL membership 2004

REGION	CISL MEMBERSHIP 2004	CATEGORIES	MEMBERSHIP 2004
LOMBARDIA	754.006	FNP	2.170.142
VENETO	405.976	FPS	318.448
SICILIA	358.804	FILCA	238.754
EMILIA ROMAGNA	298.135	FAI	206.325
LAZIO	285.469	CISLSCUOLA(Schools)	206.250
CAMPANIA	280.248	FIM	190.118
PIEMONTE	278.676	FISISCAT	170.458
PUGLIA	264.152	FEMCA	136.098
TOSCANA	223.328	PREADESIONI CISL	107.098
CALABRIA	169.615	FIT	103.590
MARCHE	157.106	FIBA	83.759
SARDEGNA	145.624	FLP	67.775
LIGURIA	113.285	UGC	52.730
FRIULI v. GULIA	109.180	FISTEL	52.099
ABRUZZO	99.282	GIOVANI/DISOC. (Young/Unemployed)	47.239
UMBRIA	80.736	CLACS	25.024
BASILICATA	72.732	ALAI (flexible workers)	24.514
ALTO ADIGE	55.173	FLAEI	20.341
TRENTINO	35.334	FRONTALIERI	10.367
MOLISE	30.433	CISL UNIVERSITÀ (University)	10.282
VAL D'AOSTA	30.110	SINALCO – VVF	8.102
MARITTIMI ESTERO	7.178	CISL MEDICI (Doctors)	6.337
FNP ESTERO	6.355	FIR	3.632
TOTAL	**4.260.937**	ASSOCIAZIONE QUADRI (Executives)	1.455
		TOTAL	**4.260.937**

Table IV – CGIL Membership 2004

REGION	CGIL MEMBERSHIP 2004	CATEGORY	MEMBERSHIP 2004
PIEMONTE	378.793	FILCEA	126.774
VALLE D'AOSTA	12.228	FILLEA	331.258
LIGURIA	185.354	FIOM	363.326
LOMBARDIA	897.781	FILTEA	118.719
VENETO	375.553	FILCAMS	307.778
BOLZANO	30.286	FILT	136.875
TRENTO	38.438	FNLE	40.811
FRIULI V. GIULIA	119.499	FUNZ.PUBBLICA	383.738
EMILIA ROMAGNA	814.924	FISAC	85.772
TOSCANA	504.892	FLAI	289.359
MARCHE	180.520	SNS	148.244
UMBRIA	118.631	SLC	91.580
LAZIO	342.805	SNUR	16.414
ABRUZZO	117.814	NIDIL (flexible workers)	18.640
MOLISE	24.220	MISTE	19.079
CAMPANIA	328.332	SPI (Pensioners)	2.926.473
PUGLIA	292.871	SPI PROVVISORIE	81.830
BASILICATA	62.182	DISOCCUPATI (Unemployed)	35.887
CALABRIA	175.045	**TOTAL**	**5.522.557**
SICILIA	370.930		
SARDEGNA	151.459		
TOTAL	**5.522.557**		

2.1.2. Union Density

An important criterion commonly assumed to indicate the strength of a union is that of union density, that is, the rate of unionisation as compared with the total active workforce (thus excluding pensioners). Although membership data demonstrates an increase in the numbers of union members, it is possible to observe that this increase corresponds to a slow but inexorable decrease in the rate of unionisation. As a number of studies have shown, in the last twenty years – during which time globalisation has started to take effect – there has been a drop in unionisation in most countries. Italy is located at an intermediate level in this international picture of a decline in unionisation rates, with an estimated rate of about 34-35% of employees[474], but the rate is still in decline with respect to the last twenty years: in 1980 the unionisation rate in Italy was 49-50%[475], in 1990 it had already dropped to 38,8%, and in 1995 to 38, 1%[476]. From 1995 to 2002, therefore, the unionisation rate had experienced a –0,6% reduction.

[474] Cf. *l'OECD Employment Outlook 2004,* according to which the union density rate is about 34,9%; according to the European Commission Report *Industrial Relations in Europe 2004,* p. 19, on the other hand, the unionisation rate in 2002 was 34%.
[475] See Cordara 2000.
[476] See *Industrial Relations in Europe 2004,* 19.

A peculiar feature of the membership of the confederate unions in Italy is the number of members who are no longer working (not included in the unionisation rate). The slow drop in this rate corresponds, in fact, to an increase in membership among pensioners. Between 1980 and 1998 the number of active members decreased by 34,1% in CGIL, 29,8% in CISL and 7,5% in UIL (see Table V). The number of retired members, again between 1980 and 1998, rose from 24% to 55% in CGIL, from 14,6% to 50,9% in CISL, and from 5,8% to 26,8% in UIL. A slight countertrend has been observed in CGIL and UIL membership in the years 1998-1999. The overall balance between the drop in active members and the increase in retired members has been positive for the total membership of all three confederations, which have, in fact, seen an increase in their total numbers (as seen in Table I): the membership data for the three confederations after 2000 even corresponds, in some cases, to the highest numbers ever recorded.

Table V - CGIL, CISL and UIL membership – workers in employment (1980-1998)[477]

Year	CGIL		CISL		UIL		Total	
1980	3.495.537		2.611.710		1.268.823		7.376.070	
1990	2.739.700		2.191.977		1.217.682		6.149.359	
1991	2.720.276		2.242.965		1.213.720		6.194.961	
1992	2.655.041		2.277.178		1.251.202		6.183.421	
1993	2.540.437		2.164.001		1.231.134		5.935.572	
1994	2.456.463		2.054.462		1.216.782		5.727.707	
1995	2.387.820		1.956.753		1.187.434		5.541.007	
1996	2.334.839		1.950.012		1.188.128		5.472.979	
1997	2.288.042		1.883.271		1.169.833		5.341.146	
1998	2.303.653		1.833.305		1.174.243		5.311.201	
1980/98	*-1.191.884*	*-34,1*	*-778.405*	*-29,8*	*-94.580*	*-7,5*	*-2.064.869*	*-28,0*

A further countertrend concerns the increase in the unionisation rate among non-European workers. According to recent studies[478], in fact, 237.000 immigrants were members of the three main confederations in 2001: 106.000 of CISL, 99.600 of CGIL and 31.400 of UIL. Assuming that these are prevalently working in regular employment, the data would appear to suggest a remarkable rate of unionisation – 45% of the total number of registered immigrant workers.

2.1.3. The pluralism/unity dialectics in the Italian system

The secularisation of ideologies and a real process of gradual independence of unions from political parties (above all after the '70s) has frequently raised the problem of the organic unity, or at least unity of action, of the three great confederations, an ideological distinction between whose views on general strategies and labour policies no longer has any reason to exist.

[477] Cordara 2000.

[478] Cf. second report by IRES CGIL, *Immigrazione e sindacato,* 2003.

Seen through the lens of pluralism, the Italian trade union system, or at least the official confederate one, has thus witnessed periods of accentuation of the competitive pluralism between the large unions (in the '50s, early '80s and at the beginning of the present century) alternating with trends (especially in the early '90s) accentuating unity of action, giving rise to unified organisational practices such as elections for common representative bodies. There still remains, however, a certain distinction between the large confederations, in terms of dissent towards concrete policy and organisation decisions – which presupposes a different concept of union organisation and action – rather than abstract ideological opposition[479]*.*

It cannot be denied, however, that confederate unionism has a natural leaning towards unity, with a consequent reduction in internal pluralism: given that it claims to provide unified representation of general labour interests and to be the only privileged interlocutor of governments and employers' associations, to concert social strategies and policies at a national or even supranational level, it is fatally attracted to unity of action if not organic unity.

This does not prevent occasionally different evaluations of policy or bargaining decisions from leading to historical phases in which diversity and lack of unity is accentuated. Under Mr. Berlusconi's second government in 2001-2002, for example, CISL and UIL showed greater willingness than CGIL to accept more normative flexibility regarding temporary, part-time and fixed-term employment, in exchange for legislative recognition of broader institutional participation by the union in regulation of the labour market (Delegate Law no. 30/2003 and Legislative Decree no. 276/2003).

2.2. Employers' organisations

Employers, like workers, have their own separate representative organisations for the various sectors of the economy – employers' associations – which are organised at a territorial level.

The use of the term "association" rather than "union" is no coincidence, as it is a consequence of the different function the Constitution assigns to workers' organisations and employers' associations. The latter, in fact, are afforded less significant protection in the Charter, basically in Art. 18 which assures freedom of association and Art. 41, which guarantees the freedom to undertake private economic initiatives.

The first employers' organisations in Italy were founded at the beginning of the 20th century at the time of the industrial revolution and the initial development of metal and mechanical industries. On May 5th, 1910 the Confederation of Italian Industries (*Confindustria*) was born, with the aim of coordinating employers' initiatives in relationships with unions, the government and local administration at a national level.

Today Confindustria is the main organisation representing manufacturing and service industries in Italy. It is a second-degree association (i.e. a federation of associations).

Confindustria has a complex structure comprising both territorial and category-based organisa-

[479] Briefly it can be stated, for example, that the CISL prioritises member representation, whereas the CGIL promotes representation of all workers, whether they are members or not; the CISL is more inclined to support worker participation – both managerial and economic – in enterprises, whereas the CGIL is hostile towards it, etc.

tions. Firms become members by the intermediation of a vertical (territorial) or horizontal (category-based) organisation or both. Some territorial associations have greater weight in Confindustria, due to a governing body election system based on the contributions paid in by the various enterprises. The provincial associations of Lombardy (Assolombarda) and Turin, which represent the largest industries in the country, thus control a significant quota of votes in the national confederation. Territorial associations play a fundamental role in assisting firms during decentralised bargaining processes .

The most important employers' sector federations are *Federmeccanica* (the federation of metal and mechanical industries), *Assochimici* (the national association of chemical industries), *ANCE* (the national association of construction industries), *Assaeroporti* (the Italian association of airport management enterprises), and *Federpesc*a (the national federation of fishing industries).

Together with Confindustria, the main employers' confederations in Italy are: *Confcommercio* (the general confederation of business and trade) and *Confagricoltura* (the general confederation of agricultural businesses).

In the sectors mentioned there are also minor organisations such as *Confapi,* whose members are small to medium enterprises, *Confesercenti* in the commercial sector, and *Coldiretti* (the Italian confederation of farmers) and *Confcoltivatori* in the agricultural sector.

Besides these associations there are others operating in specific sectors such as those involving cooperative enterprises and craftsmen and these differ according to their political leanings.

2.3. The role of government in the system of collective bargaining

The role of government in the Italian system of collective bargaining changes according to whether the sector being considered is private or public. Different considerations apply to social pacts at a central or decentralised level.

2.3.1. Government and collective bargaining in the private sector

In the private sector the national government and regional governments have traditionally maintained a neutral role of non-interference in the development and consolidation of the system of collective bargaining, which has evolved through bilateral relations. This has not prevented representatives of the government (ministers, prefects) and also regional and local governments from being called upon by the social partners, at times of labour disputes at a national, company or local level that are particularly dramatic (for example, on account of their effects on employment rates), or hard to solve (e.g. the recent Fiat crisis), to voluntarily act as political mediators. Breakdowns in bargaining processes have thus been overcome thanks to the active involvement, as mediators, of public actors. This role has, however, never been formalised.

It should be added that up to the era of widespread privatisation of state-run enterprise – initiated by technical governments and put into effect by the centre-left governments of the '90s – the Executive played an important, albeit indirect, role in negotiations in the private sector. Government-controlled public company associations (Intersind, Asap) brought important disputes in strategic sectors to an early conclusion, thus paving the way for the settlement of similar agreements with associations of private employers. These associations frequently introduced models of industrial relations inspired by a philosophy of participation and avoidance of conflict which at times spread to the private sector (e.g. in chemical and petroleum industries); they also initiated

innovative contractual elements (e.g. changes to the system of professional collocation) which then became part of bargaining in private enterprise.

This guiding role by bargaining in public enterprise started to disappear as the process of privatisation progressed and the relative associations were dissolved.

2.3.2. Government and collective bargaining in public administration

As seen previously, from 1993 (Legislative Decree 29/93 and subsequent modifications) onwards, the system of collective bargaining in the public administration sector in Italy underwent a profound transformation (see § 1.1.2. and 1.2.2) . Following the reform, the employment relationships of public sector workers, as well as the connected rules of administrative organisation, were regulated by the civil law code and the general rules governing labour in the private sector, with specifications contained in the public sector employment reform law; by the private-law collective agreement applied to the whole department; and by individual employment contracts. The collective department-based national contract (*contratto di comparto*) is not formally *erga omnes,* but has become so by virtue of normative expedients contained in the reform (the legal requirement of equal treatment for all employees and the institution of a public agency – ARAN – to represent public administration.) (see § 1.4.5.).

The government is only directly involved in bargaining concerning ministry employees, where its task is to earmark resources available for renewal of the contract and issue directives to the agency. It is the Executive that authorises ARAN to sign an agreement.

In other public departments (the health service, schools, local administration, universities, etc.) the government has a less direct role as ARAN is provided with directives by sector committees. These are organisms representing non-state public administration, which have the task of defining bargaining guidelines that ARAN is obliged to adhere to; they approve proposals arising from negotiations and authorise ARAN to sign agreements. Central policy on public expenditure and the resources transferred to the various public administration departments, as established by the government, do, however, indirectly influence bargaining policies in departments other than ministries.

