European Working Group on Labour Law

Changes in the organization of collective bargaining

Italian Report

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Questions for National Reports

1. What is the practice of collective bargaining in your country: which are the major unions and organizations; are collective agreements mainly concluded for sectors, for the whole country of for particular enterprises; what is the unionization rate; what is the percentage of employees covered by collective bargaining; is and, and if so, how is, representativity of a union determined; what is the relation between unions and works councils?

2. Answer the following questions in order to give a short synopsis of the legal system:

a) Does your country's legal system, case law or practice contain a formal definition of 'collective bargaining'?
b) Which are the parties that can participate in the bargaining process?
c) Are there any conditions on the possible contents collective agreements?
d)Which procedures have to be followed in the bargaining process, in adopting a collective agreement and ensuring that this agreement has full legal effect?

3. Do legal criteria exist for qualifying as a bargaining party (in the sense of being able to conclude collective agreements), if so, what are they?

For instance:
- independence (in which way? Independent of …….?);
- legal personality;
- unionization rate (social power);
-sufficient financial resources;
- representativity (elections);
- are measures taken to exclude yellow unions, and by whom?

4. What is the binding effect of collective agreements in your country?
- **a) What are the requirements for binding effect in legislation and in case law?**
- **b) Who is (directly or indirectly) bound and who not bound by a collective agreement?**
- **c) Is there a system of extending the binding effect by means of a decision of the government/minister or other public authority: who is bound by such extension and in which way?**
- **d) Is deviation in peius possible from statutes or collective agreements by other collective agreements or works councils agreements)?**
- **e) Does the favourability principle apply in case of concurring instruments?**

5. Do works councils have any formal role in the collective bargaining?
- **a) Are works councils legally allowed to bargain with the employer and conclude agreements on employment conditions or other issues related to the interests of the employees?**
- **b) What is the legal effect of agreements by the works councils?**
- **c) What is the relationship between works councils and trade unions in the context of collective bargaining?**
- **d) Can works councils agreements be invoked or challenged by individual employees?**
- **e) Can works councils agreements deviate from collective agreements?**
- **f) Is anything known on the issues addressed by works councils in their agreements?**

6. Can two (or more) collective agreements (on sectoral or company level) be applied simultaneously in the same company?

a. **If so, is there a solution of possible concurrence of collective agreements?**
    a. **How is the concurrence solved?**
    b. **Does a hierarchy exist between the collective agreements involved?**

7. To what extent has your collective bargaining system changed or has it been changing in recent years (are there, in particular, decentralisation trends?)

BRIEF OVERVIEW

According to article 39, par. 1, of the Constitution, in Italy trade union organization is free.

Indeed, registration is required by article 39 Const., par. 2, in case trade unions were interested in bargaining collective agreements which shall be applied to all employees and employers belonging to the sector involved (so called *erga omnes* collective agreement).

Yet, such a regulation should have been detailed by a statutory instrument which has, for a number of reasons, never been issued by the Italian legislator.

As a consequence, the State legal system provides for no rules concerning the legal structure of trade unions, the selection of the negotiating parties and the drawing up of collective agreements.

Another consequence is that general civil law provisions must be applied to trade unions and collective bargaining.

According to those provisions, trade unions are unincorporated associations (not-recognised organizations) therefore lacking legal personality and collective agreements are not universally applicable (i.e. there is no *erga omnes* effect).

As a matter of fact, the power of the union to conclude a collective agreement is based on voluntary representation, i.e. the individual, by joining the union, confers on it the mandate to perform acts on his/her own behalf.

Employers too are free to organise themselves within private law bodies that are entitled to bargain and to sign labour collettive agreements.

In the public sector, in order to avoid the fragmentation of employees' representation and collective actions exclusively aimed at obtaining trade unions recognition by the employer, typical of the private sector, representativeness requirements have been introduced by the legislative decree n. 396 of 1997 (at the present legislative decree n. 165 of 2001).

So, notwithstanding the privatisation of the contract of employment that has occurred since 1993, representativeness in public sector is very different from the private one, as it is governed by the law and for that reason is independent from the trade union system.

The legislative decree n. 165 of 2001 provides that, on the employers' side, an independent agency called ARAN (National Agency for Negotiating Representation), legally represents, at sector/national level, all the public administrations for the drawing up of national collective agreements, and, on the workers' side, only trade unions that exceed a given percentage (5%) are admitted to the negotiations for the conclusion of national collective agreements.

