The future of collective bargaining in Italy between legislative compression and role reappropriation

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Abstract
In recent years, Italian legislation seems to have accomplished a "corporatization" process of collective bargaining, in response to employers' demands being granted, without the filter of national collective bargaining, a greater and more flexible approach, firstly in the type of subordinate employment and also in the organization of work, both of which are now generally acknowledged by statutory law. Art. 8 of Law no. 148/2011 has set the possibility to deviate from the law and industry-wide collective bargaining on a wide range of topics, binding territorial and company level agreements' effectiveness toward each employee, with a mechanism never previously allowed in the legal framework. The Legislative Decrees which implemented the Jobs Act in 2015 have gone even further, allowing the possibility of directing a different (in most cases, pejorative) regulation, ultimately establishing a perfect replacement between industry-wide and complementary (particularly, company-level) agreements to comply with this type of legal referral. Faced with these changes in the balance of power, collective bargaining's response and results have appeared so far weak, repetitive and often late. Nevertheless, a number of national multi-industry agreements are laboriously trying – independently, alongside the legislation - to control the centrifugal process, by setting a new relationship between the levels of collective bargaining, or mechanisms of effectiveness of the agreements, as well as re-regulating forms of workers' representation and providing tools of control and sanction for non-compliant behaviour. The very existence, inasmuch as the pattern is repeated for different industries and with a growing coverage rate, is to be greeted as a sign of a positive and responsive industrial relations. However, as the pattern for these agreements continues to be based on the voluntary compliance of workers' organizations and employers' associations (prior to the that, on the membership or affiliation of the individual worker/employer), the implementation and enforcement of such agreements should be accompanied, first and foremost, by "re-founding" the role of collective bargaining with a view to inclusivity.

Keywords
Industrial relations, collective bargaining, corporatization, decentralization, Italy

1. What we talk about when we talk about the crisis of collective bargaining.

For several years there's been discussion about the crisis of collective bargaining , but whether hypothetical or a real problem, however, it remains controversial. Indeed, in Italy some of the markers normally used to test - Union density and collective bargaining coverage - have not suffered big declines and resist better than in the EU average (VISSER, 2015), but other elements have risen, such as an increase in atypical work, so often poorly represented and protected.

However, the Italian collective bargaining system and structure is peculiar inasmuch as it stands on the autonomous, and therefore fragile, balance reached by the social partners and their self-regulation. It is this system – traditionally based on a two-tier system, with industry-level collective labour agreements (*Contratto collettivo nazionale di categoria*, CCNL) and decentralized collective agreements at company or territorial level - which have been exposed to the strongest attacks, deemed obsolete in the face of the internationalization of markets (and competition) as well as the economic downturn. It is a widespread opinion that if the (economic) weather is unpredictable, the (social) response should be "adaptable"; hence, the alleged crisis of collective bargaining is a crisis of industry-wide collective bargaining, with a view towards a new balance (when not an actual overcoming) towards flexibility, not only of employment contracts, but also of collective labour relations, an increasingly less controlled decentralization and wider margins for exemption (BAVARO, 2012).

The debate has also found its way into Italian legislation, and the demand for a "corporatization" of industrial relations has been taken, and in some cases encouraged, by a very close sequence of interventions designed to combat the critical rates of unemployment and to revive business productivity.

The aim of this paper is to present an overview of government policies relevant to Italian industrial relations over the last few years, the impact and 'counter-measures' taken by social partners, leading to a review of the collective bargaining structure; finally, an outline of prospects for (further) development.

2. The Italian legislation from the "proximity bargaining" to the so called Jobs Act: to hell with good intentions.

Although Italian legislation had already experimented devolution techniques and had, since 2003 Labour market reform, allowed regulatory integration not only through national but also decentralized collective agreements (AIDLASS, 2005), Article 8, Decree-law no. 138 of 13 August 13 (converted into statute by Act no. 148 of 14 September 2011) represented a "revolutionary" innovation, for Italian labour law (PERULLI, SPEZIALE, 2011; LISO, 2012; LECCESE, 2012).

The provision, included in a Decree containing "urgent measures for financial stabilization and economic growth" and smartly presented as a way to "support" proximity bargaining (i.e. bargaining at local and company level), produced a binding effect towards all workers affected by "specific arrangements" in the context of "*collective agreements signed by the most representative trade unions at national or local level and by representative structures at company level*" representing the majority of workers, provided that agreements aim at increasing the level or quality of employment, adopting forms of employee participation, emerging irregular work, increasing competitiveness and wages, managing business and employment crisis, making investments and starting new activities (art. 8, paragraph 1). Art. 8 also provides that said agreements, whose topics are quite large in

scope, concerning various aspects of work and production organization (paragraph 2)[1], can deviate from the law and the regulations set at industry-wide level, subject only to compliance with the Constitution and with the constraints deriving from EU legislation and international labour conventions (paragraph 2-*bis*).

It is quite clear that this provision has intervened heavily on Italian industrial relations at least on three aspects:

i) for the first time, a legal mechanism is made for guaranteeing local and company agreements' general infrastructure, compared to the model set by Art. 39 of the Italian Constitution which has yet to be implemented;

ii) albeit within the described framework and conditions, second-level bargaining is determined to prevail (more importantly, derogate) over industry-wide bargaining, regardless of what has already been set between the two levels, and also over law regulations; that can only be regarded as an original application, in the labor law system, of the principle of subsidiarity ;

iii)the majority principle, as a validation of proximity bargaining, is identified as the means of consensus management and inhibition of relevant (legal) dissent amongst workers and other trade unions, particularly with respect to the widespread phenomenon of the so-called separate agreements, i.e. those not signed by all three major confederations or their affiliates (PEDERSINI, REGINI, 2014).