2.3.3. Public actors in social concertation

Of primary significance is the role played by central government in social pacts at a national level, both taking part with its own resources in the political exchange and acting merely as a guarantor for the mutual commitments made by the social partners, or as an actuator of agreements reached, by means of appropriate legislative initiatives (bargained legislation). Although the role taken by the government in central social pacts remains significant, it changed during the various stages of centralized concertation (see § 2.4. and ff. below).

2.4. Social concertation

As mentioned (§ 2.3.3. above), concertation as a method for producing social policy has always been spasmodic and occasional in Italy, never having been stabilised in permanent institutions.

In the '70s and '80s, issues like pay mechanisms led to concertation sessions on specific topics (the sliding scale for cost-of-living adjustments) and rounds of legislative bargaining on social and labour issues involving the great confederations and the governments of the time (centre-left

coalitions, with the Communist Party, which was very close to the great CGIL confederation, forming the opposition).

2.4.1. The '80s. Characteristics and contents

Above all in the '80s concertation agreements were based on precise, limited political exchanges between governments and unions (commitments by unions to contain pay rises in exchange for tax benefits in favour of labour, or greater resources for welfare services, for example), without giving rise to a regular, stables incomes policy. Throughout the decade, these agreements were of a spasmodic and ephemeral nature[480]. They never achieved stability or produced rules governing union relations; they at times caused a break between unions and separate agreements transposed into legislative norms were also contested by the Opposition, as happened with the sliding scale agreement in 1984: the law implementing it was the subject of a referendum to abrogate it, the outcome of which was negative.

2.4.2. The '90s. Characteristics and contents

Social concertation in the '90s tended towards greater institutionalisation of the method but did not lead to stable, lasting structures.

In this phase the contents of concertation also changed: it was no longer a question of a political exchange between economic and social parties but witnessed the direct involvement of unions and employers' associations in a middle-term policy aiming to fulfil the economic parameters needed to join the single currency area. Unions finally abandoned wage mechanisms and agreed to confine bargaining on pay issues within government-planned inflation rates, thus contributing to the restoration of the economy. This acceptance of direct political responsibility by the social partners alongside the technical governments of the time, with a consequent growth in their political legitimisation, was favoured by the crisis political parties went through following the "Tangentopoli" affair.

Unlike the agreements of the '80s, social concertation in the '90s, in particular the Protocol on incomes policy and employment, contracts, labour policies and support for the production system of 23 July 1993 (see § 3.2. and ff below), directly affected the contract system because for the first time conventional rules were introduced governing the structure of collective bargaining, the relations between the various contract levels, the duration of agreements, bargaining procedures and representative bodies in the workplace.

In more recent years, not least due to promotion by EU institutions, the concertation method has been decentralised. It has, that is, been used with relative success at a local/territorial level. Territorial concertation in Italy has taken the name of "bargained planning" and has been achieved by means of special forms of economic intervention (territorial pacts, area agreements, planning agreements, etc.) to which legislation devoted specific normative regulations in the second half of the '90s. Beyond the technical and juridical features of the tools employed, what is important to point out is that they implement policies concerted at a local level not only on social, economic and employment-related issues, but also regarding town planning and public order. This takes

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[480] Ghera 1999, 501 ff.

place with the active involvement of a variety of institutional actors (not only local government but also universities, chambers of commerce, prefectures, etc.) and social actors[481]. The aim of these pacts is to enhance territories (districts, provinces, and other economically homogeneous territorial areas) which are considered, in a context of global competition, to be strategic factors for the competitiveness of local enterprises. These local pacts – which often also contain provisions regulating employment relationships in the local labour market – give rise to a series of significant, far-reaching problems: territorial decentralisation of bargaining regulations on labour issues from the perspective of local labour markets causes problems of coordination between this new level and traditional collective bargaining at a national and company level.

An even higher level of institutionalisation of social concertation was attempted in 1998 with the so-called "Christmas Pact" which established rules regarding the way social dialogue was held at a central level: a distinction was made between issues regarding which the dialogue is only for advisory purposes and those for which it is obligatory for subsequent legislative provisions to be made; two annual concertation sessions were established; a procedure was established for the implementation of EU directives through collective bargaining, with the drawing up of a bill to give *erga omnes* effect to collective agreements resulting from the implementation of directives; social concertation at a decentralised territorial level was encouraged.

2.4.3. Concertation at the start of the Third Millennium

The process of progressive institutionalisation of social dialogue was interrupted at the beginning of the new century when the centre-right government came to power.

In its policy statement the new government declared that it did not intend to proceed with institutionalisation of concertation with the social partners, preferring an occasional method of social dialogue on proposals it intended to make, focusing above all on liberalisation of the labour market and reform of the welfare state. The new government also inaugurated the practice of "asymmetric concertation", that is, systematically limited to confederations willing to accept it and on issues that had not previously been agreed on with the confederations but chosen autonomously by the government. As regards legislative implementation of social policy, the government stated that it was not bound by previous agreements with the unions; the search for an agreement did not, therefore, exclude the possibility of its enacting unilateral legislative provisions on social and welfare issues. Lastly, the government excluded social concertation as suitable for taking initiatives that might directly or indirectly affect the collective bargaining system, thus recalling a collective laissez-faire ideology and paving the way for a season of decentralised bargaining and local concertation (see § 3.5. below) which might even set standards lower than those established by law and national agreements.

Many of the provisions of the sweeping labour market reform introduced by Legislative Decree 276/2003 and the law transposing the EU working time directive (Legislative Decree 66/2003) were coherently inspired by the aim of weakening the hold of unbreakable legal provisions and collective agreements, putting them in competition with other sources (individual contracts). The intention has not, however, yet been translated into an organic legislative policy aiming to reduce the representative role of unions and the coverage of collective bargaining. The government has

[481] Caruso 2001a; Regalia 2003a, 158.

therefore attempted to break down the trade union front but has not pursued openly neo-liberal, anti-union social policies.

It is not yet possible to evaluate fully the effects of this intervention; they do not seem, however, to have gained much favour, especially in the latter stages, even among employers' associations and enterprises, who are worried about the destabilising effects on the system of industrial relations and collective bargaining, and the situation of conflict that arose following the breakdown in unity of action by the unions, an aim the government only pursued in the first phase of its term of office. The model of asymmetric concertation followed by the government is today going through a phase of open, declared crisis: there has been a resumption of the season of inter-confederate bargaining on social issues (training) and bilateral concertation to call for measures to combat economic decline (research, the southern regions, productivity), from which the government is excluded[482].

2.5. Other actors:

A) Unitary Trade Union Representations (RSU Rappresentanze sindacali unitarie) in the private and public sectors

According to the model of "organised decentralisation" outlined in the 1993 Protocol (see § 3.3. below), the definition of the structure of bargaining implied formal recognition of the bargaining power accorded to what are called RSUs, or unitary trade union representations[483]. These bodies, elected by all the workers in a company (including non union members), or in a decentralised administrative unit in the public sector, are formally recognised as official interlocutors in bargaining processes, together with territorial-level union organisations (see § 3.4.). Recognition is granted by agreements in the private sector[484] and by law in the public sector[485]. This means that decentralised collective bargaining (at the level of a company or smaller administrative unit as opposed to a whole department) is handled jointly by territorial worker-category or department-level union organisations and the bodies elected by all the workers.

These accurately reflect the single-channel representation model traditionally prevailing in Italy, in which the body representing workers in the workplace is still formed "within" trade union organisations: when such bodies are voluntarily created, the unions forgo their right to form their own representative bodies. In this way, the united body combines representation of both the workers and the unions. Only when it is impossible to set them up (almost always due to disagreements between the unions, and a choice employers cannot interfere with) can the unions form their own representative bodies, called RSAs, or company trade union representations.

In the private sector, in order to ensure uniformity of approach between central and decentralised bargaining, the 1993 Protocol and union agreements provide for an electoral mechanism that favours coordination between the two levels (see § 3.4. below).

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[482] Caruso 2005a; Treu 2005.

[483] See Para. 2 on union representation.

[484] Framework Agreement on Unitary Trade Union Representations, signed on 1 March1991.

[485] Art. 42, Legislative Decree 165/2001.

Although decentralised bargaining is quantitatively limited in Italy (see §§ 4 and ff.), RSUs play an important bargaining and advisory role and at times take part indirectly in management of the health and safety protection system[486].

In addition, the mechanism of shared bargaining power has not caused serious conflicts with external union organisations, with the exception of a few isolated cases; this can be accounted for by organisational reasons in the private sector: unions are in fact granted control of the workers' representation bodies. In the public sector, on the other hand, the greater autonomy RSUs enjoy as compared with unions does not correspond to a bargaining power at a decentralised level comparable to that in the private sector (see § 5.2.3 below).

B) European Works Councils in Italy

Transposition of the directive on EWCs was greatly delayed in Italy and was only achieved with Legislative Decree no. 74 of 2 April 2002, which was enacted just in time to avoid an appeal by the Commission to the European Court of Justice on grounds of non-fulfilment.

The process of implementing the directive was, however, rapidly activated by the social partners, with the stipulation of an inter-confederate agreement on 27 November 1996 between Confindustria, Assicredito and the CGIL, CISL and UIL union confederations, in the presence of the Minister for Labour and Social Security; the agreement transposed the directive via bargaining, thus paving the way for company-level agreements to set up EWCs long before the actual directive was transposed.

Until 2003 thirty-two agreements were signed in Italy, out of a total of about seven hundred in Europe as a whole[487]. There are, however, many multinationals in which it has not yet been possible to set up an EWC. The consultation of EWCs and the quality of the information they are provided with follows the general trend. It emerged from a recent conference that «in most cases works councils only succeed in obtaining limited, generic information which is often already in the public domain, and are held only once a year, without being followed by the consultative phase, which would after all prove to be useless. Although limited in number, there are companies which provide satisfactory previous information, but leave no room for consultation; only a very small number of EWCs are lucky enough to meet with a management providing adequate information and allowing delegates to express an opinion, which in many cases proves extremely useful to solve serious problems, especially regarding employment»[488].

The operational difficulties experienced by EWCs are exacerbated by linguistic communication and management that is often hostile towards them. Sectors close to the unions demand modification of the EWC directive to impose and strengthen the rights it provides and require more active, direct involvement of EWCs in the social responsibility strategies pursued by companies[489].

C) Actors in bargaining in the independent worker sector

In certain sectors of the Italian economy which feature a prevalence of independent workers

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[486] Representatives responsible for security issues are often appointed among members of these bodies, thus instituting a second-degree representation mechanism.

[487] Stanzani 2003; Guarriello 2003.

[488] Santini 2003.

[489] Cf. Guarriello 2003.

(general practitioners, sales representatives and agents, investment consultants, domestic workers, etc.), there are collective economic agreements, national conventions signed and handled by category-based associations that follow the same logic as trade union organisations but enjoy much more volatile and virtual representation mechanisms and representativeness than the unions whose members are standard employees. The economic and normative significance of these agreements (juridically not quite the same as collective agreements) is not, however, negligible: it is usually taken as a point of reference by labour courts (who are also responsible for ruling in legal action brought by categories of independent workers) in not infrequent cases of dispute over remuneration.

Thanks to indirect normative recognition[490], the great spread, above all in the late '90s, of workers other than classical standard employees (in coordinated and continuous but not permanent employment and, following the 2003 reform, project workers), led the large union organisations to introduce specialised representation structures to protect the specific economic and normative needs of these workers (above all, the need for stabilisation of non-permanent employment relationships). As mentioned in § 2., instead of including representation of these workers in conventional structures, the union confederations created *ad hoc* territorial structures (NIDIL, ALAI, CPO etc.) which organised them, irrespective of the sector they belonged to, on the basis of status (which in this case was not professional status but the non-permanent nature of their position in the labour market); this reproduced, as far as the organisation of representation was concerned, the dual interests (insider/outsider) germinating and emerging in the labour market.

3. Levels of Collective Bargaining

3.1. Evolution of the structure of collective bargaining

The historical evolution of the structure of bargaining in Italy has alternated phases featuring the prevalence of centralised levels with others in which decentralised levels prevailed.

Following the corporative period, in the '50s, the need for reconstruction, the weakness of peripheral union structures, and the need for central coordination of policies to protect categories of workers and areas of the country that were unable to act autonomously, led to great centralisation, with a prevalence of inter-confederate agreements. It was only after reconstruction of the production system and the re-launching of the economy with the economic boom of the early '60s that collective bargaining took on a more complex physiognomy. The central role of the nation wide-sector based contract was asserted and later became the cornerstone of the Italian contract system. At the same time company-level bargaining began to spread, especially in more technologically advanced enterprises and state-controlled industrial sectors. A distinctive element of this phase was the connection between the two main levels of bargaining (national and company level): a single national collective agreement predetermined decentralised bargaining mechanisms in a relatively rigid and formal fashion. The system disappeared in the late '60s and early '70s with the period of industrial dispute known as the "hot autumn". The wave of worker demands which swept through companies in the centre and north of the country (and also the few industries of the south) practically overset the logic of the system: company-level bargaining became the new "driving force" while national-level bargaining was confined to what trade union

[490] See Law no. 335/1995 which extends a partial social security regime to these workers.

jargon termed as "chasing" and generalising what had been obtained in companies where the dispute had been more heated and the presence of the unions greater. This situation led to a replication of (autonomous) levels of collective bargaining and caused labour costs to spiral up to levels that were unsustainable for the competitiveness of Italian enterprises.