This percentage is measured as the average of the number of members (percentage of affiliates) and the electoral data (percentage of votes that trade unions received during works councils elections).

All the mentioned provisions together with some other ones - such as those according to which public administrations fulfil their obligations under collective agreements and they ensure equal treatment and treatments not lower than those provided for by the respective collective agreements – guarantee that national collective agreements in the public sector are universally applicable.

In the public sector, Regions are represented by the Conference of Governors, Provinces by the Union of Italian Provinces (UPI) and Communes by the National Association of Italian Communes (ANCI). These bodies are responsible for the issuing of guidelines on working conditions that Aran has to take into account while bargaining collective agreements.

In the private sector, since no requirement can be imposed by the legislator or by the judiciary to employees and employers who organise themselves in order to bargain collectively working conditions without *erga omnes* effect, any group of employees, a single employer or any group of employers can act as party of a collective agreement.

As a consequence of such a pluralistic approach, trade unions have proliferated either according to the major political leanings of the Country or to their commitment to a specific group of workers (so called autonomous trade unions).

Employers' organizations, on the contrary, have structured themselves, somehow unitarily, corresponding to the existing productive sectors (agriculture, industry, handcraft, services, commerce, banking, constructions etc.).

MAJOR TRADE UNIONS AND ORGANIZATIONS

In Italy there are three major trade union confederations, all members of ETUC:

CGIL: General Confederation of Italian Workers (Confederazione Generale Italiana del Lavoro) that had 5.748.269 members in 2010. As successor of the CGL, set up in 1906, its traditional leanings are communist and socialist.

CISL: Italian Confederation of Workers' Unions (Confederazione Italiana Sindacati Lavoratori) that had 4.542.354 members in 2010. As successor of the CIL, set up in 1918, its traditional leanings are mainly Christian-democrat.

UIL: Union of Italian Workers (Unione Italiana del Lavoro) had 2.184.911 members in 2010. As successor of the UIS, which split from the CGL in 1911, its traditional leanings are socialist, social-democrat and republican.

In 1996, a fourth Confederation - UGL, General Union of Labour (Unione Generale del Lavoro) has been established (2.377.529 members in 2010), following to the dissolution of CISNAL, a post-fascist trade union which had never been accepted by CGIL, CISL and UIL as bargaining partner.

As regards the so called "*yellow unions*", art. 17 of Act n. 300 of 1970 forbids the constitution of unions of convenience, i.e. unions supported, financially or by other means, by the employers or by employers' associations.

Italian trade unions are complex organizations, structured on a double line of organisation: so called vertical and horizontal lines, converging at the top in the confederation.

Vertical structures (the national unions, called federations, and their provincial, regional and local sections), organize all workers of the same branch of the economy.

This is of variable latitude, usually including different sectors, e.g. the metal-mechanic unions organize six major sectors (steel, auto-aeronautic, ship-building, general mechanics, foundries, electro-mechanics and electronics), the chemical unions also organize the rubber and pharmaceutical sections, the textile unions, the garment industry.

However the trend is towards simplifying union structure, through amalgamations, especially in the public sector where it has traditionally been most fragmented: the number of vertical unions affiliated to the major confederations has been reduced from 36-37 to 16-18).

This reduction has created, for example, one single union for school employees, one for transport workers, both previously organized in many national unions.

Horizontal structures aggregate all workers and/or vertical structures in each geographic areas: national (named confederations), regional, provincial and sometimes local.

In Italy trade union density was 35% in 2014 even if there are major differences among the sectors: 25% in industry, 26% in services and 35% in Public administration, health and social services. Others differences can be observed with regard to gender (34% men; 23% women);

age (>30 years old 16%; between 30 and 49 years old 31%; >50 years old 32%); occupation (31% Professional and Managerial Staff; 28% white collar; 37% skilled blue; 23% unskilled blue).

Employers' organizations in the private sector are:

Confindustria, the General Confederation of Italian Industry (Confederazione Generale dell'Industria Italiana), member of Eurobusiness, which is the largest (it is composed by about 260 federations at their turn divided into sectors and local -province- bodies; Confcommercio representing enterprises in commerce and services; Confservizi representing enterprises in local public services; Confagricoltura, Coldiretti and Confcoltivatori which are organisations in the agricultural sector; Confapi, Confartigianato and the CNA representing small and medium enterprises (SME) and craft workers; ABI (Associazione Bancaria Italiana), which has included Assicredito since 1997, representing a large number of banks.