Article 8 has thus drafted a collective bargaining model that can be described as "disorganized" decentralization, unbound from the compliance with national level rules and therefore highly competitive, to the point of undermining Labour law cornerstones such as equal treatment and employee favorability.

Although apparently justified by the compelling and urgent need to provide for appropriate measures as requested by EU institutions – in fact, just a week before Decree was issued, the ECB warned the Italian Government "for further reform of the collective wage bargaining system, allowing agreements at enterprise level to adjust wages and working conditions to specific business needs and rendering those agreements more relevant compared to other levels of negotiation", there is a widespread consensus among scholars that the legislative decision was not exclusively dictated by a desire to combat the delocalization process and boost national productivity in the face of the international crisis of 2008. The 'proximity bargaining' rather appears to be the culmination, at least until then, of a progressive and inexorable assimilation into the political arena of entrepreneurial claims for freedom from (the majority of) legal and collective bargaining obligations,

[1] They include: audiovisual equipment and introduction of new technologies; job classification; fixed-term contracts; part-time and flexi-time contracts; joint liability in contracting and use of labour-only subcontracting; working time discipline; recruitment and employment relationship regulation, including freelance work coordinated by an employer; conversion of employment contracts; consequences of termination of employment (except for the discriminatory or null and void dismissal).

shifting the "*locus*" of the conflict and its regulation within the company and making sure that the balance - reached from starting positions certainly more favorable for the entrepreneur - cannot be questioned by dissident workers/unions or, worse, subverted by judicial decision (LECCESE, 2012).

A generalization and "institutionalization" of the Fiat case[2], the rule is also imbued with the now dominant idea that collective bargaining, particularly at industry level, represents a "tax" imposed on business (HIRSCH, 2007), a cumbersome rigidity factor, which had already surfaced in previous legislative strategies (a "useless bureaucratic burden", according to the accompanying Report of the Government's proposal for labour market reform, later to become Law no. 30 of l4 February 14), even more in the context of a deeply dynamic and competitive economy. As it is, it stands as a legal recognition of the company's "pursuit of profit"[3], which, paradoxically, political power has helped to shape unrestricted: the only chance for widespread administrative and judicial control over proximity agreements, and their compliance with Article 8 'internal' and 'external' boundaries, was granted by the filing requirement at *Direzione territoriale del lavoro* (DTL, Territorial Department of Labour) as a condition of their validity (Art. 9, paragraph 4, Decree Law no. 76 of 2 June 2013) had a very short life, being repealed already in the conversion Act (Law no. 99 of 9 August 2013), fueling suspicions that the phenomenon is much more extensive than the statistical data shows, taking advantage of a lawful "clandestine" status (IMBERTI, 2013).

Such approach is translated if not into a direct transition, given the exceptional nature of Article 8, certainly in the endorsement of a change of regulative axis of collective bargaining from what is called *multi employer bargaining*, whose function has always been

[2] In a long and complex sequence of events that developed between 2010 and 2011, the company retreated from continuing to apply metal-working industry-wide collective agreements, left its representative employers' association (Confindustria), formed new companies for each existing plant (avoiding the transfer of undertaking procedures and obligations), and launched a new collective bargaining system, outside of the traditional framework, based only on first-level agreements, which over the years have been established, and in July 2015 already faced their first renewal; this model *"presents today, in a situation of exploitation of technological and organizational investments made by the company, of recovery in orders, new recruitments and redistribution of productivity wages, considerable appeal to businesses that operate internationally and to the eye of the legislator and policy maker"* (GUARRIELLO, 2016). Moreover, in saving the *erga omnes* effect of the *"company collective agreements in force, approved and signed before the National Multi-industry Agreement of 28 June 2011"*, paragraph 3 of Article 8 was "saving" precisely the agreements signed by the Fiat owned newly formed "Fabbrica Italia".

[3] *"Nota bene that capitalism is about profit, not about productivity. While the two may sometimes go together, they are likely to part company when economic growth begins to require a disproportionate expansion of the public domain, as envisaged early on in 'Wagner's law': Adolph Wagner, Grundlegung der politischen Oekonomie, 3rd edn, Leipzig 1892. Capitalist preferences for profit over productivity, and with them the regime of capitalist private property as a whole, may then get in the way of economic and social progress"* (STREECK, 2014).

recognized in limiting business competition and guaranteeing industrial order, to the less cumulative and more contentious *single employer bargaining*; it is a perspective that - albeit in a less radical way than in other European countries such as Romania, Greece, Spain, underpinned by the need to maintain or regain competitiveness in the market (MARGINSON, 2015), finally seems to receive in Italy solid legal foundations. Especially considering the fact, as it has been dutifully noted, that even if the norm deals with both territorial and company agreements, find a comprehensive regulation in terms of negotiating entitlement only with the latter, while the former lacks a precise identification of the selection criteria of employers' associations, and thus in fact inhibiting the possibility to ensure overall effectiveness of territorial agreements (CARINCI, 2011).

The practical implementation of 2011 reform[4] has shown that the corporatization of collective bargaining suggested by the Italian legislator was perhaps too aggressive to be widely disseminated. It had the rather unsurprising effect, on one the hand, to strengthen a temporary convergence of interests among the three main union confederations, and then, to get the social partners (Confindustria, Cgil, Cisl, Uil) to find a way of 'defusing' the norm's dangerous potential, thanks to the commitment undertaken in the *Postilla* of 21 September 2011 to follow exclusively the intersectoral agreement already signed. It must also be noted that the proximity bargaining model was far from sufficiently accurate in its formulation, as the "majority principle" is laid down but left unexplained. Nevertheless, it has clearly marked a legislative trend, common thereafter to both center-right as those of the center-left governments, in conceiving labour relations as functional not only (and not so much) to a contingent response to the crisis but to pursue company's primary interests. Despite numerous subsequent regulatory actions and their implied ambition to "redefine" Italian industrial relations, Article 8, although outdated, can certainly not be considered repealed: a Pandora's box (almost yet) unlocked (PERULLI, SPEZIALE, 2011), but still available as a convenient exit strategy for companies craving for self-regulatory work relationships.