The change came in the mid '80s, when the confederate unions, employers associations and governments of the time chose to experiment with the concertation method: with the first significant tripartite agreements of 1983 and 1984, this method made a great contribution towards re-centralisation of the bargaining system. This was not, however, achieved in a systematic or organised fashion: it occurred progressively and on a *de facto* basis. It was not until the early '90s that a bargaining system governed by precise rules was created.

3.2. The structure of collective bargaining as outlined in the 1993 Protocol and wage policies

With the Protocol signed in July 1993, which is a sort of "constitutional charter for industrial relations", the social partners regulated the structure of collective bargaining, giving rise to a model of "controlled and coordinated decentralisation".

The agreement outlined a new system of collective bargaining, with explicit indications as to the relationships between the various levels of negotiation and their respective functions, making specific reference to the crucial node represented by the connection between wage policies and contractual levels. From this point of view, certainly the most innovative element of the Protocol was the agreement on a model of bargaining in which protection of the real value of wages was entrusted exclusively to periodical collective bargaining.

The nation wide-sector based contract was split into two parts, a distinction being made between the economic and "normative" contents of negotiation by the unions. To allow the national contract to perform its essential function of protecting the real value of salaries, it was established that the contract was to be renewed every two years. For the first two-year period account was to be taken of the planned inflation rate, so as to make salary trends consistent with the incomes policy agreed on by the government and the social partners. In the second 2-year period, upon renewal of the contract, salary increases were to be determined on the basis of any difference between the inflation rate planned and the rate actually recorded in the previous period.

The '93 agreement had a dual aim: from the macroeconomic viewpoint it was to favour wage dynamics commensurable with those of productivity, so as to avoid inflationary effects and foster economic development and better employment rates by supporting the growth of domestic demand; from the microeconomic viewpoint, it was progressively to shift wage increases and the introduction of flexibility policies from the centre to the peripheral sectors of the bargaining system.

3.3. The specific partitioning of competencies between the various levels in the private sector

The 1993 Protocol formally identifies two levels at which collective bargaining can legitimately take place – the national sector level and the company level – and, only as an alternative to the latter, at a territorial level, with coordinated, non-overlapping, and at times specialist competencies, above all as regards salary issues. It should, however, be specified that there are in reality three levels, a further one being inter-confederate bargaining, even though it takes the form of concertative tripartite, as opposed to direct bilateral, negotiation between the social partners.

Inter-confederate bargaining does, however, play an important role as regards important issues affecting workers in general (see § 5.2.1. below).

The Protocol gives explicit indications as to the competencies and functions of the two levels and the relationships between them. The national sector contract determines the modes and sphere of action of decentralised bargaining, even though in the spirit of current bargaining practice with particular reference to small enterprise. Sector-based agreements are also entrusted with establishing the issues with which decentralised bargaining is allowed to deal (see point 2.3, third para.), and the way in which the relative bargaining platforms are presented (see point 2.4).

To decentralised bargaining the Protocol – according to a *principle of specialisation and non-overlapping between issues previously defined at a higher level* - assigns "issues and institutes other than and not repetitive of those regarding remuneration, which are specific to the CCNL (or national sector contract)", in particular, the awarding of pay rises linked to "results achieved in the implementation of schemes agreed on by the partners, the aim of which is to increase productivity, quality and other competitive elements enterprises have at their disposal, including productivity margins, which can be set aside following agreement by the partners, over and above any sums put aside to cater for salary increases provided for in national agreements, as well as results linked to the financial profit trend shown by the enterprise". Decentralisation is thus accepted, but within the strict limits imposed by the national contract. It can thus be stated that the *non repeatability clause* certainly places a qualitative limit on decentralised bargaining but lays the foundations for a specialised role of decentralised agreements as opposed to category or sector-based ones as regards pay issues, and thus introduces a functional, rather than merely hierarchical, relationship between the two levels.

As far as pay is concerned, company-level or territorial bargaining, can only deal with issues linked to precise indicators of productivity, quality and company profitability: it cannot affect standard or minimum pay, which is regulated by the national contract.

The sector-wide contract also establishes the times at which decentralised bargaining can take place, according to a principle of autonomous bargaining cycles, even though the Protocol establishes that second-level agreements are to last for four years.

The significant decentralisation of bargaining is further confirmed by recognition of its responsibility for timely procedures of information, consultation and verification, as well as forms of bargaining contemplated by laws, national collective agreements, collective agreements and current bargaining practice "to cater for the social effects of transformations such as technological and organisational innovation and restructuring processes, which affect job security, work and employment conditions, not least in relation to the law regarding equal opportunities" (point 2.3, last par.). The provision is an extremely broad one as regards the type of activity it covers, its contents (as they do not exclude those with economic effects) and timing; the four-year duration is replaced by company-level bargaining when considered "necessary" by the partners. This leeway conferred on decentralised bargaining enhances its organisational and management functions and ensures its potential as a continuous negotiating process.

It should, however, be stressed that the reference to "actual practice" does not render the second level formally obligatory either for companies already involved in second-level bargaining or for those – especially smaller ones – that were previously excluded from this possibility, the consequence being that decentralised bargaining has continued, even in smaller units, to be controlled

by the interests and balances of the power relationships between the subjects involved in negotiations.

3.3.1. Levels of bargaining and responsibilities in the public sector

As seen previously, collective bargaining in the public sector is broadly regulated via legislation, even though the law (Art. 40, clause 3, Legislative Decree 165/2001) states that the different levels of bargaining and their respective responsibilities are to be freely regulated by bargaining itself.

Like the private sector, the system hinges round the national department-level contract (*comparto*), where departments mean homogeneous or similar sectors of public administration, as identified by an agreement between ARAN and the representative union confederations (Art. 40, clause 2 Legislative Decree 165/2001).

The law also expressly states the possibility of stipulating "framework agreements" that can be applied to a set of departments when uniformity is deemed appropriate by the social partners.

The law also establishes (Art. 40, clause 3, Legislative Decree 165/2001) that public administration can activate "autonomous levels of supplementary collective bargaining" for peripheral structures or locations (Art. 48, clause 8, Legislative Decree 165/2001). Decentralised bargaining cannot, however, establish its whole sphere of reference on its own: as the law states (Art. 40, clause 3), it has to refer to "issues that come within the limits established by national collective agreements, and take place between the subjects and apply the negotiating procedures laid down by the latter".

In the public sector, therefore, collective autonomy once again determines the issues that the different levels of bargaining are responsible for, the only difference being that in this case it is the law that assigns collective autonomy this regulatory role in the contract system and, in the event of violation of the division of competencies outlined by the national department-level contract, it is the law that establishes the nullity of supplementary collective agreements thus stipulated. The partners are also entrusted with establishing the duration of agreements: in line with the provisions made in the 1993 Protocol, this is currently a four-year period for national collective agreements, with a two-year renewal as regards pay alone.

3.4. Co-ordination of Union and Employers' Bargaining Strategies

The 1993 Protocol also contains a series of provisions identifying the actors, above all representing the unions, who are entitled to bargain at a decentralised level, as well as the procedures that are to be followed during second-level negotiations.

In order to ensure "better regulation of the system of industrial and contractual relations", it formalises and confirms the mandate given by the three main confederations, in a framework agreement signed in 1991, to a single representative body (the RSU). The very way the RSU is made up, in particular the reservation that one third of its components are to be unions that signed the national collective agreement, appear to aim explicitly at assuring the necessary link between organisations stipulating national agreements and representative bodies within companies delegated by such agreements. In the private sector, uniformity between central and decentralised bargaining is guaranteed in the 1993 Protocol and union agreements by an electoral mechanism which "adjusts" the principle of pure proportionality in the sense that one third of

the delegates elected to the RSUs (whatever the result of the elections) are always certain to be members of the unions which stipulated the collective agreement (almost always unions belonging to the large confederations)[491].

Coordination with the union bargaining at the second level is then reinforced by a further provision legitimising decentralised negotiation, "on issues specified" by the national collective agreement, by RSUs and territorial union organisations belonging to the unions which stipulated the national collective agreement, according to the modalities laid down in the relative contract.

There are also supplementary provisions regarding negotiating procedures in the contract system. The 1993 Protocol assigns national sector-level agreements the task of defining procedures for the presentation of national and decentralised platforms, and establishing when negotiations are to be opened up.

In the public sector it is the law (Art. 42, clause 7, Legislative Decree 165/2001) which entrusts RSUs with supplementary bargaining. As established in a 1998 framework agreement (Art. 5, clause 3), RSUs are flanked by the worker category unions that signed the national contract.

3.5. Recent debate on the contract structure reform "inherited" from the 1993 Protocol

Analysis of national agreements in the various economic sectors and areas has shown that some wide-sector-related issues have objectively limited the spread and regulatory function of decentralised bargaining, causing excessive centralisation and/or reduced the possibility of flexible treatment as regards pay and working conditions, even though the most strongly limiting factors are above all a widespread unwillingness among certain employers to apply the two levels of bargaining, along with power relationships that are favourable to them. Recently, however, it has been in these very sectors that the excessive centralisation of the system and its unsuitability for relating pay to company performance with a view to improving competitiveness has been criticised[492].

It has, on the other hand, been pointed out that agreements renewed after the 1993 Protocol was stipulated regulated standard salaries, thus pursuing the objective of containing inflation rather than safeguarding their real value. Despite differences between sectors and historical periods, at the end of '98 gross salaries in manufacturing industries and the private sector as a whole (for regular employees, that is) were lower in real terms than they were in '93 and the overall pay dynamics were below, rather than in line with, productivity[493].

At the beginning of the new century, therefore, confrontation between the two sides of industry regarding reform of the collective bargaining system as defined by the 1993 Protocol resumed, although it did not lead to significant results, at least, so far.

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[491] See par. 2 where it is stated that «2/3 of representations are made up of members elected by all workers, ans 1/3 by members appointed or elected by the organisations stipulating the national contract that have presented lists in proportion to the number of votes obtained». The contract thus imposes a mixed RSU composition divided between a certain number nominated by members of the worker category federations, according to their respective statutory norms, and another number of representatives elected by all workers. Cf. Monaco 2000, p. 245 ff.

[492] See Bellardi 2003, p. 17 ff.

[493] See CNEL Report 2000, *Le relazioni sindacali in Italia 1997-1998*.

Input for resumption of the debate was provided by the Government: its *White Paper* published in October 2001 recognised that this was an area to be regulated by the social partners, but urged for reform of the model defined in the 1993 Protocol. Stating that the 1993 model had "outlived the situation for which it had been devised" (p. 10), and that the relatively centralised structure outlined in 1993 "while contributing towards regulating macroeconomic consistency, it hinders the relative wage adjustments", with negative effects for the reduction of unemployment (p. 60), the White Paper recommends a dual reform. On the one hand, a weakening of the role of the national contract, in the form of a sort of framework agreement guaranteeing minimum pay (a function carried out in other systems by minimum legal standards), which could also apply for periods other than the current ones, without two-year renewal, in compliance with government economic policy statements; and on the other, a strengthening of decentralised bargaining to make the pay structure more flexible and redistribute productivity in a framework of greater consistency in the pay rises collectively determined by inflation dynamics. The proposal to re-dimension the role of national agreements in order to strengthen decentralised bargaining did not, however, find favour with the social partners, as it neglected the problem of workers protected by higher-level agreements who were excluded from company-level bargaining. It is no coincidence that unions (especially CISL and UIL) theoretically in favour of reform of the 1993 setup with a view to strengthening decentralised bargaining (territorial or company-level) laid emphasis on this problem, going so far as to hypothesising a sort of obligation or requirement to resort to second-level bargaining. Enterprises, and especially *Confindustria*, were decidedly against this obligation. Also decidedly against any hypothesis of radical reform of the national contract was the CGIL confederation, which maintained the necessity of preserving a "resilient" national contract guaranteeing all workers, even those not covered by second-level bargaining, not only protection of the real value of salaries but also participation to a certain extent in increases in the average productivity of the worker category involved. Together with others, the confederation proposed rationalisation of national bargaining by progressively reducing the excessively high number of different national agreements, which no longer corresponded to the current production structure in Italy.

There was a difference of opinions among employers as well: whereas the association of mechanical enterprises (*Federmeccanica*) was clearly in favour of abolishing the national contract, *Confindustria* took a less radical stance, above all when new leadership showed a greater willingness to maintain the two-tier status quo. This stance appears to have been shared by most employers, at least according to the results of a 2002 survey involving a representative sample of 1100 employers. It emerged from the survey that over two-thirds of enterprises with more than 50 employees considered the national contract to be useful given the benefits connected with regulation of competition between enterprises concerning employment costs and conditions and its ability to stabilise industrial relations[494].

Despite the debate and the various (at times conflicting) criticisms made[495], as observed previously the model defined in the 1993 agreement remains essentially unchanged in both the private and public sectors. The only significant exception is the inter-confederate agreement in the craftsmen sector (850.000 companies, about 1,5 million employees), provisionally reached in late 2003

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[494] See CNEL Report 2004, *Contrattazione, retribuzioni e costo del lavoro in Italia nel contesto europeo.*

[495] For references, see Napoli 2003, 353 ff.; Bellardi 2003, 17 ff.

without the approval of CGIL, and finally signed on 3 March 2004 by all three confederations and the four employers' confederations operating in the sector; although the agreement confirmed the role of national bargaining, it strengthened the trend towards decentralisation by entrusting territorial bargaining with the task of redistributing productivity benefits and bridging the gap between planned and actual inflation.

