Current situation, features, and evaluation of changes in the labor law in Italy in the wake of the economic crisis

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1. Italy’s Labor Market Figures

Italy’s labor market has always been marked by some endemic problems, though a worsening of its conditions was reported during the years following the 2008 economic crisis. Nevertheless, pre-2008 employment rates were already a cause of concern, since in 2007 only 58.7% of those available for work were in employment. This means that only one third of the overall population generated income from employment, by also taking into account the significant share of retired workers. Concerning social security, these figures translated into a ratio between those in employment and those out of work that was equal to 1:2, an aspect that clearly had an impact on the sustainability of the national welfare system. As already stated, the recent economic downturn has even aggravated this state of affairs, as employment rates declined to 55.4% in 2013 (practically, only one worker out of two had a job). Employment levels increased over 2015, although not enough to offset the jobs lost in the period 2008 to 2013.

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Specifically – and thanks to the slow but steady rise in employment – the number of those with a job increased to 23 million in 2008, but a new fall in employment was recorded following the first international crisis. Apart from 2010, when the number of employed people in Italy was slightly higher than 22.5 million, a second recessionary period was reported, causing a steady decrease in the number of those in employment that lasted until the end of 2013. In 2014 and 2015, the number of those in employment started to rise again, although slowly. In the third quarter of 2015, employment rates reported a 0.7% increase compared to 2014. According to Italy’s National Institute of Statistics (ISTAT) this was mainly due to an increase in the number of workers hired on fixed-term employment contracts (+4.6%). Data from EUROSTAT (updated to May 2016) indicated that Italy recorded the lowest number of those employed and those seeking employment in EU28. To sum up, Italy still has a long way to go before achieving the goal set by the Europe 2020 strategy to employ 67% to 69% of the population aged 20 to 64 years old.

Female employment represents another major concern. Although reporting a slightly increase during the economic crisis – which required families to generate higher incomes and compelled women to seek paid employment – the share of female workers is still low (50%), as is that of young people in the 15-to-24-year-old age group, especially if compared to other European countries.
Unemployment also increased steadily over the 2007-to-2014 period and, save for 2010 and 2011, the number of unemployed doubled, rising from 1.6 to 3.2 million. A slight downward trend has been visible over the last year, but 2.9 million people are still out of work, an increase of 1.3 million compared to the start of the crisis. Italy’s youth unemployment is a particularly serious aspect, especially if one considers that in some European countries (e.g. Germany and Austria) the unemployment rate for young people is lower than that recorded in 2008. After peaking at 44.2%, the youth unemployment rate in our country is still significantly high and stands at 39.2%.

Finally, there are the inactive, that is the share of the population that is neither employed nor looking for a job. High inactivity rates have always been a main feature of the Italian labour market and this partly explains why employment levels in our country are low. As early as 2007, the share of the inactive was 37.1% of the workforce (14.2 million). During the crisis, this percentage continued to decrease, reaching 35% (13.6 million) in the first semester of 2016. This figure – coupled with the share of those in employment (22.7%) – clearly shows that today’s employment situation in Italy is not sustainable from an economic and a social point of view.
The Italian labour market can be better understood if age is considered. The ageing of the population – which produced a rise in the average age from 42.3 years in 2007 to 43.9 in 2015 – has had an effect on employment levels. For example, an increase in the employment rates was reported between July 2015 and July 2016, but significant differences emerge if one considers different age groups. Some 402,000 jobs were added that concerned workers over 50 years old, while 135,000 workers in the 25-to-49-year-old age group lost their occupation. No significant changes were reported in relation to workers under 25 years old.
Unemployed people over 15-24 years old - 2008-july 2016 (thousand)

Employed people over 50 years old - 2008-july 2016 (thousand)
2. Italy’s new labor reform: The Jobs Act

In order to deal with the economic crisis, the governments that have alternated in office since 2008 have introduced different reforms of the labor market, making it impossible to compare and evaluate their impact in the long run. The one introduced by the Centre-left coalition led by Matteo Renzi has been the fifth reform in five years and has pursued
the same objective as the previous ones: tackling unemployment – particularly that of young people, which has been rising since 2008 – dealing with the fact that there are fewer jobs available and reducing unstable employment, by encouraging employers to hire staff on open-ended employment contracts.