Similar considerations apply to the numerous legislative measures that have over the years provided for contribution and tax incentives for the second-level bargaining[5],

[4] As for any second-level bargaining survey in Italy, it must be said that the analysis is based on sample databases only, such as those provided for years by CNEL and more recently by OCSEL and the Bank of Italy; the recent trends are examined in D'AMURI, GIORGIANTONIO, 2015.

[5] Art. 2, Decree-law No. 67 of 25 March 1997 converted into statute by Act No. 135 of 23 may 1997; Art. 1, paragraph 67 and 68, Law no. 247 of 24 December 2007; Art. 2, Decree-law no. 93 of 27 May 2008, no 93, converted into statute by Law no. 126 of 24 July 2008; Art. 5, Decree-law no. 185 of 29 November 2008, converted into statute by Act no. 2 of January 28, 2009; Art. 2, paragraph 156, Law no. 191 of 23 December 2009; Art. 53, Decree-law no. 78 of 31 May 2010, converted into statute by Act no. 122 of 30 July 2010; Art. 26, Decree-law no. 98 of 6 July 2011, converted into statute by Act no. 111 of 15 July 2011; Art. 4, paragraph 28, Law no. 92 of 28 June 2012; Art. 1, paragraph 481-482, Law no. 228 of 24 December 2012; Art. 1, paragraph 182-189, Law no. 208 of 28 December 2015. Moreover, Art. 14 of Legislative Decree no. 151 of 14 September 2015, has imposed the electronic filing at the DTL of the (company or territorial) collective agreements giving right to "*con-*

where the virtuous exchange between wages and productivity does not appear functional to the development and consolidation of collective bargaining, but only to the upturn of the company's competitiveness, ultimately centered on technical and production business strategies. Those measures, on one hand, have not provided rigorous mechanisms to verify actual competitive boost or significant organizational change (CAMPANELLA, 2013); on the other hand, the downstream involvement of trade unions to negotiate the distribution of corporate results have not been accompanied by actions for an upstream involvement in determining the productivity targets (CELLA, 2013).

This picture has not changed under the more ambitious Renzi government (in office since February 2014), whose legislative measures – collectively known as Jobs Act – have been inspired by the will to comply and apply, albeit in a very Italian way, the European flexicurity (MARIUCCI, 2015), whose delay in implementation would have supposedly exacerbated the weaknesses of the domestic labour market and deprived of effectiveness active labour market policies (TREU, 2015). In conclusion, they have not only confirmed the same disorganized decentralization model but furthermore pressed for an overall downsizing of the significance of collective bargaining.

Evidence of this shift can be traced to the first legislative reform of the new government, in the new regulation of fixed-term contracts (Decree-law no. 34 of 20 March 2014, n. 34, converted into statute by Act no. 78 of 16 May 2014), which, presented as a concrete response to "the ongoing job crisis and the uncertainty of the current economic environment in which companies have to operate", has liberalized the use of this flexible type of contract, already widespread in the labour market, finally overcoming its causality, which indirectly would have still allowed trade union representatives to gain important information on corporate organizational choices, with a view of their bargaining role.

As a consequence, the trade-off of liberalization has been identified in the introduction - besides the already existing temporary limit[6] - of a quantitative limit[7], which operates "without prejudice" to the percentages set by collective (at the time of the reform, industry-wide and since 2015, also company and territorial); the effect is that, once a means of controlling the use of flexibility, collective agreement has unexpectedly found itself in the realms of being the competitor, if not the accelerator, of the legal benchmark. Moreover, the impact of collective agreements on this topic come out of the reform considerably softened as the quantitative limit is assisted, in case of breach, only by an administrative sanction, instead of the more appropriate transformation of the fixed-term contract into an indefinite contract (FONTANA, 2015).

tributory or tax benefits and… other benefits", thereby providing a procedure of "*acquisition and certification of all corporate and territorial collective agreements eligible for any kind of "concessions" on the part of the undertaking*" (ZOPPOLI, 2015).

[6] 36 months as a whole, referred to the specific contract or to the series of contracts between the employer and the employee to fulfil tasks of equal level.

[7] 20% of employees with indefinite contracts in force with the employer.

Even more defined and incisive is the path taken by Law no. 183 of 10 December 2014 – containing the Parliamentary delegation for the Government to bring the most extensive and organic reshaping of labour market legal framework Italy has ever known[8] - both in terms of the method which led to its approval and of the space left to collective bargaining.

As for the first perspective, Law no. 183/2014 has signalled the moment of the furthest distance between political power and social partners, a relationship already tested by a decade of transition from trilateral concertation practices to a 'social dialogue', transformed into a distinctly less challenging version than what is practiced in Europe. It is the end point of a process of "disintermediation" – or, as more accurately highlighted by industrial relations scholars, of "exclusion" (BELLARDI, 2015) – from those intermediate bodies, the trade unions, deemed - rightly or wrongly - less and less capable of effective representation of workers' interests, as a consequence of an increasing crushing (even legislative) marginalization. The Labour law government reforms are henceforth imposed and not coordinated, as part of a bigger structural agenda (constitutional, administrative, fiscal), considered necessary to ensure the political and economic stability required by EU institutions.

As for the second perspective, the Act has seemed intent in 'downsizing' the role of collective bargaining, but for a specific involvement on a few topics (job classification, working hours flexibility, performance bonuses, work and life balance, bilateral funds and work sharing agreements).