4. Coverage of Collective Bargaining

No systematic analytical data is available concerning the coverage of collective bargaining in Italy. As regards above all decentralised bargaining the only studies available are out of date and limited to regional or territorial areas and do not apply on a national scale[496].

4.1. National bargaining at worker-category and department level

Nation wide-sector bargaining remains the most widespread form of negotiation in industrial relations in Italy[497]. National agreements continue to be renewed regularly with the exception of the public sector, where delays are due to the greater complexity of the negotiating procedure.

According to OECD data[498], the coverage of collective bargaining is about 82,5%, which is in line with statistics in countries with similar unionisation rates (Denmark, Sweden, Norway) and those which, despite lower rates (France, Spain)[499], feature extension of the legal effects of agreements. As recalled above (§ 1.4. ff.), due to the absence in Italy of a law which extends the personal scope of a collective agreement to non union members and regulates minimum pay standards, labour courts – following a constant trend since the '50s – have ruled in favour of the extension of pay standards set by collective agreements to non union members and above all in enterprises which do not belong to employers' associations and are thus formally not obliged to respect collective agreements. It should be added that legal norms providing financial aid and incentives for enterprises, and even legal regulations concerning public works agreements[500], often condition access to the relative benefits by requiring companies to respect collective agreements. This has favoured the coverage of national agreements. As outlined above (§ 1.4.5.), in the public administration sector, regulated by the public employment law, the coverage of national bargaining at a departmental level is practically 100%, as in this case it is the law, via particular devices, that guaranties the *erga omnes* effect of the collective agreement in a single department.

To this should be added, however, the rather shadier area of the hidden economy, which is cal-

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[496] Fabbri, Pini 1999, 296 ff.; Biagioli, Lugli, Tugnoli, 1996, 61; also D'Aloia, 2002, 219 ff. See also CNEL Report 2004, *Contrattazione, retribuzioni e costo del lavoro in Italia nel contesto europeo.*

[497] According to statistics provided by the national statistics institute, it accounts for 80 national sectors and 11.5 million out of a total of about 16 million employees. In 2002 34 national contracts were renewed, referring to 3,6 million workers, above all in manufacturing and construction (about 2 million). At the end of 2003, again according to national statistics, 57 national salary contracts were in force, involving 8,6 million workers (71,2%). In the same period, 19 national contracts involving 3,7 million workers were still waiting for renewal.

[498] Cf. *OECD Employment Outlook 2004*.

[499] In Italy, as seen above § 2.1.2., the average unionisation rate is 34-35%, including a large number of pensioners.

[500] See Art. 36 of the Workers' Statute (Law 300/1970); see also § 1.4.3.

culated to produce about one-fourth of the GDP in Italy. Excluding the grey area of irregular overtime, untaxed pay, etc., the estimated amount of totally irregular employment not covered by a contract is about 10% (excluding semi employees and the semi self-employed)[501].

4.2. Inter-confederate bargaining

Inter-professional bargaining at an inter-confederate level covers all employees in the form of framework agreements containing general norms concerning horizontal rules (see § 5.2.1 below). These agreements are reached at the highest level by all or the most important employers' associations and unions, at times with active mediation by the government. Although this bargaining is on private-law basis, the general significance of the interests involved ends up by extending the personal scope to more or less all sectors and worker categories, even though this is a de facto occurrence rather than an entitlement.

4.3. Company-level bargaining

Company–level bargaining coverage is different. According to national statistics, decentralised company-level bargaining in the private sector accounts for about 40% of workers in companies with more than 10 employees and 60% in those with over 50[502]. A recent survey conducted by the Bank of Italy returned, on the other hand, an estimate of 80% in enterprises with a company contract. In the public sector, where decentralised bargaining was introduced by law in 2000, the coverage is about 90%[503].

In general, although the 1993 Protocol confirmed the bipartite structure of the bargaining system, the company level cannot be said to have taken root. According to estimates, second-level bargaining in Italy covers at most 50% of the sector in which it is traditionally most widespread (metal and mechanical workers), the rate being much lower in other categories. Distribution is also uneven in territorial bargaining (more frequent in the centre and north, less so in the south and the islands) and in enterprises of different sizes (being essentially limited to medium-large enterprises). It is estimated that no second-level bargaining took place in the period under consideration in enterprises with fewer than 50 employees[504].

According to a recent analysis based on Eurostat data going back to 1997 – which, however, considers second-level bargaining to be confined to a bout one-third of the total number of workers – estimates that it involves above all workers on higher salaries (see Table V). The coverage would appear to increase alongside worker income, on account of the fact that it takes place above all in larger enterprises, which despite similar employment conditions pay their workers higher salaries than other firms[505].

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[501] See CNEL Report 2004, *Contrattazione, retribuzioni e costo del lavoro in Italia nel contesto europeo.*

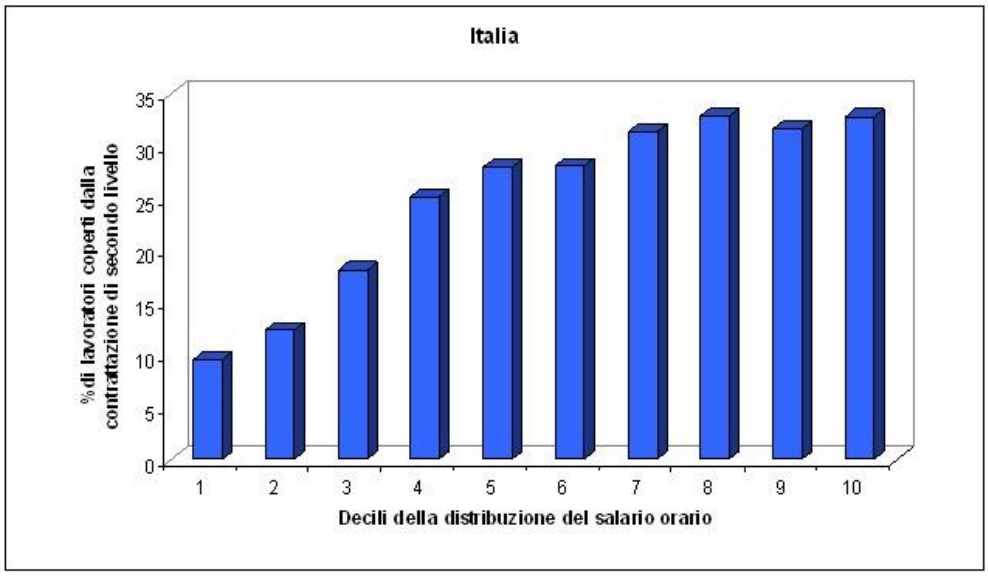
[502] Istat 2000, *La flessibilità del mercato del lavoro nel periodo 1995-96*, p.32; Pellegrini 2002, 117 ff.

[503] A *Federmeccanica* survey of a sample of associate enterprises in 1997 (Federmeccanica 1997) estimated that 45% had conducted bargaining at a company level. Birindelli, D'Aloia, 2002, 219 ff. estimate a coverage rate of between 60 and 80% of workers in industries with over 50 employees. A survey conducted in the Emilia Romagna region in 1998-2001 refers to company-level bargaining in about 200 enterprises operating in the food industry. They represent about 50% of all food industries with at least 20 employees, as confirmed by the last available census provided by Istat (1996). These companies employ about 75% of food industry workers in the region. See Pini, Tortia 2002, 133.

[504] Damiano, Giaccone 2001, 52.

[505] Boeri, *Contratti a chi serve lo status quo*, in www.lavoceinfo.it, 19 July 2004.

Table V – Coverage of bargaining and salary levels



4.4. Territorial bargaining

There is a total lack of data regarding the coverage of territorial bargaining (provided for by the 1993 Protocol as an alternative to company-level bargaining: see § 3.3. above) which takes place above all in sectors such as construction industries[506], agriculture and crafts, as well as in regions such as Veneto, where a district economy is prevalent. According to some studies, it would appear in this region that the coverage of territorial bargaining is comparable to that of company-level bargaining, especially in service industries[507]. A CNEL report refers to about 571 agreements reached in 236 negotiations between 1996 and 2003[508]. Territorial bargaining is above all provincial, and in the crafts industries regional. As yet unprocessed data is also available concerning

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[506] In this sector the coverage of territorial bargaining is estimated to be 40%.

[507] Regalia 2003b, 436.

[508] *Accordi per grandi Aree Territoriali;* CNEL Report 2004, *I lineamenti fondamentali della contrattazione territoriale contenuta nell'archivio del CNEL e la contrattazione territoriale nei distretti industriali:*

Area	*No. of Agreements*	*%*
Centre	131	23%
North	313	55%
South	127	22%
Total		571 100%
Macro-area	*No. of Agreements*	*%*
Agriculture	177	31%
OTHER	13	3%
Crafts	104	18%
Comm., Tour. and Serv.	47	8%

bargaining in industrial districts[509].

4.5. Supplementary bargaining in public employment

A recent study of supplementary bargaining in the public administration sector between 1998 and 2001[510] shows that, unlike the private sector, it is almost universal, at least as regards worker coverage, even though the statistics may be adversely affected by the sample, in which smaller administrations (especially small local municipalities) are under-represented. This extension of supplementary bargaining can also be accounted for by the fact that national agreements in the public administration sector almost always refer to issues that require second-level bargaining, making it necessary if not obligatory.

5. Issues covered by Collective Bargaining

The contents of collective bargaining have evolved and been considerably enriched over the years. Its has evolved from its initial task of establishing essential employment conditions such as wages and working time, not covered by legislation on minimum salaries, to include items ranging from organisational processes, the work environment, professionalism, etc. to more general issues such as company policy and strategy. Items covered alongside these include assurance of the right to exercise bargaining power (union rights in the broad sense, information rights etc.), as well as more incisive union intervention in management of the labour market and participation in institutional activities or negotiations with political powers.

In general a distinction is made between the *normative* and *obligatory* parts of the collective agreement. The normative part refers to clauses destined to regulate and establish individual employment relationships between employers and workers covered by the contract but who did not actually sign it. This, in short, is the part of the contract which regulates wages, working time etc. Alongside this part, the obligatory part places a series of procedural obligations on the parties to the contract, regulating their future relationship or requiring commitment by both parties to adhere to the collective agreement[511].

Construction	215	38%
Industry	15	3%
Total	571	100%.

[509] For further details, see CNEL 2004, *I lineamenti fondamentali della contrattazione territoriale contenuta nell'archivio del CNEL e la contrattazione territoriale nei distretti industriali,* 51 ff.

[510] The sample included about 320 public administrations in various departments throughout the country (except schools, which were not involved in supplementary bargaining, and research, a sector in which a national contract had not yet been stipulated at the time of the survey). See also CNEL Report 2004, *I lineamenti fondamentali della contrattazione territoriale contenuta nell'archivio del CNEL e la contrattazione territoriale nei distretti industriali.*

[511] A classical example of clauses contained in the obligatory part of a collective agreement were called *truce* clauses, whereby unions pledged, for the duration of the contract, not to take strike initiatives on issues covered by the contract or to make claims before the contract expired, or clauses in which the parties create bilateral committees with members from both sides of industry. Today the labour market reform promotes these bilateral committees for purposes including regulation of the labour market (Art. 2, letter h, Legislative Decree 276/03) which affects employment relationships such as training, etc. Another example is *collective agreement administration* clauses, which are quite common and aim to achieve out of court settlement of collective or individual grievances concerning above all the interpretation and the enforcement of a collective agreement.

5.1. The "new" functions of collective bargaining

From a different point of view, the contents of collective bargaining can be distinguished between on the basis of the function *of the relative agreements. Theoretical debate on the topic has for some time now highlighted a progressive enrichment and diversification of the functions of bargaining, showing that in an evolving economic and social context it has come to involve issues in which it does not perform its traditional acquisitive function as regards wage increases and new guarantees, but rather "administers" risks a group of workers are exposed to. With increasing frequency in the last few decades, often thanks to specific legal delegation, collective bargaining has been entrusted with the additional task of collaborating in the organisation of labour and in particular handling company crises and the ensuing employment problems. The related* concession agreements[512] *and* management agreements[513] *(see § 1.4.4. above) were common in the '90s.*

5.2. Bargaining levels and specific contents

In the current situation it is possible to distinguish between collective agreements stipulated at the various levels of bargaining according to their main contents, thus demonstrating the existence of a sort of "specialisation".

5.2.1. Inter-confederate and inter-departmental agreements

In line with the setup outlined in the 1993 Protocol, inter-confederate bargaining continues to play a significant role, above all concerning incomes policy, in that it controls wage dynamics and orientates worker category negotiations.

Inter-confederate agreements from the late '40s onwards always concerned very general issues potentially involving workers belonging to all categories, not only the major issues of wage levels but also agreements regarding company committees (1943, 1947, 1953, 1966), paid leave (1948), individual dismissals and redundancy (1950, 1965 and 1983), equal pay for men and women (1960, 1961 and 1963), the normalisation of union relations (1964), training and work contracts (1985, 1986, 1987, 1988 and 1989), and reform of the bargaining and industrial relations system (1990).

The issues dealt with in the '90s focused above all on flexible work contracts (training and work,

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[512] Forms of contract common in the '90s were *solidarity contracts* (governed by Laws 863/1984; 236/1993 and 608/1996), of which there were two versions: internal solidarity (to avoid collective dismissals) and external solidarity (to allow new workers to be hired) – whereby workers were bound to accept a reduction in their working time, and consequently wages; or contracts in which workers simply forwent expected or granted wage increases in order to enhance the competitiveness of a company in crisis; or again contracts in which they accepted increased working time with no overtime pay.