COVERAGE AND EFFECTS OF COLLECTIVE AGREEMENTS

Branch collective agreements play a crucial role in the Italian industrial relation system and, although lacking of the above mentioned *erga omnes* effect, practically speaking they are commonly applied by employers who legally operate on the labour market (the percentage of employees covered by collective bargaining in Italy was more than 80% in 2014).

This is primarily due to the fact that the judiciary has interpreted as immediately mandatory the provision contained in art. 36 Const. according to which "*wage shall be proportionate to the task performed and shall be, in any case, sufficient to guarantee to the worker and to his/her family free and decent living conditions*".

Looking for a reliable reference to define the notion of sufficient wage, the judiciary has found it in the collective agreement usually applied in the branch in which the worker is employed.

Moreover, case law states that branch collective agreements bind not only, according to the civil law principles, the employers and the employees who are affiliate to the signatory associations and unions but also: 1) the employer who is affiliate to the signatory association even if the employees are not affliate to the signatory union -double affiliation is not necessary-; 2) the employers and the employees, even if neither is affiliate to the signatory associations and unions, who directly or undirectly comply with the rules established by the branch collective agreement (e.g. when the employment contract provides that the branch collective agreement will be applied or in case of voluntary enforcement by the employer).

Another means of extending indirectly the effects of private collective agreements, in certain cases, is provided for by art. 36 of Act n. 300 of 1970.

This provision obliges the state and all public bodies to include in all contracts for the execution of public works, and in all financial subsidies to entrepreneurs, a clause explicitly requiring the beneficiary or the executor to apply his employees condition not inferior to those contained in the collective agreements of the appropriate bargaining unit or area.

A further very strong pressure to extend the effects of national agreements comes from the legislation which reduces social security contributions in certain areas and conditions: this benefit is granted only to those firms which apply standards not lower than those bargained with the most representative unions at a national level.

Taking into account the role collective agreements play in the Italian industrial relation system it may look surprising that no statutory instrument has ever been issued in order to regulate their juridical status and their application.

Nevertheless, the same high degree of effectiveness collective agreements have reached from the Fifties onwards can be considered as an understandable ground on which the Legislator has decided not to interfere into such an efficiently self-regulated domain.

Moreover, although fragmented in their composition, major Confederations have always acted unitarily when it came to the bargaining and the conclusion of branch collective agreements (but see below for the latest developments).

In absence of a statutory instrument regulating collective agreements, contracting parties are free to decide on their contents.

Systems of hiring, employment contract typologies, modifications of the employment contract, skills classification, working time, wages, health and safety, leaves, disciplinary sanctions and dismissal: these are the most significant topics collective agreements are, at present, dealing with.

They all belong to the so called normative part of the collective agreement, i.e. that one containing contractual clauses which produce a vertical direct effect (effetto normativo o reale) from the collective agreement on the individual employment relationship to which the collective agreement applies.

This is the result of a long-lasting debate which has catalysed and even monopolised the attention of Italian trade union law scholars and of case law by the Corte di Cassazione from the late Forties onwards.

Different theories have confronted in this field, starting from that one of a mandate implicitly and irrevocably given by members to the trade union at the moment they join it, to bargain

working conditions that once defined shall be permanently and mandatory applied to each individual employment relationship.

Convincingly, trade unions (or spontaneous coalitions) only are considered able to express and realise the collective interest of the relevant group of workers towards the employer as strong as needed in the view of obtaining the best possible working conditions the same employer may afford.

This is obviously true if collective bargaining is aimed at and succeeds in improving already existing working conditions.

On the contrary, according to general principles of Italian private law, workers cannot be obliged to accept the worsening of working conditions on the sole ground of an implicit and irrevocable mandate given once for all to trade unions.

Therefore, since the Fifties, case law has looked for an unambiguous legislative provision on which the vertical direct effect of the collective agreement on the individual employment relationship could have been grounded.

Eventually, it has found it in article 2077 Civil Code according to which individual contracts cannot derogate, *in peius*, working conditions provided for by the applicable collective agreement.

Such a decisive norm has been inherited from the fascist-corporatist system in which collective agreements were considered as mandatory, thus producing the above mentioned *erga omnes* effect.

Nevertheless, according to case law, since article 2077 Civil code has never been explicitly repealed, it has to be considered applicable also to post-corporatist collective agreements in order to sort the otherwise unsolvable problem of their vertical effect on the individual employment relationship in the absence of any other specific statutory instrument granting it.