On closer inspection the two aspects are deeply linked – "if the law is less and less the result of an independent political synthesis, collective autonomy can no longer pursue freely chosen purposes" (L. ZOPPOLI, 2015) - and meet on the subject of a possible government setting of minimum wage (Art. 1, paragraph 7, letter g) of Law no. 183/2014), relegating to a purely advisory role the trade union contribution for "sectors not regulated by collective agreements signed by the most representative workers' unions and employers' associations at national level". Despite unclear phrasing, the provision has sparked intense debate, dividing opinion between those who have pointed out that the vast number of collective agreements and judicial implementation of Article 36 of the Italian Constitution allow *de facto* widespread application of industry-level agreements wages[9] and those who

[8] The wide range of topics cover, among others, the introduction of a new discipline on dismissals for indefinite contract workers, a complete revision of the (flexible) employment contracts, the reform of specific disciplines of the employment relationship (mainly, *jus variandi* and control power), the reordering of Welfare support provisions during the employment relationship and in the event of involuntary unemployment, with the scope of homogenization of the disciplines and universalization of protection, the reform of the legislation on active labour market policies and services.

[9] The provision could also be interpreted, therefore, as "enhancement of collective bargaining" (GUARRIELLO, 2016), based on the fact that, as reported by a recent survey, Italy is the country with the highest percentage of workers not covered by the collective contracts minimum: about 19% of

have suggested that a legal minimum wage could have the perverse effect of discouraging the compliance with collective agreements, in yet another application of the *race to the bottom* logic (*"in other words, if the minimum wage were to be set lower than what is determined at the bargaining level - the most likely hypothesis - employers could find, in this legal compensation, one reason less to enter into the national collective agreement model and one more to turn their attention to other contractual levels for the purpose of labour relations regulation"*, A. ZOPPOLI, 2014). At least for now, this part of the reform has been abandoned without the chance of implementation, so we'll focus instead on the measures already achieved.

3. The paradigm of Article 51, Legislative Decree no. 81/2015: one step back and one to the side.

The eight decrees implementing the Jobs Act contain far more numerous references to collective bargaining than envisaged in the parliamentary delegation. Among these references, Article 51, Legislative Decree no. 81 of 15 June 2015, stands out. Although introduced as part of the reordering of flexible work contracts and their regulation entrusted to collective bargaining, it has rapidly acquired a paradigmatic status[10] and is symptomatic of the government approach: as a definition of collective bargaining for the purposes of the law, the norm provides in fact not only a clear representation of bargaining levels (national, territorial, local) but also the selection of the negotiating parties ("*the most representative trade unions at national level and their territorial and workplace representatives*").

The real distinguishing feature, however, is given by the fact that the provision, behind its apparently limited scope ("*unless otherwise provided*"), hides a clear reformist intent, aimed at affirming the perfect replacement between the national level and second level (with particular emphasis on the company) bargaining. It is a quality that, although interpreted by some scholars in terms of "indifference" (MAINARDI, 2016), comes full circle on the progressive corporatization of labour relations, as in just over a decade Italian legal framework has gone from questioning to leveling the central role in industry-wide collective agreements.

workers, on average, would receive a gross hourly wage lower than the minimum relevant in their industry, with peaks of over 30% in some sectors. The survey, moreover, uses a reference sample that only takes into account firms with more than 10 employees, suggesting that those results are underestimated (*source:* CNEL, Rapporto Mercato del Lavoro 2013-2014).

[10] It has been noted that, since its introduction in June 2015, the provision has already been recalled in Article 21 and 41, Legislative Decree no. 148 of 14 September 2015, on social cushioning measures and work sharing contracts, as well as in Article 1, paragraph 187, Law no. 208 of 28 on productivity bonuses paid through decentralized bargaining, and again in Art. 50, Legislative Decree no. 50 of 18 April 2016, with regard to social clauses referring to the application of collective agreements for labour-intensive contracting.

Compared with the provision of Article 8 on proximity bargaining, the 2015 model outlined takes one step back and one to the side. By avoiding any reference to the *ultra partes* effectiveness of the second-level bargaining and its primacy over the first level, it appears, in fact, less confrontational; however, it proves to be but no less 'interfering', unlimited in its scope and disengaged from any particular aims and purposes. The "emergency" trait of proximity bargaining thus gives way to the perspective of an entirely new industrial relations system scenario. With two important caveats.

The first concerns the meaning to be attributed to the "fungibility" of contractual levels. The Italian legislator does not appear at all concerned about the possibility of superimposition and duplication of contractual regulations, and provides no explicit indication on the subject of collective bargaining coordination. If the different levels can move disjointedly and independently, as a way to integrate or derogate the legal norm, we are facing a general acceptance of the 'disorganized' decentralization, with the understanding that the different levels mean different ways of dealing with integration or derogation of the law: while industry-level agreements can use it with a way of finding a balance with other (more pressing) matters, territorial and company agreements, without the necessary higher level support, cannot avoid reflecting the existing power relationships and lowering protection standards, with no relevant compensation. Perhaps unsurprisingly, the norm has been interpreted by some as implicitly "bound" to autonomous current industrial relations regulations (via the intersectoral agreements we'll examine *infra*), as a means to avoid contradictions and implosions, which not even a judicial intervention could solve; therefore, the combined reading of legal and social partners provisions would assign the CCNL an unprecedented and overwhelming function of "sorting" the competence and boundaries of decentralized bargaining (MAINARDI, 2016).