Renzi’s reform has been named “Jobs Act” and consists in three sets of provisions. The first one – Decree-Law No. 34 of 20 March 2014 – came into force in May 2014. Afterwards, this piece of legislation was converted to Law no. 78 of 16 May 2014. It was known as “Decreto Poletti”, for it was named after Giuliano Poletti, Italy’s present Minister of Labor and Social Policies. This provision seeks to promote fixed-term employment and apprenticeships.

The second set of measures includes eight implementing decrees approved by the government based on the mandate received from the Parliament. In order to promote regulatory simplification, these decrees made a number of amendments to social-safety nets, placement services and active policies, as well as to contractual arrangements, inspection services, work-life balance provisions, and to employees’ right to certain safeguards. Specifically, legislative simplification concerned the reduction of the different types of employment contracts in place and the promotion of salaried and open-ended employment in order to prevent bogus self-employment and precarious work. The government promoted the use of salaried and open-ended employment in two ways.

The first one is the implementing decree relating to the Jobs Act, which deals with Article 18 of Law No. 300 of 20 March 1970 (the Workers’ Statute) and requires employers with more than 15 employees to reinstate workers if their dismissal is regarded as unfair. In the new law, reinstatement has been replaced by employment contracts with "rising protection", that provide a form of compensation paid to workers that is proportionate to their seniority. The other measure to promote open-ended employment is an economic one and is included in the third set of provisions laid down in the Jobs Act. They are part of the 2015 Stability Law, which allocated millions of euros to put in place three-year tax-exemption schemes for employers who hired staff on open-ended employment contracts in 2015. As for flexibility in dismissal, access to income support measures has been widened, while a new body operating at a national level (ANPAL) has been created to implement active policies.

With a view to increasing employment figures, the Jobs Act makes an attempt to shift from an approach based to job property to one prioritizing flexicurity, a long-awaited move that draws on the model in place in Nord-European countries.

In relation to the reform of collective bargaining, one might note that the enabling legislation referred to above makes little reference to bargaining autonomy. The reform deprives social partners of their intermediary function, making some conditions
automatically legal without giving these actors the opportunity to define them through decentralized bargaining, as it was the case pursuant to article 8 of Law No. 148/11).

3. The Position of Case Law and the Social Partners

Obviously, this comprehensive labor market reform has been the subject of widespread analysis on the part of Italian labor law experts. The wide-ranging scope of the reform package has received criticisms, and a number of evaluations have been made on specific aspects and provisions. Concurrently, the same criterion has been used for all the major amendments made to labor legislation contained in the reform. For this reason, labor law scholars have also focused on the founding principles of the reform and the relevant implementation procedures.

Generally speaking, the new piece of legislation has been recognized as a tool to innovate Italy’s labor law. However, different views are provided by labor law scholars as far as its merits are concerned. In this respect, some criticisms have been levelled, the nature of which depends on commentators’ cultural vision. Those who are less critical view the Jobs Act as an attempt to review national labor legislation in consideration of the profound changes affecting today’s world of work. While there is still room for improvement, the Jobs Act is seen as the first step towards a new regulatory paradigm. Other commentators raise criticisms on the measures implemented, for they are not considered as sufficient to take on the challenges posed by the new labor market. They are of the opinion that the Jobs Act fails to consider a new vision of work and the transformation currently underway, especially because it aims at promoting stable employment by encouraging the use of open-ended employment contracts, although with some major differences from the past.

This approach seems to clash with the current labor market, which features increasingly short production cycles and needs to be based on higher levels of autonomy and collaborative working.

Another part of legal opinion thinks that the government has made regressive changes to labor laws. They are unacceptable for they only consider employers’ interests and economic output, therefore running counter to the founding principles of labor law.

Apart from the different views on the Jobs Act, mention should be made of a number of implementation issues. Many scholars underline that – notwithstanding the amendments made to legislation – the benefits provided to encourage the use of the open-ended employment contract will not be able to promote this form of employment. This point was already raised at time of assessing the piece of enabling legislation, along with concerns regarding the contradictory ways used to pursue legislative simplification.
Finally, another part of legal opinion has provided a positive assessment of the reform package. In this sense, the Jobs Act represents an attempt to introduce the European model of flexicurity into Italian legislation and promote stability of employment. This can be explained by the central role given to open-ended employment, which only apparently stands in contrast with the evolution of the labor market.