In 1973, within the framework of Act n. 533 (introducing a specific procedure in employment disputes resolution), article 2113 Civil code was amended as to state that workers can lodge a claim against their own renounces and transactions if these deal with rights granted by mandatory collective agreements provisions.

According to the prevailing doctrine, article 2113, as amended, can be considered to be the specific statutory provision explicitly recognising the normative effect of collective agreements without making reference to article 2077 Civil code.

Collective agreements may also contain contractual clauses directly recognising rights and obligation upon the signatory parties, thus producing a horizontal effect (effetto obbligatorio) among them.

One has to admit that clauses like these are not typical of the Italian collective bargaining model. For a long time they have been regarded with suspicion by trade unions due to the fact that they were considered to be aimed at opening up the way to a participative industrial relation system they did not want to be part of.

However, although episodically, social partners have provided for contractual arrangements which would have granted a more participative management of industrial relations.

This was the case of the 1963 collective agreement for metal industry in which no-strike clauses were accepted by trade unions in exchange for a two levels collective bargaining system. Unfortunately, no implementation has followed.

Once again in the metal industry, the 1979 collective agreement has introduced information and consultation rights for trade unions. In this case the follow-up has been remarkable.

From the late Eighties onwards, following a season of trilateral framework agreements signed among the Government and the social partners, clauses producing horizontal effect have become more frequent in collective agreements, mainly dealing with the functioning of the collective bargaining system at branch and plant level, trade union rights and workers' representation at workplace.

In 2003, by legislative decree no. 276, provisions recognising remarkable prerogatives to bilateral bodies (enti bilaterali) as far as the management of the individual employment relationship is concerned were introduced in order to make the industrial relation system more participation driven.

By consequence, from 2008, collective agreements have provided for the establishment or for the transformation of already existing observatories into bilateral bodies, thus enhancing the role clauses producing horizontal effect are playing within collective agreements.

From the aforesaid one may think that the legislator had never delegated to collective bargaining the exercise of its regulatory powers.

Contrary to all expectations, collective agreements at branch and plant level (above all) have been entrusted with setting indispensable performances in case of strike in essential services (Act n. 146 of 1990) and with defining criteria on which workers to be made redundant has to be selected (Act n. 223 of 1991).

In these specific cases an *erga omnes* effect has been indirectly recognised to them (so called "*contratti collettivi gestionali*").

Therefore, the Constitutional Court has been called to decide whether such legislative provisions were compatible with article 39 Const.

In two landmark decisions the Court has ruled for the compatibility of both on the ground that collective agreements implementing them do not produce a direct vertical effect on individual employment contracts - rather they affect the way in which employers' powers are exercised. This is clear in the case of collective agreements defining criteria on which workers to be made redundant are selected but also in the case of collective agreements that indicate which workers cannot take part into a strike because they have to provide indispensable performances aimed at guaranteeing constitutional rights of the human being.

The same can be said for all the other cases in which legislative provisions delegate to collective bargaining the regulation of specific working conditions, such as, for example, article 2016 Civil Code (disciplinary sanctions), article 2109 Civil Code (holidays), article 2110 (sickness leaves), article 2118 (dismissal notice).

Generally speaking, in case working conditions are regulated by the law, collective bargaining can only provide for a better treatment for the worker.

Collective agreements which derogate *in peius* have to be considered null and void as for the relevant clauses (article 1418 Civil Code).

According to the Constitutional Court, article 39 Const. cannot be interpreted as reserving to collective bargaining any exclusive space as far as the regulation of working condition is concerned.

Therefore, while respecting the principle of reasonableness, the legislator may intervene on collective agreements in order to let the general interest prevail on the collective interest of social partners as they have regulated it.

It has happened in the Eighties, above all, in relation to contractual clauses which provided automatic wage increases linked to the growth of the inflation rate (so called *scala mobile*), thus triggering a vicious circle which had led Italy to its higher inflation rate ever.

LEVELS OF COLLECTIVE AGREEMENTS

As we have stressed before, collective bargaining has developed in Italy outside any legal framework.

Only in the public sector, from 1983 onwards, the legislator has provided a detailed regulation (at the present by legislative decree n. 165 of 2001).

Therefore, collective bargaining has been free to define autonomously its levels without any legislative constraint or indication.

Traditionally speaking it has structured itself on a two level system based on national sectoral (branch) collective agreements, on the one hand, and on inter-sectoral (inter-branch) framework agreements, on the other.

These latter are aimed to define common regulations of working conditions (training, workers representation, for instance) which will be apply to all sectors concerned (within industry or agriculture, for instance).