There's more to be said. A more careful reading of Article 51 shows that, as the collective agreements are mentioned exclusively according to their geographic relevance but oblivious to any "internal" articulation, they are not only interchangeable but also (potentially) mutually exclusive. That is to say that 2015 reform takes into account the assumption that company level bargaining may not be second level bargaining, as much as national bargaining does not necessarily mean "industry-wide": a contractual system which may comprise of multiple levels is not obliged to be implemented through all (or most) of them (GARGIULO, 2016). Even more than Article 8, this corresponds to the legal acknowledgement of the coexistence of multi employer bargaining and single employer bargaining.

The second remark is that, in the analysis of a collective bargaining system, the "who" and "how" is as important as the "what"; in this regard, the 2014/2015 reform of the labour market regulation affects the Italian system of industrial relations, forcing the collective bargaining potential into a narrow passage, facing, on one hand, the risk of legal substitution and on the other, a higher conflict with of individual agreements' (re)regulation and thusly, deregulation.

Two examples can be given. On the subject of part-time work, the aforementioned Jobs Act deprives the collective bargaining of the previously recognized power of authoriz-

ing (as in regulating) supplementary work - working hours that exceed the amount fixed in the individual contract - and so called 'flexible' clauses (request for different or longer working hours from what is agreed in the contract), in a system which had been defined as a "double-key" (i.e. collective and individual) control; after the Legislative Decree no. 81/2015, any further flexibility of part-time employment is liberalized by general provision and only potentially limited by collective agreement (Article 6, paragraph 2, 4 and 6)[11]. On the subject of work tasks, the innovative provision that enables collective bargaining to identify hypotheses for which the employer can modify *in peius* workers' assignments - within their specific category and retaining the same wage (art. 2103, paragraph 4, Civil Code) - hence entrusting the social partners to the managing of a (general) employment concern – co-exists with the equally innovative provision allowing the employer and the worker to sign a modification *in peius* agreements referring to assignments, professional qualifications and categories (Article 2103, paragraph 6, Civil Code), leading to a greater individualization of the employment relationship (and conflict).

These considerations can pave the way to a legitimate hypothesis. As a lack of interest in the quantity and quality of representation emerges from the most recent legislation, it may be reasonable to conclude that we have entered a new phase, neither pro- or anti-union, but a-union, uncaring of the very regulation of its partners' interests.

4. The response of social partners through the intersectoral framework agreements of 2014/2015: a sign of surrender or resilience?

Faced with these major changes, the reaction of the social partners has for a long time appeared weak, repetitive and delayed. Although the need for a re-evaluation of industrial relations and collective bargaining system had been suggested since 1998, five years after the Protocol of 23 July 1993 - the first framework agreement to establish the basic rules for collective bargaining and workplace representation with the considerable backing of the government, signs of a reform to the collective bargaining structure were registered only in 2009 (Accordo Interconfederale of 22 January 2009), albeit with an explicitly "experimental" formula and not without tears amongst various confederations[12].

Unsurprisingly, it took the doubled and combined pressure of direct 'invasion' of proximity bargaining legislation and the launch of an alternative first-level company agreement model by Fiat to alter the industrial relations climate and push a debate for ac-

[11] Supplementary working time is allowed if provided by the collective agreement; if this is not the case, the employer may request the worker to work up to a maximum of 25% of the determined working time (entailing a 15% increase of the usual pay). Similarly, flexible clauses may be included within the individual contract if so provided by the relevant collective agreement or if the individual contract is signed before a Certification Commission (in this case, the upper ceiling of the modification may not exceed 25% of the working time, entailing a 15% increase of the usual pay).

[12] Cgil (the General Confederation of Italian Workers) didn't sign the agreement.

celeration of the reviewing process that could answer the pressing demands for bargaining decentralization and yet be able to provide certainty and stability to the system.

Since 2011, collective autonomy tendencies were implemented by intersectoral collective agreements (a tool often overlooked in Italian legislation, and certainly disadvantaged in the current climate), landing in the years 2014/2015, in texts often termed "Testo Unico" (Consolidated Text), signifying the sense of an overall and arduous process (LAFORGIA, 2014), developed through the introduction of precise measuring and certification of representation for national level sectoral bargaining, (revised) regulation of workplace representation, setting of the entitlement, areas of competence, the effectiveness of second level collective bargaining, and also the provision of cool-down procedures, consequences for the trade unions and the employer's associations non-compliant behaviour: It is, as a matter of fact, the new basic agreement for all the involved partners.

Signed by three major workers confederations and the most representative employers organizations, the first to complete the reform has been Testo Unico sulla rappresentanza Confindustria of 10 January 2014, followed by Testo Unico sulla rappresentanza Confservizi of 10 February 2014, Accordo Interconfederale AGCI, Confcooperative, Legacoop of 28 July 2015 and Accordo Interconfederale Confcommercio of 26 November 2015[13]. The spread of this type of intersectoral framework agreement indisputably demonstrates the opportunity and the utility of replicating the same model through different sectors, with a view to monitoring (single employers and other unions) centrifugal drive and in itself is extremely relevant: at present only part of small and medium industry[14] and the service sector, as well as banking and insurance sectors and the craft industry, would be outside such regulative model.

Despite some (often important) regulatory differences coherent to the pertaining economic sector, all these agreements share two common traits, the confirmation of a two-tier collective bargaining system and of an organized decentralization, "coordinated from the centre" (BELLARDI, 2014), in accordance with the level of coordination and width of articulation space granted by sectoral collective agreement.

The framework is first of all based on the identification of a specific rate of trade union representativeness, not only for the purpose of being entitled to negotiating - 5% for the national and sectoral level of bargaining[15] - but also for the binding of resulting collec-

[13] To these we must add other minor (in coverage) ones, such as the Testo Unico sulla rappresentanza tra Sistema impresa e Confsal of 25 May 2016. A comprehensive list and collection of the intersectoral framework agreements available at the CNEL website (http://www.cnel.it/347?contrattazione_testo = 11).