[513] Besides the *management contracts* mentioned in 1.4.4. we can mention company contracts involving significant welfare initiatives such as the setting up of funds for supplementary social security benefits. There are a number of other examples of collective agreements that fall into this category, above all because the management function is directly recognised by the law: they include contracts which remove a ban on fixed-term contracts in firms which have launched mobility or collective dismissal procedures in the previous 6-month period (Art. 3, clause 1, letter *b)* Legislative Decree 368/2001); those which establish the maximum number of workers who can be hired on fixed-term contracts in a given company (Art. 10, clause 7, Legislative Decree 368/2001); contracts covering variations in working time (called "elasticity clauses"), overtime and extra hours in part-time employment (Art. 1, clause 3 Legislative Decree 61/2001, as amended by Legislative Decree 276/2003); contracts legally authorised to extend temporarily the duration of previous coordinated and continuous but not permanent employment relationships in expectation of the introduction of a new type of "project" contracts (Art. 86 Legislative Decree 276/2003); or again contracts which define individual schemes for introduction to the labour market, which have replaced the old training and work contracts (Art. 55, clause 2, Legislative Decree 276/2003).

fixed-term, part-time – 1993 and 1995), the institution of RSUs (1994 and 1995), bilateral committees (1994 and 1995), health and safety in the workplace (1995 and 1996), transposition of the EU directive on EWCs 94/45/CE (1996), temporary labour supply contracts (1998), apprenticeship (1998), dispute settlement and arbitration procedures (2000), telework (2001).

Recent agreements refer to the definition of a new contract system in the crafts sector (3 March 2004), transposition of the European Framework Agreement on telework (9 June 2004: see § 8 below.), and finally the inter-confederate agreement on first-time employment contracts signed on 11 February 2004 by the three confederations CGIL, CISL and UIL and 22 employers' associations representing all types of companies and production sectors, stipulated in compliance with Art. 86, clause 13, Legislative Decree 276/2003.

Following the reform of employment in public administration, and in particular after 1996, there were a series of inter-departmental agreements, called *framework agreements*, again referring to issues involving all workers in the public sector (e.g. health and safety in 1996, leave of absence, entitlement to paid leave for union commitments and the setting up and operations of RSUs from 1997 to the present, telework in 2000, dispute settlement and arbitration in 2001 and 2003, guidelines for arbitration and settlement procedures to be inserted in agreements concerning essential services to be ensured in the event of strikes in 2001, etc.) or the bargaining system itself, for example agreements on the definition of departments and autonomous bargaining areas for executives in the public sector from 1998 to the present.

5.2.2. Nation wide-sector and departmental (*comparto*) agreements

The national sector contract in the private sector and the departmental contract in the public sector are, as seen previously (§ 3.3. and 3.3.1.) the cornerstone of the Italian system, playing an essential role in determining wages and defining responsibilities in decentralised bargaining.

The contents of national sector bargaining have changed over the years due to structural and institutional factors – the new political framework and recent labour market legislation – that have contributed towards the emergence of new issues to be dealt with during negotiation.

Very briefly, with reference to a recent report highlighting the more innovative contents of collective bargaining[514], the most important issues include the following:

- the model of industrial relations, which often favours concertation with the aim of implementing shared policies founded on consensus as a positive element to be pursued at the various levels, in a global system of industrial relations, establishing specific timing for information, consultation and participation;

- the institution and functioning of bilateral organisms which in the last decade have become part of almost all agreements and have various tasks ranging from an active role in management of the labour market to the realisation of new industrial relations, in order to facilitate ordered and correct management of union relationships within production units. Bilateral organisms have been entrusted with tackling various thorny issues emerging in the world of work, such as mob-

[514] For a detailed analysis of the contents of recent collective bargaining, see CNEL Report 2004, *Contrattazione, retribuzioni e costo del lavoro in Italia nel contesto europeo.*

bing and sexual harassment which have been added to some agreements even in the public sector;

- staff organisation and classification on the basis of professional skills, seniority, etc. Classification in some sectors (telecommunications, railways, metal and mechanical workers) has recently been broadened to allow for greater functional flexibility;

- wages;

- the duration of employment, in relation to which the new regulations set forth in Legislative Decree 66/2003 contain a number of references to collective bargaining, some authorising it to derogate significantly from almost all the provisions the same decree contains;

- "flexible" employment, which regulates – via a number of references in recent legislation (Legislative Decree 368/2001; Legislative Decree 276/2003) - various aspects of part-time, fixed-term, intermittent, shared, agency-brokered employment and telework (see § 8.2. below), and also training contracts;

- ongoing training and the right to study, often seen as ways to enhance competitiveness and meet workers' retraining requirements with a view to helping them deal with increasing precariousness in the labour market;

- regulation of work by immigrants; this, however, is only regulated by worker-category bargaining in very few exceptional cases[515];

- worker health and safety: numerous agreements now regulate or set up organisms and bilateral committees responsible for such issues;

- the work environment: from analysis of agreements there emerges a new awareness of the significance of quality of life in the working environment, a formula comprising protection of the personal dignity, fundamental rights and physical and mental health of workers. In this context phenomena such as sexual harassment and mobbing appear to be dangers potentially inherent to company organisation, to be dealt with by means of preventive measures;

- policies which have recently made an appearance, aiming ate enhancing the environmental sustainability of production in sectors with a greater environmental impact;

- the regulation of extrajudicial dispute settlement, for example the obligation to attempt settlement, etc.

- the setting up and regulation of supplementary social security funds.

5.2.3. Decentralised agreements in the public sector

As seen above (§ 4.5.), national departmental agreements in the public sector contain a large number of items to be implemented in second-level bargaining, making it necessary although not

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[515] See the recent contract *Ccnl Concia Confapi ofl 17 September 2003,* in which Companies, as advised by the RSU, are to evaluate, according to their production requirements, any requests from permanent non-European employees regarding participation in training courses, especially with a view to learning Italian, and problems related to being reunited with family members.

compulsory[516], even though decentralised negotiating competencies in this sector are by no means comparable to those in the private sector (see § 3.3.), as the law itself sets a limit on the issues covered by bargaining, excluding those of wages and anything else that might indirectly affect the cost of labour (with the exception of staff classification policies). At any rate, the public system features shared bargaining rights that allow the unions to control decentralised bargaining dynamics[517].

As regards the issues covered, the most frequent (91%) - both overall and in the individual departments, with a peak in the Health sector and an exception in the Ministries – is horizontal wage progression, followed by productivity and the distribution of resources for fringe benefits among the various items included in departmental agreements, vertical progression, staff evaluation criteria and systems, overtime, working time, staff numbers, etc.

As far as the relation to the size of administrations is concerned, there are significant differences regarding additional resources, organisational situations, equal opportunities and management economies, all of which are more frequently covered by bargaining in the larger administrations. Atypical contracts are covered by bargaining in administrations of all sizes.

5.2.4. Company-level agreements

The issues most commonly dealt with by company-level bargaining[518] confirm its role as a fundamental tool in adapting the specific situation of an enterprise to external conditions (determined by both market competition and national rules and regulations) and in shared, bargained, management of this adaptation.

The three main issues most commonly addressed are, in fact, wages (since the 1993 Protocol attributes a central role in second-level bargaining to what are called "results bonuses"), models of participation and working time. As regards working hours, the most commonly addressed items are contracted working hour management, holidays and leave of absence, shift work and bargained flexibility on the basis of a multi-week timetable. As can be seen, bargaining always addresses either annual working time (in particular the first two) or flexibility and an increase in plant usage (in particular in relation to seasonal work). Reductions in working time are of a certain modest significance, but only in the trade sector and service industries. Flexible working time are also often considered as a significant trade-off in concession agreements attempting to offset the effects on employment of the economic crisis.

The other main element of flexible employment relationships, atypical contracts, is almost always included in the second group of the most commonly addressed issues. The forms of contract most commonly referred to in agreements in all sectors are part-time and fixed-term contracts.

It is also important to stress the significance in all sectors of professional training. This is a considerable achievement considering the importance attributed in recent years by governments

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[516] Bordogna 2002.

[517] According to Bordogna 2003b, p. 446, in the public sector «there have certainly been frequent negative instances of improper application of certain institutions, in which expenditure constraints have to varying degrees been breached». Nevertheless, the decentralised bargaining system currently appears to be more rational than the informal uncontrolled mechanisms of the '80s.

[518] See CNEL Report 2002, *La contrattazione aziendale nel settore privato dell'economia.*

and social actors at a European level to ongoing education as a basic tool for workforce adaptability and thus employability.

An important role is also played by industrial relations issues in enterprises of almost all sizes: for example, the time at which enterprises provide unions with the information contemplated in national and company-level agreements is of greater weight in larger enterprises (at times being linked to restructuring and reorganisation processes and the related employment problems). The setting up of bilateral and joint committees usually has a more important role in larger companies. Of significance is also the weight of bargaining for union rights.

As regards the organisation of work, alongside the obvious bargaining on organisational change what appears highly significant in almost all sectors is the role of bargaining on outsourcing.

5.2.5. Territorial agreements

Territorial bargaining, as contemplated by the 1993 Protocol, takes place above all in agricultural and construction enterprises, as well as crafts industries (at a regional level) since the inter-confederate agreement of 1992, commerce, tourism and the service industries.

The main contents[519] are wages and modes of participation in industrial relations, with particular reference to the setting up of bilateral and joint committees. As regards wages, performance-related bonuses, which are a common issue in company-level bargaining, started to spread after 1999 in territorial-level bargaining in construction industries and in part also in the crafts industres; their role in agriculture is, however, secondary. Other common issues are flexibility (both functional and employment-contract linked), the organisation of labour, professional status, working time and the work environment. Another item of a certain importance is "social issues", which includes work by minors, the protection of certain categories such as the disabled and drug addicts, worker aid organisations, services such as accommodation, which is common above all in construction industries and agriculture, but to a lesser extent in crafts industries.

6. The role of collective bargaining in Transfer of Undertakings and in Collective Dismissals

6.1. The Role of Collective Bargaining in Transfers of Undertakings

Italian law has evolved alongside EU regulations governing transfers of undertakings, including the obligation to consult workers (Art. 7 EC Directive 23/2001). Art. 47 of Law 428/1990, recently amended, states that the transferor and transferee are to given written notification of any planned transfer (even of a branch of a company) at least 25 days before the transfer deed is signed or a binding agreement between the parties has been reached, if this is prior to the former.

Notification must be sent to the respective RSUs or to the RSAs in the production units involved, as established by Art. 19 of Law 300, 20 May 1970. It must also be sent to national-category unions that stipulated the collective agreement in the enterprises involved in the transfer.

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[519] For a detailed analysis of territorial bargaining, see the recent CNEL Report 2004, *I lineamenti fondamentali della contrattazione territoriale contenuta nell'archivio del CNEL e la contrattazione territoriale nei distretti industriali.*

If these workplace union representations do not exist, the enterprises are to notify the comparatively most representative unions: this can be done by the transferor and transferee via the employers' association to which they belong or which has a mandate to represent them[520].

The following clause of Art. 47 states that on written request by the union representations or worker-category unions, made at the latest seven days after receipt of this notification, the transferor and transferee are obliged, within seven days of receiving the request, to activate a joint examination with the requesting unions. Consultation is considered to be complete is an agreement has not been reached after ten days of talks.

In the Italian system, therefore, transfers of undertakings require information and then consultation with the parties involved. The law refers to consultation as being compulsory: on request, the unions must be consulted. It is, however, evident that by consultation the law actually means bargaining activity: consultation can transform into negotiation and end with a formal agreement. As can be seen, therefore, the transferor and transferee are obliged to negotiate in good faith, if the workers representations and unions ask for consultation to be transformed into negotiation Whereas consultation, and therefore indirectly negotiation in good faith, are compulsory, there is no obligation to reach an agreement: the law indicates a term after which the transferor and transferee may proceed with the transfer, even if the effects on workers, other than established by law, have not been regulated by a union agreement.

Any breach of the obligation to inform and consult the unions is dealt with by the anti-union behaviour procedure laid down by Art 28 of Law 300/1970 (Workers' Statute).

In practice, collective bargaining has frequently intervened to control the effects on workers involved in transfer operations, at times to specify or increase the protection they are afforded, as established by Art. 2112 of the Civil Code (amended by Art. 32 Legislative Decree 276/2003), in particular to maintain contractual benefits acquired even after the expiry of collective agreements; to insert guarantees of stability beyond those provided for by law[521]; to guarantee continuity in supplementary pension contributions specified in company agreements, etc.

It should, however, be pointed out that, unlike what happens with collective dismissals (see § 6.2. below), the law does not provide incentives for the conclusion of formal agreements regarding the transfer of undertakings. Any agreement reached is quite voluntary. This difference can probably be accounted for by the fact that the regulations governing the transfer of undertakings provide broad guarantees of job continuity for transferred workers, whereas collective dismissal regulations, which also require union involvement, only aim to attenuate the economic effects of dismissals[522] but do not provide any specific solution to protect the jobs of workers to be dismissed. Any solution aiming at reducing the number of dismissals is entrusted to collective bargaining, hence legislative support, basically economic, for the reaching of agreements (see § 6.2 below).