However, from the Sixties onwards, social partners have tried to introduce a further level of negotiation within the plant.

Generally speaking, collective bargaining at plant level raises huge problematic questions concerning its relationships with the national branch level which has still to be considered the key feature of the Italian industrial relation system.

In Italian Social Partners' view, coordination and control were and are needed in order to avoid the plant collective agreement to be in contrast with the branch collective agreement.

For this purpose, a link had to be established between bargaining agents at plant and branch level.

Until 1991 trade unions confederations (CGIL, CISL and UIL) and employers organisations did not succeed in finding a suitable solution to this problem.

Then, in 1991, by a General Framework Agreement, they set up an original form of workers representation called Rappresentanza Sindacale Unitaria - RSU (Unitary trade union representative body), partly elected by the employees on lists presented by trade unions that have signed the above mentioned Framework Agreement (two thirds of members) and partly directly appointed by the unions.

Since all the workers employed in the plant are entitled to the right to vote, one may say that RSU represents the entire workforce.

At the same time, taking into account that candidates are selected by the above mentioned trade unions, one may also say that RSU are controlled by them.

The Inter-sectoral Agreements of 1991 thus provided for the coexistence of two representative bodies: 1) the RSAs, envisaged by law (Article 19 of the Workers' Statute) and representing only the workers enrolled in a given trade union; 2) the RSUs, governed by negotiated accords which enable universal representation because they are legitimated by the votes of all the workers, enrolled and not enrolled in trade unions.

This mix of law and legislation on agreements has led to the emergence of uncertainties of application, with negative repercussions also on the number of disputes.

Particularly significant, in this regard, are the numerous controversies that arose between the Fiat group and the trade union FIOM, which – up until the recent ruling of the Constitutional Court on Article 19 of Act n. 300 of 1970 – had been prohibited from forming RSAs because it had not signed the agreements, despite the fact that it was one of the main trade union bodies of the sector.

Not even the criterion identified by the Court to establish the legitimation or not of a trade union to establish an RSA appears, moreover, sufficient for overcoming the potential conflicts. In fact, the "*participation in a negotiation*", unlike the signing of a contract, is a much more evasive notion, and as such open to very different interpretations, with the risk of intensifying any disputes.

As a follow-up of the 1991 General Framework Agreement on RSU, in 1993 trade unions confederations and employers organisations signed the Framework agreement on income and employment policy (Protocollo sulla politica dei redditi e dell'occupazione), setting up a two levels bargaining model (branch and plant) according to which contents and aims of collective bargaining at plant level are predefined by the branch collective agreement. Overlapping shall be avoided.

RSU acts as bargaining agent at plant level, assisted, in case of need, by representative of the trade unions which have signed the collective agreement at branch level.

As for its duration, this latter will last for four years in relation to clauses provided by horizontal effect (parte obbligatoria) and two years in relation to clause provided by vertical effect (parte normativa).

Collective agreements at plant level will last, altogether, for four years.

This two levels model has been confirmed by the Inter-sectoral Agreement on collective bargaining signed on April the 15th 2009 by CISL and UIL and the employers' organisation without the consent of CGIL.

However, as for the duration, both the branch and the plant level collective agreements will last, altogether for three years.

The above mentioned Inter-sectoral agreement has been signed in order to implement the Tripartite Framework Agreement signed on January the 22nd 2009, under the aegis of the Italian Government, by the Employers organisations and two out of the three most representative trade unions (CISL and UIL).

COLLECTIVE NEGOTIATIONS MACHINERY

In absence of a statutory instrument regulating collective agreements, contracting parties are also free to decide on the way collective bargaining shall be carried on.

Until 1993, no formal machinery had been established at inter-sectoral level, thus allowing social partners to define timing and rules for the opening and the procedure of negotiation at branch level. From 1993 onwards, indeed, the above mentioned Framework agreement on income and employment policy has provided a detailed regulation which has been recently modified by the 2009 Inter-sectoral Agreement on collective bargaining.

According to the 2009 Inter-sectoral Agreement on collective bargaining, the negotiation machinery has to be defined by collective agreements at branch level.

However, some general rules are directly provided within the same Inter-sectoral agreement in order to prevent an excessive duration of negotiations.

In particular, proposals for the renewal of the branch collective agreement shall be presented six month before its termination.

The contracting party which has received the above mentioned proposal shall react to it within twenty days.