[14] The review process of the industrial relations system for the small and medium-sized industrial enterprises represented by Confapi, halted at the Accordo interconfederale of 20 April 2012, was finally concluded on 26 July 2016 with the signing of three framework agreements on representativeness, collective bargaining structure and the tax exemption of productivity wages.

[15] Calculated as the average of the percentages of certified members and votes cast in the periodic elections of trade union plant-level structures; it is, however, interesting to note how the Confcom-

tive agreements, thanks to a widespread use of the principle majority: at sectoral level, it is requested that the platform of demands for the renewal of the collective agreement, when not presented jointly, has to represent at least a majority of the affiliated unions and collective agreements by trade union organizations with representativeness of at least 50% plus one are binding for all the signatory parties and would be applied to all workers; the same principle is applied to second level agreements.

At the same time, the choices of social partners have been directed toward a more direct involvement of the workers, pursued on one hand through the review of the set-up and competence of the *rappresentanza sindacale unitaria* (RSU), the workplace representation voted by all workers, with a view towards a more pronounced autonomy, and on the other hand by the institutionalization of "certified consultation" procedures for the validity of the national collective agreement[16] and direct consent verification for company collective agreements when signed by non-elective representation (*rappresentanze sindacali aziendali*, RSA)[17]. This ensures the binding nature of collective agreements, the certainty of their application and the management of the (workers or unions) minority, enforced thanks to the aforementioned cool-down procedures and sanctions[18].

Such rigor in the enforceability of collective agreements is obviously counterbalanced by a re-evaluation of the articulation of sectoral and decentralized bargaining, with a scope of better suiting "the needs of specific production contexts", by authorizing, within the limits and the procedures set by the sectoral agreement, a second level review thanks to *clausole di articolazione contrattuale* (contractual articulation clauses), on paper a more discerning version of the opt-out clauses of the 2009 intersectoral agreement. It is also to be underlined that, as a transitional measure, pending the implementation of the new model and the first collective agreements signed by the trade unions entitled under new rules of representation, the intersectoral framework agreements offer a broad possibility of exemption from CCNL, on topics of "work obligation, working hours and work organization" in order to govern crisis situations or to facilitate the economic and employment development of a territory or of individual companies, but always "in agreement" with national or local trade unions representatives. Also on remuneration, level coordination is maintained by the sectoral collective agreement, which guarantees homogeneous economic

mercio intersectoral framework agreement identifies two additional markers for the trade unions representativeness: a) "the number of individual plural and collective disputes represented in the sector" and "the certified unemployment paperwork" (Section A), Step 2), taking into due consideration by the lower rates of unionization in the service sector and the greater number of facilities covered by the trade unions, regardless of the number of their members.

[16] A similar consultation is required at the territorial level by the AGCI, Confcooperative, Legacoop intersectoral framework agreement (Section E), Part 2) and the Confcommercio intersectoral framework agreement (Section B), Step 5).

[17] The deals are effective when approved by a simple majority.

[18] The provisions differ from one agreement to another, appearing far stricter in the Confindustria and Confservizi consolidated texts.

conditions and is responsible for adjustment to the inflation rate and the definition of the so called *elemento economico di garanzia*, a fixed sum for those not covered by a second level contract, while the latter is called to increase productivity and wages through a better utilization of the factors of production and the improvement of work organization[19].

The evaluation of the social partners' response given by scholars is very reminiscent of the way in which the same glass can described as half full or half empty. For some it is "a kind of protective umbrella that cannot avoid differentiations and divisions, but that [...] allow, in case of division, to control further damage and excessive tearing" (CARRIERI, PIRRO, 2016), for others a completely new way to pursue solidarity between workers, "taking realistically into account the changed environment that, by expanding the area of economic competition far beyond the territory that a national level agreement can preside, forces to realise how the effective work protection (for those who have already a job, and for those who aspire to one) can hardly be achieved without adjustments to safeguard and strengthen the actual grounds that it requires" (LISO, 2012).

We can only remark that the reformed industrial relations and collective bargaining model represent a case of resilience rather than surrender. The dissemination and the reiteration of the scheme even in economic sectors that have not gone through the same traumatic experience of the metalworking category demonstrates a will and a skill to respond not only to the pressures from within the industry but also to the interference legislation, thus maintaining and claiming a traditional and multi-level structure. While the law rethinks the role of collective bargaining with - as we have seen, however, limited – care for its outcome rather than for the place in which it is achieved, workers and employers representatives reaffirm the leading role sectoral contract. Furthermore, the self-regulation choice moves along a well-established tradition of agreements making provision for derogation in order to cope with crisis situations: to allow this possibility within a framework of recognized and shared rules is not only an occasion to control but also to preserve and respect the system (JACOBS, 2012).

The model, nonetheless, is far from perfect; many are problems that remain unresolved.

From an "internal" perspective of the system, it is worth noting, first of all, that as it continues to be based - and it could not be otherwise, in accordance with contractual autonomy - on a voluntary basis, binding only the signatory parties participating: the Fiat case demonstrated its vulnerability and the ease with which the traditional model of industrial relations might be drastically "simplified", although it has remained somehow isolated, didn't fail to recur even in the relationship between employers' federations and their affiliation to the respective confederations, as in the case of Federdistribuzione in relation to Confcommercio[20].

[19] See Part Three of Testo Unico sulla rappresentanza Confindustria.