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[520] The information is to concern: a) the date or proposed date of transfer; b) the reasons for the planned transfer; c) the legal, economic and social consequences for workers; d) any foreseen measures affecting workers.

[521] A 10-year employment protection clause regarding transfers to new companies was inserted into an important agreement in the credit sector: the 2003 S. Paolo IMI agreement concerning management of the Bank of Naples overbalance.

[522] This is provided through income support for workers made redundant: a mobility regime and redundancy payments.

6.1.1. The case of airport services

Airport services are a significant case. In implementing EC Directive 96/67 on the deregulation of airport services, and in particular Art. 18 - which requires Member States, in respect of the general provisions laid down in the directive, to apply any measures necessary to guarantee protection of workers' rights – Italy introduced legal provisions offering workers better conditions than those established in the directive on the transfer of undertakings (2001/23/CE) and the general national provisions. Art. 14 of Legislative Decree 18/1999, enacted to implement EU directive 96/97, in fact contained a social clause guaranteeing stable employment for airport service workers by the new operators (in proportion to the activity acquired), entrusting bargaining with specification of the special clauses. Collective bargaining in the sector took advantage of this, even regulating the selection mechanism for workers to be transferred (similar regulations only apply in Italy to collective dismissals and not normally to the transfer of workers following a transfer of undertakings or a branch of a company).

In implementing Art. 14 of Legislative Decree 18/1999, greater stability clauses were added to company agreements (the commitment by airport service providers to re-employ transferred staff within a certain period of time in the event of dismissals by the new operators for economic reasons) and further economic incentives, besides accrued credits, for transferred workers.

Recently the European Court of Justice (ruling 9.12.2004 Case-C-460/02), following an appeal by the Commission, ruled against Italy on account of the fact that the greater favour regulations (Art. 14 Legislative Decree 18/1999) not only specifically formulated the notion of transfer of undertakings in a way dissimilar to the general provisions, but also tended to limit competition in the airport services market (in contrast with Directive 96/97) by requiring new operators to hire a pre-established number of workers, thus increasing the costs for new enterprises and distorting the market.

In the future the ruling may affect the validity of union agreements to implement Italian legislation deemed to be in contrast with Directive 96/97, but not the results of negotiated agreements that comply with the legal provisions, declared to be illegitimate, and implementation agreements.

6.2. The role of collective bargaining in collective dismissals

Following repeated, even recent, rulings against Italy by the ECJ[523], in 1991[524] and 2004[525] provisions were enacted to implement EU directives regarding collective dismissals. The regulations govern the procedure of collective dismissals and, as in the transfer of undertakings, require unions to be informed and consulted.

Procedure is regulated by Arts. 4 and 5 of Law 223/1991, which require an employer with more than 15 employees to give prior written notification to the RSA (now called RSU) and worker-

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[523] ECJ 6 November 1985, C-131/84; ECJ 8 June 1982, C-91/81; recently, ECJ 16 October, 2003, C-32/02 regarding the field of application of collective dismissal regulations to non-entrepreneurial employers.
[524] Law no. 223/1991 and subsequent additions.
[525] Legislative Decree no. 110/2004.

category associations belonging to the most representative confederations of the technical and organisational reasons for reducing staff numbers[526]. Scholars (*dottrina*) and the courts maintain that this information should be complete and appropriate for the opening up of negotiations with the unions. Union notification is followed by a negotiation phase which may take place, on the request of the unions, within seven days of receipt of the notification and must conclude in no more than 45 days.

The employer is to conduct negotiations in good faith, a lack of which is deemed to be anti-union behaviour, legally punishable under Art. 28 of Law 300/1970 (the dismissal may even be declared not valid).

The law openly states that the aim of negotiation is to reach an appropriate agreement on total or partial reductions in staff numbers.

If a formal agreement is signed – and this is the main difference between collective dismissals and transfers of undertakings, in which there is no support for the agreement – the employer will be granted relevant aid with the cost of dismissal and may also take advantage of normative benefits (s/he may assign not dismissed workers inferior duties, which is normally not allowed by Art 2103 of the Civil Code); it is also possible to introduce partial early retirement schemes combined with a reduction in working time (part-time) etc.

An important role is played by collective bargaining in identifying the criteria used to select workers for dismissal. The conflicting legally established criteria (technical, production-related and organisational reasons, number of family members, seniority) only intervene in the absence of alternative criteria introduced by the collective agreement. According to a Constitutional Court ruling, such agreements take *erga omnes* legal effect as they represent proceduralisation of the powers an employer is entitled to exercise (see also § 1.4.4.).

7. The Influence of European Law and the EMU on Collective Bargaining

7.1. The Euro and wage negotiations

The collective bargaining structure which evolved following the 1993 Protocol and the consequent policies for the control of wage dynamics via a system of organised deregulation, were due to the decision to meet the economic and financial parameters required to join the single currency system. These policies allowed the objective to be reached in 2002, the year the Euro was introduced. It cannot, however, be denied that the single currency objective pursued by political powers and the unions by means of the 1993 social pact significantly affected the wage issues addressed by bargaining policies in the following decade.

In Italy, as in most European countries, wage dynamics are controlled via sector-level bargaining, company-level negotiation having little influence (with the exception of sectors such as agriculture, territorial bargaining is also uninfluential); as seen above (§ 3.3.) this occurred in spite of the

[526] Notification must also include the number, position and professional qualifications of excess staff, as well as staff numbers usually employed; the time required to implement the mobility scheme; any measures planned to cater for the social consequences of implementation, etc. (Art.4 clause 3° Law 223/1991 as amended by Legislative Decree 151/1997)

fact that the 1993 Protocol had assigned this level the task of redistributing increases in company productivity[527]. The wage increase solutions used in the first half of the '90s were also highly conventional (fixed or presence-related bonuses). The turn of the century, on the other hand, saw an spread of wage increases linked to innovative models of participation and industrial relations (performance- and results-related, even though in the early stages there was a widespread trend towards reserving a certain fixed quota)[528].

In short the 1993 Protocol can certainly be said to have favoured wage policies aiming to control income from employment, thus lightening costs for enterprises, bringing inflation under control and allowing Italy to enter the single currency[529].

The single currency has not led, or at least not yet, to processes of supranational coordination of unions' wage and negotiating policies[530]. Nor do these processes seem to be currently affected by enlargement of the EU. Recently, economists[531] have cast doubt on the usefulness of reference to a planned inflation rate in contract renewals, despite its important role in reducing inflation in the '90s. They have suggested reference be made to "prices and salaries in the single currency area". The suggestion has, however, been accepted with great caution.

7.2. EU Law and collective bargaining

There are no systematic studies of the degree and quality of the influence of EU law on collective bargaining. Some observers doubt that EU law influence has led to greater deregulation of the collective bargaining system[532].

As regards working time, prior to official transposition of the EU directive, which was delayed until the enactment of Legislative Decree 66/2003, collective bargaining, even at a company level, had frequently transposed the more innovative contents of the directive, above all concerning flexibility in working time; territorial bargaining was also significant in this area[533]. Company and territorial bargaining on working time was often experimental, in the attempt to tune the legislation subsequently enacted, skipping national sector-level bargaining. This level, not least due to its four-year expiry period, was therefore not able to take a guiding role in EU-inspired issues, and was thus transformed, in the best hypothesis, into ratification of experience gained at company level.

The same happened with part-time employment. National bargaining often delayed in adapting to EU regulations, and was overridden by company bargaining. National collective bargaining in fact maintained outdated specific provisions and did not implement the changes that had in the meantime been introduced into the normative framework (Legislative Decree 61/2000) to implement EU Directive 97/81. The only significant changes in national regulations were made in the

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[527] In the 90s company-level bargaining only accounted for about 3-5% of overall wage agreements, with significant differences between companies. More recent estimates refer to about 7-10% of wages. CNEL Report 2004, *Contrattazione, retribuzioni e costo del lavoro in Italia nel contesto europeo,* 26.

[528] See CNEL Report 2004, *Contrattazione, retribuzioni e costo del lavoro in Italia nel contesto europeo,* 26.

[529] Mermet 2002, 39 ff.; Megale 2001, 163 ff: *Commissione Giugni per la revisione del protocollo del 1993*, Rome, 1998.

[530] See Sciarra 2002, 9 ff.

[531] Boeri, Bertola 2002, *A che serve il Tasso di Inflazione Programmata?,* in www.lavoce.info, 20 October 2002.

[532] Damiano, Giaccone 2001, 61.

[533] Ricci 2004, 146 ff.; Bonati 2004, 56.

commercial sector. It has been widely suggested that national bargaining should be confined to framework regulation of issues covered by EU rules, entrusting decentralised bargaining with the task of exploring new ways to implement the principles they contain.

Although recent legislation on working time and flexible employment (Legislative Decrees 66/2003 and 276/2003) aim to implement EU directives, they formally strengthen the responsibilities of decentralised levels but within a framework of overall weakening of the criteria governing coordination between the various levels.

In short, by favouring a certain amount of decentralised bargaining, community law has in some way contributed towards altering the relationship between the national and decentralised levels established by the 1993 Protocol, favouring second-level regulation.

It is discussed whether a possible impact of community law on industrial relations may derived from Directives 2001/86/CE and 2002/14/CE, respectively on the involvement and participation of workers in European companies and information and consultation in national enterprises.

As regards the collective bargaining system as a whole, the spread of forms of worker participation induced by secondary EU law may put some pressure on the role and space for collective bargaining but will not necessarily reduce it. As far as the effects of the structure and contents of bargaining are concerned, there may well be a further push towards decentralisation at a company level and attenuation of the more conflicting orientations.

Finally, as regards the impact of the system of worker representation, there may be a push in directives towards a dual representation mechanism, which would clash with the traditional single-channel system operating in Italy (see above § 2.5.)[534]

8. The Transposition of European Directives and the Agreement on Telework

8.1. The transposition of EU Directives via collective agreements in the Italian system

In Italy, the transposition of EU directives by means of agreements stipulated by the social partners has created a series of difficult problems given the persistence of limits – frequently recognised by the Court of Justice – regarding the lack in the Italian system of legislative and administrative mechanisms to extend the personal scope of collective agreements. As seen above (§ 1.4. ff), these limits derive from the existence of Art. 39, clause 4, of the Constitution, which was never implemented and which in fact makes it impossible to see the private-law collective agreement, with its limited personal scope, as a suitable tool for implementation of EU directives. Art. 137, par. 3, of the Treaty, in fact, in allowing member states to entrust the social partners with transposing directives, commits member states to adopt the "necessary measures" to "guarantee at any time the results imposed" by these directives. Hence the problem, because in the Italian system on the one hand the collective agreement is of no generalised personal scope, and on the other any legal intervention to extend the personal scope of collective agreements transposing directives would come up against the constitutional limit imposed by the failure to implement Art. 39, clauses 2, 3 and 4 of the Constitution.

[534] Bordogna 2003a, 107 ff.

Some experts, however, in relation to collective agreements which transpose European directives, foresee a generalised effect of such agreements, overcoming the obstacle deriving from the failure to enact the second part of Art. 39 of the Constitution. According to this thesis, when a member state decides to entrust the social partners with adapting domestic law to prescriptions laid down by European law, the collective agreement would be a highly appropriate tool for the transposition of European directives: like all tools used for this purpose it has to be characterised by the principle of effectiveness, and in this specific case by generalised extension of the personal scope[535].

In the so-called "Christmas Pact" of 1998, the government and the social partners expressly declared that "concertation will also refer to the transposition of EU directives in relation to which the social partners have significant responsibilities as expressly foreseen by the social policy agreement now incorporated into the Treaty of Amsterdam", emphasising that "agreements between the social partners are a priority tool for the government and Parliament to fulfil their European obligations, especially with reference to directives issued following social dialogue"[536]. The 1998 Pact thus seems to elude the question of the failure to enact Art. 39 clauses 2, 3 and 4 of the Constitution, by favouring, in principle, the bilateral bargaining option, and above all by inserting agreement between the social partners into the concertation procedure preceding legislative initiatives by the government. More precisely, the agreement is destined – as the Pact states – to regulate "the contents of government intervention: consequently provisions that the government is committed to enacting following this procedure would not merely be an extension of the effects of a transposing collective agreement, but regulation of the issue to which the directive refers "modelled" on agreement between the social partners[537].

This model involving the social partners in the transposition of European directives was, for example, followed in 2000 when European Directive n° 99/70 on fixed-term contracts was transposed: the Labour Minister invited the social partners to start negotiations with a view to providing a "shared opinion" regarding the modalities of transposing the directive into the Italian system. Despite predictions to the contrary by the social partners, who expected an agreement to be reached in a short time, the negotiations were long and difficult and only ended – in a harshly polemical climate – in April 2001 with an agreement not signed by the CGIL. The final outcome was approval of Legislative Decree 368 of September 6, 2002, which enacted the agreement signed by the unions and thus transposed the European directive[538].

8.2. The 2004 inter-confederate agreement transposing the European Agreement on Telework

With an inter-confederate agreement signed on June 9 2004, and thus considerably early, Italy transposed the European Agreement on Telework stipulated on July 16 2002 by UNICE and UEAPME for private enterprise, CEEP for public companies, and CES for the union associations. This was the first European agreement reached on the basis of Art 139, par.2 of the Treaty, that is, the first "free" or not legally binding agreement, the transposition of which into the systems of the member states was left up to the initiative of the social partners, within the framework of

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[535] See D'Antona 1998, 665 ff.; Lo Faro 2002, 220 ff.