Trade unions also have a different take on the reform. Representatives from Cgil (a social-communist union) and Uil (a social-democrat union) – which can boast the largest number of members in Italy – oppose the new law. According to them, the Jobs Act reduces workers’ rights and protection, and does not provide any plans in terms of development policy. In addition, the reform favors unstable forms of employment – e.g. on-call and casual labor – therefore moving away from the objectives stated at the time of its drafting.

A different view has been taken by Christian-catholic Cisl, the second largest trade union in Italy, which has seen as a historic move the priority given to open-ended employment over other contractual arrangements. However, Cisl has expressed doubts in relation to the extension of the safeguards for individual dismissals to collective ones, a procedure in which trade unions traditionally play a major role in Italy. However, decentralized bargaining will enable unions to regain their role when discussing collective dismissals.

As far as employers’ associations are concerned, one might note that Confindustria - Italian employers’ association – has praised the reform, for it puts forward many of the innovative changes demanded by employers. However, they repeatedly point out that the new law is only one of the conditions required to promote job creation, seeing that employment growth can be encouraged by investing in infrastructure and reducing labor costs.

4. Future Prospects

As from September 2016 – that is 12 months after the approval of the reform and 18 months after the introduction of employment contracts with rising protection – no active policy has been applied yet. The first task of the newly-created National Agency will be that of implementing a special employment contract intended to help unemployed workers to re-enter the labor market, by means of financial resources allocated to find them work with the support of specific public and private bodies.

While awaiting the implementation of these measures, a number of aspects can be identified concerning the great transformation of work that are in need of regulation but have been ignored by the reform. Among them are self-employment, so-called smart working, the sharing and on demand economy, digital manufacturing, and the sustainability of the national welfare system. In this respect, there seems to be a lack of
dialogue between the social partners, which can contribute to understanding the changes currently underway in the labor market.

In relation to self-employment and smart working, on 28 January 2016 Italy’s Council of Ministers put forward the bill “Measures to safeguard non-entrepreneurial self-employment and to promote the flexible organization of working hours and place of work when engaging in salaried employment”, that is presently under scrutiny by the Senate.

Measures on self-employment mainly concern tax, social and welfare benefits. For instance, they protect self-employed workers in commercial transactions (by vetoing unfair clauses), provide for tax deductions for training costs, promote access to guidance and retraining services, participation in public tenders, maternity leave and allowances, and ensure protection in the event of work-related accidents or diseases.

Regarding smart working, the second part of the bill intends to promote this form of employment as a flexible way to perform salaried employment. This provision was put forward in the wake of legislation on work-life balance – which has been favored by new technologies – and aims at overcoming some legal limitations hindering the use of this working scheme. A survey carried out by the Association for International and Comparative Studies in the field of Labour Law and Industrial Relations (ADAPT, www.adapt.it) on a sample of collective agreements has stressed the need for further legislative action to make widespread use of this form of employment, although a number of collective agreements already provide for flexible work arrangements. A clear legal framework enabling the implementation of smart working will serve the purpose, as will economic incentives like tax relief schemes and the reduction of contributions to be paid for productivity bonuses, which are negotiated by decentralized bargaining.

Starting from 2016, the government has introduced these incentives – providing for a 10% reduction on taxes on productivity bonuses worth up to €2,000 and on annual salaries up to €50,000 – and an increase of this percentage is currently being discussed for 2017.

A final consideration concerns Italy’s industrial relations system. While some possible interventions have been under discussion in this field, the government has failed to put forward a legal reform of collective bargaining so far. Further, the Jobs Act empowered the Council of Ministers to make provisions for the minimum wage. But the Council has yet to fulfil this task, informally encouraging trade unions to do so autonomously.

On this aspect, in January 2016 trade unions reached agreement to promote “a modern system of industrial relations”. However, this proposal did not differ much from the agreement concluded on 23 July 1993. It is still the collective agreement concluded at a national level that sets forth remuneration and introduce derogations to be dealt with by decentralized bargaining.