[20] Federdistribuzione, born in 2005 from the merging of FAID Federdistribuzione and Federcom, and representing large-distribution companies and retailers, followed the footsteps of Fiat by deciding in December 2011 to operate autonomously with respect to Confcommercio (the confedera-

Secondly, the compliance with the rules set by intersectoral framework agreements are guaranteed by provisions preventing unilateral action and cooling down conflicts whose effectiveness are limited to sanction the defaulting behaviour, without removing the effects (e.g. replacing the unauthorized company level contractual clause). Similarly, the overcoming of the previously enforced clause of "non repeatability" at second-level bargaining on matters can result, in a lack of distinction between contractual levels, in perfectly legitimate yet overlaying regulations, conflicting with the instance of government and overall coordination.

There is, however, one final and pertinent issue: the lack of measures in dissemination of second-level bargaining, which, ultimately, is likely to keep the outlined system theoretically coordinated, but practically devoid of any implementation capacity. As a matter of fact, for the model to be effective, it is necessary that decentralized collective bargaining reaches coverage rates at least comparable to the ones of sectoral bargaining (BELLARDI, 2014); as economic studies have shown, a 'limp' system establishes a perverse bond between wages and productivity: if productivity grows, the limited dissemination of second-level bargaining ensures only an increase of the capital share in the income (TRONTI, 2014). To this purpose, it has to be noted that the social partners are partly responsible.

There is a relevant difference between the contractual model adopted by Confindustria and Confservizi and the one outlined by AGCI, Confcooperative, Legacoop and Confcommercio: the first two, provide that the decentralized level corresponds exclusively to the company level, while the latter guarantees an alternative between territorial and company collective bargaining. It is an inconsistency that cannot be justified in the pronounced dualism between large and small firms in the fabric of the Italian economy: small companies are numerically prevailing and their average size (in terms of employees) make the development of collective bargaining quite unlikely. It is an oversight which has not spared the legislation, as recently introduced tax relief on welfare services (for educational, training, recreational, health or religious purposes) for all employees and paid by the employer refer to "a contract, agreement or *company* policy" (Art. 1, paragraph 190, Law no. 208 of 28 December 2015).

5. Is there still a need for collective bargaining? An epilogue as a prologue.

The analysis of the choices made by legislation and social partners shows that while they are apparently on the same journey, they move in parallel and potentially divergent lanes of disorganized decentralization for the former and coordinated decentralization for the latter. There are no doubts as to the fact that these reforms are all too recent to assess their actual impact and mutual interference, especially if we take into account that, on the

tion to which until that moment was affiliated) thusly ending its recognition of the already signed CCNL.

one hand, intersectoral framework agreements set a model which implies a bureaucratic implementation, with a view to serving as an example of recording votes, to this day still sluggish[21] and, on the other, a majority of industry-wide collective agreements expired between 2014 and 2016 still await to be renewed[22].

It's the sign of a season of extreme confusion for the Italian industrial relations system, exacerbated by tensions within workers' organizations and the resurgence of a friction, never completely dormant, concerning collective bargaining structure, so as to provoke the reopening of negotiations for the Confindustria agreement. It has to be said that this uncertainty is not confined to Italy – Brexit seemed to create a space for a rethink on the flexibility of stability constraints from European decision-makers - and has yet to be judged as a negative force.

What is certain, however, is that the corporatization model, which political, economic and social actions tend to, exists, at least at the moment, in regulation rather than in the actual description of the collective bargaining phenomenon; due to cultural legacies and organizational decisions, company level agreements continue to receive a very limited dissemination, moreover, directly proportional to business size[23]. At the same time, the most recent renewals indicate an increasing weakening of the sectoral collective agreement, in its fundamental function of wages determination. The CCNL *Industria Chimica* (Chemical industry), signed 15 October 2015, is an apt example of this trend, inasmuch as it sets wage adjustment to the forecasted inflation rate with an "annual check" (an exception to the intersectoral framework agreement of 2009, and a derogatory one at a time of negative inflation rates), as well as "spreading" the overall wages increase through different contractual clauses, including those of strict competence of (non mandatory) company bargaining[24].

At this point, it must appear quite fitting to wonder what the future holds for collective bargaining, given that "the change of the contractual structure, and its functions, if not

[21] For example, only in March 2015 the three main workers Confederation signed an agreement with INPS (the Italian institute of Social Security) to regulate the certifying and counting of union memberships.

[22] At the time of writing there are almost sixty, covering 7 million employees.

[23] A recent (July 2016) study remarks that company level agreements exist in the 69,1% of businesses with at least 500 employees, in 60,5% of businesses with more than 200 (but less than 500) employees, in 38,5% of businesses with more than 50 (but less than 200) employees and only in 17,5% of businesses with more than 10 (but less than 50) employees. The study also highlights wide differences according to the geographical area, with lesser percentage in the south of Italy (*source:* Fondazione di Vittorio; http://www.fondazionedivittorio.it/it/contrattazione-integrativa-e-retribuzioni-nel-settore-privato) .

[24] It is a consolidating trend: "wages do not fully absorb the efficiency increases and therefore the productivity related pay has contributed to the growth of labour productivity to a greater extent than it has contributed to the growth of wages, thus promoting a recovery of margins of competitiveness" (DAMIANI, POMPEI, RICCI, 2016)

also its nature is still creeping"(CELLA, 2016) can potentially move either in a neo-liberal or a neo-corporatist direction (TOMMASETTI, 2015).

The thread that unites almost all reflections is the need, in the ongoing weakness of the industrial relations system, for an intervention of political power, called for with varying schemes and solutions (SCARPONI, 2016), most importantly not only by scholars but also by the main three workers Confederations in a recent joint document, signed at the beginning of the year[25]. It is clear that, although in the current political landscape an Act on trade union representativeness and collective bargaining structure remains a far-fetched hypotheses, any intervention could not be conceived without a new beginning for tripartite concertation practices, in order to avoid another "invasion" like Article 8 of Decree-law no. 138/2011. The legislator should consider a strategic rethinking of the now consolidated legal provisions to support business productivity by introducing effective measures to disseminate collective agreements.