[536] See Par. 2.6 of the 1998 Pact.

[537] Bellardi 2001, 87 ff.

[538] See Zappalà 2004, 98 ff.

their respective procedures and current practice.

In Italy before the inter-confederate agreement was signed, telework in the private sector was not subject to specific legislative regulations, being mostly regulated by agreements stipulated by the social partners. The same did not apply in the public sector, where Art. 4 of Law 191 of June 16 1998 legitimised recourse to telework in public administration. On October 24, 2002, ARAN and the public sector unions signed an agreement establishing the basic rules for assigning public sector employees to telework projects.

Already regulated by contract, as mentioned, telework was recently regulated by the 2004 inter-confederate agreement[539] signed by the most important national employers' associations[540] and the CGIL, CISL and UIL confederations. The agreement faithfully reproduces[541] the European Agreement. In general, Art. 11, clause 1, confirms existing collective agreements on telework, the limits and conditions of which continue to apply. This having been said, however, the agreement makes it possible for collective bargaining, at a level considered appropriate by the social partners, to supplement the principles and criteria established in the inter-confederate agreement in order to take into account the specific needs of the social partners interested in adopting telework. It is thus possible, via collective agreements signed at any level (national, territorial or company) to establish regulations which differ from those adopted in the inter-confederate agreement, as long as they are justified by specific company and/or territorial and/or sector requirements and naturally respect the non-regression clause. Par. 4 of the introduction to the inter-confederate agreement includes the non-regression clause typical of European-style regulations, according to which implementation of the agreement is not a valid reason for reducing the general level of protection workers are ensured of by its field of application. It should, however, be pointed out that the non-regression clause does not prevent national social partners from establishing provisions other than those included in the agreement as long as the minimum standards laid down there are respected.

As regards the effects of transposition of the 2002 Agreement in the Italian system, it should be noted that the solution of the cross sector agreement in fact limits the personal scope of collective agreements. The agreement on telework is a civil law agreement which has no generalised personal scope but exclusively concerns the employers and workers involved or who belong to the union associations signing the agreement. It should, however, be pointed out that the decision to transpose the European Agreement via an cross sector agreement signed by all the national employers' associations and thus destined to have a binding effect on almost all of the private sector in Italy, shows a clear intention on the part of the social partners to make as broad and general an implementation as possible of the provisions contained in the European Agreement

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[539] See Gottardi 2004, 67 ff.

[540] Confindustria, Confartigianato, Confesercenti, Cna, Confapi, Confservizi, Abi, Agci, Ania, Apla, Casartigiani, Cia, Claai, Coldiretti, Confagricoltura, Concooperative, Confcommercio, Confinterim, Legacoop and Unci.

[541] The only part obviously modified is the one which in the framework agreement regulates its "enactment and subsequent verification" which in the inter-confederate agreement becomes "implementation and verification of the agreement".

9. Conclusion

9.1. Legal effects of collective agreements today. Prospects of reform

Despite repeated exceptions introduced by the law, the collective agreement remains the civil law source regulating employment relationships (see above § 1.1.1.). It is, however, a widespread opinion that it is a persistent institutional anomaly, above all due to two factors, the first a general one pertaining to the national system, and the second a more specific one involving the relationship with the European system. These factors would appear to suggest the appropriacy of legislative intervention to regulate the effects of collective agreements.

As regards the first factor, the functional overload of the collective agreement in the national system (the fact that it is assigned increasingly complex regulatory functions ranging from the labour market to supplementary pension contributions, from the reorganisation of public administration to the regulation of industrial action in public services, etc.) does not seem to be able to tolerate for much longer the lack of legal regulation of its effects and, to some extent, of the actors who bring it into being.

The tenure of the legal effect of the collective agreement in Italy is based, as has been seen, on a factual element external to its legal structure: what Italian scholars (*dottrina*) define as *effectiveness*. The term refers in particular to the persistence over time of certain historic features of the system of industrial relations, which all converge to guarantee the actual effectiveness of the agreement, the most important of which is the traditional unity of action between the most representative union confederations.

Up to the present this unity of action has ensured unified collective agreements and thus homogeneous regulation of employment relationships at a sector, territorial and company level. This has avoided both regulatory fragmentation, which would have implied overlapping and competing agreements in sector, territory or company, and the harmful effect of the attempt to set lower standards by autonomous unions, which could propose derogation agreements. On the contrary, employers have up to the present considered it to be more convenient to opt for the stability in industrial relations and homogeneous costs guaranteed by a single agreement.

However, if the unity of action should disintegrate, as it threatened to do between 2002 and 2003, when the confederations took different stances regarding the legislation enacted by the centre-right government (CGIL being hostile, whereas CISL and UIL were more willing to enter into dialogue), or as happened upon renewal of the metal and mechanical workers' agreement in 2003, the consequences for the legal effect of the collective agreement would be far-reaching. A possible result, which is what happened after the separate agreement signed by the metal and mechanical workers in 2003, would be a race to achieve better wage conditions and social upheaval.

Stipulation of the separate national agreement by the metal and mechanical workers – a sector which still has great symbolic importance in Italy, albeit less than in the past, risked reproducing the pattern of uncontrolled bargaining of the 70s, which the 1993 Protocol legally remedied by imposing coordination of the bargaining structure based on the hierarchical prevalence of the

sector-level agreement (see above § 3.2. and 3.3.)[542]. A break in trade union unity could also result in a proliferation of agreements based on derogations signed by smaller unions (called "pirate agreements"), the effect being social dumping and disarticulation of the bargaining structure[543].

Today this risk seems to have been avoided. In 2005 the metal and mechanical workers' unions presented a single platform inspired by the position of the FIOM-CGIL, based on a conflictual and non-participatory pattern of industrial relations which pursues worker welfare and safety by means of a high level of homogeneous, inderogable national normative and contractual standards. This position is currently shared by CISL and UIL, although their bargaining pattern is different, featuring more participatory relations, wages linked to productivity and company profitability, greater decentralisation at a territorial and company level and therefore greater differentiation between standards.

Faced with already evident resistance from employers towards renewing the agreement according to the modalities and traditional contents of the platform, disagreement between the unions seems destined to resume, with the risk of yet another separate agreement and renewed tension. It is therefore evident that the lack of a law regulating, on the basis of the principle of majority, disagreement between unions proposing different models of industrial relations, makes industrial relations as a whole more instable[544].

The second factor, of a supranational nature, which suggests the appropriacy of legal regulation of the effects of the collective agreement, is the fact that this lack makes it impossible, in Italy, to apply secondary European law as established by Art 137 of the Treaty by means of the collective agreement (see above § 8.1.), and also makes it difficult to transpose "free" European Agreements stipulated according to the provisions of Art. 139 of the Treaty (e.g. telework § 8.2.).

Even for such a limited purpose normative intervention would be appropriate.

The greatest obstacle to legislative intervention (besides the hostility of the employers' associations who prefer to maintain the *status quo* based on the de facto legal effect of the agreement) is the lack of agreement between the major union confederations, which already became apparent when the majority of the previous centre-left government supported a parliamentary bill. Today, as then, there is no agreement on either the *an* or *quomodo* of legislative intervention, above all as concerns representation and representativeness. Regulation of the legal effect of a collective agreement cannot, in fact, exclude regulation of the representative subject (trade union pluralism, the principle of majority, criteria of representativeness, etc.), as happened in public sector employment (see above § 1.2.2.). Regulation of the *status* of the collective agreement and the introduction of rules regarding the representation and representativeness of the social partners are two sides to the same problem.

Some confederations (UIL, and above all CISL) are traditionally opposed to outside intervention

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[542] In fact, far from putting an end to the conflict and restoring the social peace pursued by the employers, the separate national contract led to unilateral resumption of the conflict at a territorial and company level by CGIL and its worker-category organisation FIOM, with a separate general strike in the sector in November 2003.

[543] Similar episodes occurred in the second half of the 90s (e.g. the UCICT-CISAL collective agreement which halved monthly salaries in the sector). The spread of the practice was avoided by strengthening the unity of action of the large confederations; cf. Lassandari 1997, 261 ff.

[544] Caruso 2005b, 75 ff.

for both ideological reasons (their support of voluntarism in industrial relations and a persisting associative concept of the trade union) and tactical contingent reasons (the desire to avoid exposure to inter-union competition based on a legislatively regulated rule of majority).

Another obstacle of a legal constitutional nature to the possibility of legislative intervention regarding the legal effect of the collective agreement and union representation is Art. 39 of the Constitution, (clauses 2, 3 and 4) which imposes a certain pattern of intervention by the law, considering all others to be unconstitutional.

Besides the objective obsolescence of the provision, above all in its technical details (the requirement for registration of unions, the ontological concept of worker categories) it is a widespread opinion among experts that the constitutional norm confines itself to sanctioning certain basic principles (the principle of majority to regulate pluralism, measurement of the representativeness of unions on the basis of the number of members and not only "open elections"). Accepting these impassable limits, a law inspired by these principles could be held compatible by the Constitutional Court even though the technical details mark a departure from the constitutional model.

The issue is an open one and is likely to reappear on the legislative agenda if the parliamentary majority and the current government should change.

9.2. Recent labour market reforms

The rise to power of a centre-right government following the 2001 general election marked a profound change in the system regulating labour law in Italy.

The reforms were radical and introduced "in the name of Europe". The government frequently expressed in official documents[545] its vision of the "modernisation" of Italian labour law, considered to be obsolete and no longer adequate for the requirements of a global market; it repeated that loosening the historically rooted normative rigidity was an aim to be pursued not with a view to free market deregulation but following the path laid down by the EES and "new generation" soft social policies. Concepts such as competitiveness, social dialogue, soft law, employability, entrepreneurship, subsidiarity, active society and workfare were often used to support the labour market reforms enacted and/or promised.

Debate about the result of the reform process is obviously complex and still ongoing. The reforms enacted cover a wide range of aspects: competitive reorganisation of the labour market and its governing institutions; the regulation of new types of flexible employment and a profound re-regulation of existing ones; reorganisation of working time, working and non-working time to implement the European directive; legal facilitation for economic operations involving outsourcing in certain phases of the production cycle; the introduction of a system of certification for the classification of flexible employment relationships and support for transactional activity in individual bargaining in order to re-dimension the role of industrial tribunals, judged to be excessively unbalanced in the favour of workers, and other aspects[546].

As regards the system of collective bargaining, the agreement structure and union representation, the recent reforms seem to continue on from changes made in the 90s.

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[545] Ministry of Labour and Social Policy, *Libro bianco sul mercato del lavoro in Italia*, 2001, Roma.

[546] Caruso 2004a, 11 ff.

As far as the regulatory method is concerned, the "Italian style" is re-proposed: legislation does not use an organic union law to regulate the bargaining and representation structure. It does not intervene by regulating the basic structures of the union system, the autonomy of which it purports to respect[547]. It does not change the archetype: the reform is still inspired by the abstention of law, if not auxiliary legislation.

Intervention has, however, been indirect, frequent and fragmented, with a typically kaleidoscopic effect in the sense that each piece of the previous mosaic has undergone a shift, admittedly to a limited extent, but taken as a whole the picture has been significantly redrawn, as we shall see later (see below § 9.5).

The intervention, as will be seen, may have an impact on four fundamental aspects of the legal union system: the structure of collective bargaining with a direct incentive for greater decentralisation; the relationship between the law and the collective agreement, which becomes even more complex; the relationship between the law and the individual contract, which is given greater space; incentive for lack of united action by the unions and union relations that rely on the split between the great confederations and no longer presuppose unity of action by them.

9.2.1. Institutional reforms: regional federalism

A further profound normative change concerns the institutional context of industrial relations: the 2001 constitutional reform[548] which considerably strengthened the competencies of the Regions in labour issues; today the Regions are also responsible for "protection and security in employment" (new Art 117, clause 3, Constitution).

It may well be that this change will in time affect the bargaining structure and the system of industrial relations. The constitutional reform has triggered off intense theoretical debate over both correct interpretation of the labour issues actually entrusted to the regions and, more generally, the relationship between federalism and labour law[549]; it has also led to significant intervention by the Constitutional Court regarding the latest government reforms, which according to some regions usurp their competencies in the light of the new constitutional provision[550].

The most significant question at present is whether the new regional form the State has taken on in Italy will in some way affect the structure of collective bargaining and in particular the central role of the national sector agreement.

Since there does not appear to be a mechanical consequential link between institutional reforms in a federal sense and changes in the system of industrial relations[551], the regional reform might favour, as it seems to be doing, a regional level of social concertation in relation to the more prominent role of regional governments which now have greater powers of intervention in the

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[547] White Paper 2001.

[548] Constitutional Law 18 October 2001, n. 3.

[549] See Caruso 2004b, 801 ff.

[550] Constitutional Court ruling n. 50 2005.

[551] Caruso 2001b, 437 ff.

labour market; regional governments may, in fact, act with greater responsibilities and authority[552].

Recent experiences have included regional territorial pacts signed after the constitutional reform, which are highly innovative as regards not only the methods and tools used but also their contents[553].

Also worth mentioning is the inter-confederate agreement in the crafts sector[554]: although inspired by the bilateral setup of the 1993 Protocol, it redefines the relationship between the two levels, assigning the second territorial/regional level the task of 2-yearly recovery of the difference between real and planned inflation.