In the meantime, some interesting signs of change come from the social partners.

The first evidence is in a prospective review of trade unions' representative bodies and more widely of employee representation. It is remarkable that the aforementioned Confederations joint document speaks in favour of a more inclusive collective bargaining and to this purpose suggests " representing and protecting all forms of employment contracts in the workplace, overcoming divisions between better protected and more precarious jobs" and reviewing not only the role of RSA/RSU but also enhancing mechanisms direct for participation of workers. The argument is not new among trade unions representatives, compelled by the exponential increase in the number of temporary workers, freelance (but economically dependent) workers and 'new generation' employees (e.g. smart-workers) (AMBRA, 2013 and 2015), but for the first time finds an organic understanding of the established forms of worker representation, which are now being questioned on the subject of their set-up and function (ALAIMO, 2016). A bottom-up overhaul of worker representation would more than likely contribute to an overall revitalization of trade unions and, moreover, greater stability of the industrial relations system.

A second element, linked to the previous one, is a perspective review of the articulation of collective bargaining structure. Again, January 2016 Confederations document steers in two directions, namely the overcome of the conflict between controlled decentralization of intersectoral agreements, the disorganized decentralization of legislation[26] and a "multidimensional" vision of second level bargaining, that does not correspond exclusively to company level - here interestingly augmented by suitable connections with

[25] *"Un moderno sistema di relazioni industriali. Per un modello di sviluppo fondato sull'innovazione e la qualità del lavoro"* ("A modern system of industrial relations. For a development model based on innovation and quality of work"), 14 January 2016.

[26] "*The national industry level contract must maintain its primary function of commonly regulating labour relations for all workers in the sector of reference, and must be strengthened in its role of industrial relations governance. The national contracts will establish guidelines for the development of the second-level agreements, taking on a new and broader title in defining the rules for devolution*".

transnational bargaining for companies of a relevant size - but enhances also the territorial, district and supply chain level.

It's undoubtedly a step forward which takes into account the prevailing size of Italian companies, and that can be developed with a specific reasoning on "network bargaining" (Article 3, paragraph 4-*ter*, Law no. 33 of 9 April 2009), as an extremely flexible and effective means of inter-company cooperation (SALVATORE, 2015), which, placing itself between the company and the territorial level (BAVARO, LAFORGIA, 214) and potentially crossing different sectors (L. ZOPPOLI, 2014), entails specific rules and guarantees. In the light of the contemporary metalworking employers federation document[27], which suggests company level bargaining as an 'alternative' to the industry-wide regulation, it is an all but easy development which ultimately would provoke, among other beneficial effects, the rethink of employers representation, along with its structure and its functions, highlighting an underrepresented issue which seems now impossible to postpone any longer (FELTRIN, ZAN, 2014).

There are also signs of great interest, when examining the contents of some of the most recent agreements. Firstly, there are trends for inclusivity, overcoming fragmentation between old and new jobs, "typical" "atypical" workers: they appear in those (company and territorial) agreements which extend for example union rights to freelance and precarious workers within the workplace, or define rules for the transformation of fixed-term contracts into indefinite contracts, or introduce a "fair" employment contract. Inclusivity can also be traced in the (sectoral level) dissemination of bilaterality as well as local and corporate welfare, and more recently in widespread regulation of freelance work coordinated by an employer (D. GAROFALO, 2016; VOZA, 2016). Lastly, the Jobs Act provoked dismantling of some workers rights, such as the reinstatement in the case of unfair dismissal – a "legal distribution of inequality" (FONTANA, 2015), has given way to a number of 'old-fashioned' meliorative agreements, inasmuch as they introduce stronger protection standards, equivalent to what was provided by the legal discipline no longer in force (GARGIULO, 2016).

Although not the only (or prevailing) trends of development, they show nonetheless a discrete vibrancy of collective bargaining, able to expand its scope towards the so called *outsiders* or rediscover the wider meaning of derogation (potentially giving Article 8 provision a completely new spin). The key word is, in these trends, coordination with a view of complimenting parallel sectoral and the territorial and company bargaining. In this sense, the aforementioned 2016 Confederations joint document finds a convergence with the employers' organizations position and puts the spotlight on *subjects* of collective bargaining, identifying a "high road" to competitiveness, based on research, training, invest-

[27] Federmeccanica, "Proposta rinnovamento contrattuale", 22 December 2015.

ments and innovation, rather than on the cut of labour costs[28]. But such a high road can not happen without consensus building and mutually recognized and binding rules[29].

It is perhaps here that the answer to the question posed in the headline of this chapter and this paper can be found. The cut of labour costs, practiced in Italy well before the 2008 economic downturn, and secured through a massive use of flexible work contracts and the containment of wage trends as "employment insurance", has not really affected the lack of competitiveness in the fabric of the Italian economy or addressed the high unemployment/low employment rates; on the contrary, it has contributed to an increasing number of *poor workers*, identified on a personal and, more worryingly, family basis (SARACENO, 2015), and strengthened territorial, gender, and age disparities.

Ultimately, it is a conflict between social dignity and economic competition. And that is an old story.

[28] In this respect, however, the public actor's commitment is now even more crucial in its role towards the development of factors such as education, resources for innovation, resources for social shock absorbers, functional to the overall system productivity.

[29] Recent economic studies confirm furthermore this argument, proving that the risk of a negative effect on investments in sectors with stronger unions is substantially reduced (or compensated) when trade unions and firms are involved in the processes of active cooperation between social partners (CARDULLO, CONTI, SULIS, 2015).

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The future of collective bargaining in Italy

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