In the public sector constitutional reform may give rise to countertrends and highlight critical points above all in regional and local authorities "comparto". Since early 2000, in fact, a general attempt has been made in this sector, above all with the aim of limiting public expenditure and thus the cost of labour, to contrast the trend towards decentralised negotiation determined by a drive for autonomy by decentralised actors trying to adapt the services offered to an increasingly diversified demand. The attempt resulted in the re-proposal of legal mechanisms for centralisation of the bargaining structure[555].

The problem is whether the use of normative tools to support the re-centralisation of bargaining in the public sector is consistent with the new normative picture of relations between the state and the regions introduced by reform of Title V of the Constitution.

The new constitutional framework, in fact, raises the problem of whether it is still plausible for the law to impose on regions and local authorities the centrality and juridical primacy of the national department-level agreement over supplementary bargaining; also of whether the representation of ARAN (see above § 2.3.2.) is plausible in its current configuration as obligatorily representing all public administration in national bargaining. It seems evident, in fact, that the central control of resources destined for collective bargaining clashes with the principles of fiscal federalism.

The counterargument is that this persistence is justified by the fact that the national level of bargaining guarantees national homogeneity of treatment as regards social rights, the equalisation of financial resources or the economic and juridical unity of the country.

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[552] Treu 2005.

[553] To mention but a few, see Abruzzo Concertation Protocol 2003; Concertation agreement Veneto, 2002 of a methodological character; Welfare system agreement Emilia 2003; Pact for development and social cohesion Emilia Romagna 2004; Pact for qualified development Toscana 2004; Development Pact Umbria 2002 with a prevalence of operational guidelines; Agreement on atypical work Toscana 2002; Agreement on development, employment and competitiveness Toscana 2003; Agreement on regularisation of irregular work Calabria 2002, agreements prevalently of a thematic nature. In http://www.unicz.it/lavoro/BADACONTE.htm

[554] The agreement concerns 850.000 companies and 1.5 million workers, stipulated by the four major employers' confederations in the sector (Confartigianato, Cna, Casartigiani, Claai), firstly, in late 2003, without the consent of CGIL, and then signed definitively by all three major confederations in March 2004.

[555] The 2002 budget (Art. 17 Law 448/2001) strengthened the role of the government alongside the competent sector committees, in supervising the financial implications of both national collective bargaining and supplementary bargaining.

Whatever the answer to this difficult choice is, it seems certain that institutional federalism is today a weakening factor affecting the centralisation of collective bargaining in the public sector.

9.3. Recent proposals aiming at rationalising and reorganising the structure of collective bargaining by means of centralised agreements

Since 1993 there have been no centralised agreements affecting the collective bargaining structure outlined in the Protocol (see above § 3.2. and 3.3.). In the late 90s a committee of experts was set up with the task of proposing the necessary changes to the social partners[556]. Their evaluation, which was basically positive towards application of the protocol, only proposed marginal improvements on the critical points which had emerged. The proposals were not, however, implemented, not least due to the instability of the centre-left government which was supposed to support them.

On coming to power, the centre-right government harshly criticised the 1993 protocol in its policy statement[557], considering it to have outlived the conditions for which it had been conceived and recommending the streamlining of the role of the national contract in a sort of framework agreement guaranteeing a minimum wage (a task elsewhere covered by a legal minimum wage) with a different duration and no 2-yearly renewal. According to the government proposals, this evaporation of the role of the national contract was to correspond to a strengthening of decentralised bargaining, to make wage structures more flexible and redistribute productivity without overlapping with the higher level (see above § 3.5.). Consistent with this position was the proposal made by Marco Biagi before he was killed, of a model based on a single level of bargaining, at a national sector or company/territorial level, as chosen by the partners. In the model proposed in the *White Paper* the regional level gradually replaces the national level (in harmony with the federal reform) with the possibility of authorised derogation (the German corridor model) from the company or territorial subregional contract (and so coordinated, not radical decentralisation based on "protected derogability"). The government, however, declared that the reforms were to be pursued by means of a voluntary method and not via legislative intervention.

Similar proposals led to no results even in concertation. The 2002 Pact for Italy, which inaugurated the model of asymmetric concertation favoured by the government, that is, stipulated only with consenting confederations (above § 2.4.3.), does not affect the structure of collective bargaining and confirms almost the whole of the 1993 Protocol setup.

More recently (2004-05) the crisis affecting social concertation and the relations between the government and the large confederations, and even disagreement between the social partners as to how the structure of collective bargaining should be altered, have led to an impasse in the expectation of a new phase and a new political-trade union balance.

9.4. The trend towards decentralised bargaining

There have not been any recent trends towards unregulated decentralised bargaining in Italy. As mentioned previously, national sector and departmental agreements still have a central role; they

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[556] Final report of committee investigating the Protocol of 23 July 1993, chaired by Gino Giugni, in Rivista Giuridica del Lavoro, 1998, 3, 571 ff.
[557] White Paper 2001, 10 and 60.

are the pivot of a coordinated two-tier bargaining system. There have, however, been some innovations which may be considered as anticipating new trends or, on the contrary, self-contained phenomena which do not clash with the *status quo*.

Recent changes certainly include a rationalisation of the current structure centring on the national contract. This is the case of the optimisation resulting from incorporation of several sectors in a single category in departments (energy, telecoms, railways, credit) where privatisation is widespread. There have been mergers between previously differentiated sector agreements[558], or the transformation of giant company-level agreements (e.g. Telecom Italia) into category agreements extended to employees of related businesses (the national telecoms services contract)[559].

A symptom of the trend towards greater decentralisation is, on the one hand, the recent interconfederate contract in the crafts sector (above § 3.5. and 9.2.2.) which, as mentioned, confirms the role of national bargaining but strengthens the trend towards decentralisation by giving the territorial/regional level both the task of distributing productivity benefits and that of recovering the difference between real and planned inflation.

On the other, the strengthening, via bargaining and now also legislative, of the role of bilateral decentralised bodies. These are voluntary organisms to which national agreements assign management and dynamic bargaining tasks (based on the concertation method), which are of increasing importance in market issues and active labour policies (see 2003 national contract in the tourism and commerce sector); the realisation of new industrial relations at the level of decentralised production units (metal and mechanical workers' contract, Confapi 2003); conflict prevention (railway services contract, 2003). Of interest also is the fact that bilateral decentralised organisms are also entrusted with handling delicate "new" issues such as mobbing and sexual harassment[560] or topics such as food safety and the social responsibility of companies[561].

9.5. The relationship between the law and collective agreements in recent legislative reforms

In the recent reform of the labour market (Legislative Decree 276/2003), working time (Legislative Decree 66/2003) and fixed-term contracts (Legislative Decree 368/2001), the law frequently entrusts collective bargaining with adaptation to flexibility, and the faculty to derogate from the law or to supplement it. There are several fundamental differences as compared with the past:

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[558] This is the case of the first single contract in the energy and oil sector, Confindustria (2002) and the single gas and water utilities contract (2002). In the lubricants and liquid gas sector there was not a merger but a convergence with the chemical sector.

[559] The same happened in the railway workers' contract (16 April 2003) which no longer concerned only state railway employees but all workers employed in railway-related activities.

[560] Concia Confapi contract, 17 September 2003. A special committee to investigate the phenomenon of mobbing was set up; in addition, upon renewal of the contract for non-economic public bodies of 9 October 2003 and, in an identical text in Art. 6 of the contract for Ministry workers of 12 June 2003, as modified by a supplementary agreement of 16 July 2003. In both cases the partners express awareness of the increasing emergence of the mobbing pheneomenon and set up a special committee to contrast the spread of the phenomenon. See Also CNEL Report 2004, *Contrattazione, retribuzioni e costo del lavoro in Italia nel contesto europeo,* Rapporto 2002-2003, Rome, October 2004, 206 fs.

[561] Food industry workers contract, Confindustria 2003.

a) At times it is the law itself that that derogates from previous standards and so collective bargaining is only given the power to adapt lower legal standards and not to derogate from them. In certain cases (e.g. job sharing) collective bargaining has no power to deviate from legal standards; in others its intervention is limited within a mobile legal framework ranging from a maximum to a minimum (duration of apprenticeship contracts).

b) The national sector contract is no longer the main point of reference for the law: with increasing frequency company and/or territorial agreements are mentioned, thus potentially putting the two in competition with each other. Decentralised bargaining is allowed to adapt normative flexibility, or derogate from legal standards. In this case there is an evident legal incentive for decentralised bargaining and disarticulation of the coordinated system introduced by the 1993 Protocol[562]; the risk is one of potential uncontrolled and uncontrollable conflict between the different levels.

c) The union actors in authorised derogation and flexibility bargaining are not necessarily "all" the most representative or comparatively most representative unions (according to the previous formula) but may be "only some of them" as long as they are comparatively representative, even if they actually represent a minority of workers (union and non union members).

d) More often than in the past, the law grants unions powers of intervention in issues regulated by law, but only on condition that these powers are actually exercised. This is a proposal, at a national level, of the European institutional social dialogue model, or "bargaining in the shade of the law": if a provision needs supplementary bargaining to become effective, the failure to exercise this faculty (because the partners do not wish to or cannot reach an agreement) authorises the government to intervene in their stead with administrative acts[563].

e) Several provisions (e.g. regarding part-time work and working time) put the collective agreement in competition with the individual contract, making it possible for the latter to intervene in the absence of the former. The individual contract thus becomes a "supplement" in the event of a lack of a collective agreement. Once again this is seen as unfair competition because employers may be tempted not to sign collective agreements, or not to respect their legal effect in order to access the resources of individual bargaining. Previously individual bargaining (e.g. in elastic clauses and supplementary work in part-time employment) still fell into the safety net of the collective agreement. In other cases, the relationship between the law and individual bargaining is direct, with no mediation by the collective agreement and the former can legitimately set lower standards with respect to the latter[564].

f) The law regulates a wide variety of new bargaining models concerning flexible employment (on-call employment, various kinds of training contracts, job sharing, staff leasing) and other more traditional kinds such as fixed-term contracts agency work are more readily accessible for firms. Others again such as part-time are made even more flexible. The evident aim is to allow companies easier access to flexible hiring. The attempt is to encourage the creation of new, essentially flexible, jobs by allowing firms to choose between different, non-standard forms of employment.

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[562] As regards working time, intermittent work (an Italian version of jobbing), part-time work and apprenticeships.

[563] As regards intermittent work, insertion contracts, working time and rest periods.

[564] For disadvantaged workers on labour supply contracts it is possible to derogate from the principle of fair treatment.

But at the same time it is made more difficult for firms to hire workers on a semi- freelance basis (via the project collaboration contract).

g) In some cases there is an overlapping between activities assigned to collective bargaining and those assigned to bilateral concertation bodies (e.g. in insertion contracts).

h) The reform sketches out a procedure of "assisted wishes", that is, a worker may, in suitably certified circumstances, not only enjoy acquired rights but also adapt his working conditions by derogating ex ante from the application of certain otherwise inderogable norms. There has been such uncertainty regarding this point on the part of legislators that the provisions have been repeatedly manipulated and modified, to the extent that any possibility of interpreting them as allowing for preventive derogation from inderogable norms on the drawing up of a contract, even with suitable certification, would appear to be excluded.

Further demonstration of the complexity of legislative intervention to redefine the relationships between the sources is given by provisions which follow the more traditional lines of the Italian system: (pleonastic) provisions which allow a contract to set better conditions than legal standards[565] or lower than standard conditions (job sharing and labour supply); provisions which require the intervention of collective bargaining to authorise employer activities (without the possibility of ministerial intervention)[566]; provisions which give the collective agreement a merely supplementary function with respect to the law[567] and provisions which extend the effect of the contract *ultra vires*[568]; legal provisions which, on the other hand, are merely supplementary in the event of lack of a collective agreement[569]; provisions which only give bargaining the opportunity to adapt the constraints on employers and workers' rights (e.g. weekly rest periods).

In some parts of the most recent legislation collective bargaining has a general task of fine tuning the legislative reform, which would appear to exalt rather than re-dimension its role[570].

In short, following the recent reforms the interweaving of the law and the collective agreement seems to be even more complicated than in the past, with even more overlapping layers, and not devoid of contradictions, which has led to widespread uncertainty and a consequent state of expectation among the actors involved.

This has affected collective agreements stipulated after the recent reform came into force: they have often included merely transitory provisions, in some cases eliminating those which referred to the previous legislative framework, in others provisionally confirming the old rules.

Where agreements have applied the new legal rules, there are frequent cases in which employers, instead of exploiting the new flexibility of resources offered by law, have preferred either not

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[565] Project and intermittent work.

[566] Fixed-term labour supply, part-time and staff leasing.

[567] Labour supply and intermittent work and also working time.

[568] Labour supply, apprenticeship, profit-sharing.

[569] Job sharing.

[570] Inter-confederate collective bargaining is also explicitly assigned the general role of "fine tuning (…) Legislative Decree 276/2003, including the transitory regime" (Art. 86, clause 13); a not well-specified verification in collaboration with the unions (which could also take on the form of negotiation) is entrusted with applying whole parts of the decree defined as "experimental" (Art. 86, clause 12).

to use them at all (especially as regards the new types of flexible work), or to apply more restrictive regulations than those established by law[571].

The overall risk, therefore, is that many of the legal provisions are not being applied, either due to objective technical uncertainty regarding their application or because the actors who should act to make them operational (the social partners and regional legislators) are waiting for the new legal framework to settle down.

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[571] E.g. terms of fixed-term contracts in the tourist sector, where the previous hypotheses have been redefined, and the university contract, where the terms holding prior to the reform have been confirmed.

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