Presuming that the proposal comes from a trade union, if these rules are violated, the 2009 Inter-sectoral Agreement provides for the non payment of the additional sum due to workers as a compensation for the loss of wage increase suffered because of the delay in renewing the branch collective agreement.

Within the above mentioned period of six months before the termination of the national collective agreement and of six months after that, parties committed themselves to bargain and not to take unilateral actions, collective included.

WORK COUNCIL AND COLLECTIVE BARGAINING

As already explained, in Italian Social Partners' view, coordination and control were and are needed in order to avoid the plant collective agreement to be in contrast with the branch collective agreement.

For this purpose, a link had to be established between bargaining agents at plant and branch level.

Until 1991 trade unions confederations (CGIL, CISL and UIL) and employers organisations did not succeed in finding a suitable solution to this problem.

Then, in 1991, by a General Framework Agreement, they set up an original form of workers representation called Rappresentanza Sindacale Unitaria – RSU (unitary trade union representative body) whose characteristics and composition have already been illustrated above.

RSUs are the typical Italian workplace representatives and, in reason of the particular composition (in practice dominated by the trade unions), we cannot use for them the term "*work council*" in the European meaning.

In fact, although RSUs are elected by the whole workforce, they remain primarily union committees.

Despite of the above, RSU acts as bargaining agent at plant level assisted, in case of need, by representative of the trade unions which have signed the collective agreement at branch level.

RSU is therefore authorized, as a collective bargaining party, to negotiate with the employer binding agreements over its company.

The main elements of the negotiating structure are as follows.

Industry level negotiations are intended to ensure that pay keeps pace with prices and should set increases that take account of expected inflation.

In addition, industry level negotiations deal with a range of non-pay issues such as hours, information rights and work organisation.

Pay negotiations at company level should provide a mechanism for the employees to take account of particular company level developments, such as improved productivity on the one hand or the risk of job losses on the other.

In addition, company level negotiations also deal with changes introduced by the company such as the introduction of new working methods.

As well as company-level bargaining it is also possible for this lower level of bargaining to be conducted for several employers on a district or regional basis.

The bargaining framework, based on the strict hierarchy between national and plant level collective agreements, as well as the absence of derogations machinery *in peius* of the lower level, has come under pressure in recent years.

The employers' association, Confindustria, has called for bargaining to be made more decentralised, giving greater importance to company level bargaining.

CISL also accepts that lower-level bargaining, where it emphasises district as well as company level negotiations, should gain in importance (UIL takes a broadly similar position).

CISL argues that it is important to make the system more flexible so that it can respond better to the very varied position that individual companies face.

CGIL, however, takes a different view, arguing that the main problems in recent years have been the long delays in reaching agreements – these are often signed months after the old agreement has run out, and the fact that inflation, particularly forecast inflation, is often underestimated.

These issues were discussed by the three confederations in an attempt to find a common position, but without success.

The consequence has been that since the beginning of 2009 there have been a series of agreements, sometimes involving all three confederations, sometimes just CISL and UIL, or their affiliates, aiming to provide a framework for negotiations.

The first of these was in January 2009 when, following the three confederations' failure to agree a common position, CISL and UIL decided to act without CGIL.

Together with another smaller confederation, UGL, they signed an outline agreement with the employers and the government on a new system of collective bargaining.

In April 2009, this was followed by a more detailed agreement specifying the rules for the new system in the industrial sector.

CGIL did not sign either agreement and does not recognise the new system.

The most important changes compared with the system established by the July 1993 agreement are that: industry agreements now run for three years, covering both pay and conditions issues, rather than the two years for pay and four years for conditions, as set out in the 1993 framework; pay increases in industry agreements are no longer linked to the forecast inflation rate but to the forecast European consumer price index for Italy, excluding energy consumption.

Any differences between the forecast and actual inflation should be made up for within the three-year period of the agreement.

Productivity improvements are now only to be taken account of in company level bargaining, which the government is encouraging through tax incentives.

Where there is no company-level bargaining, employees should receive extra payments through a wage guarantee element ("*elemento di garanzia retributiva, EGR*"), to be agreed jointly by the two sides, and paid at the end of the three year period.

The negotiating timetable has been changed: the unions must submit their claim six months before the end of the agreement and the employers must respond within 20 days; strikes are prohibited during the last six months of an agreement and in the month after it runs out.

The intention was that the new system should be introduced on a trial basis for an initial period of four years.

During this time, a committee comprising all parties has the task of evaluating the effects of the new bargaining agreement.

This is part of an emphasis on joint working between employers and unions, which goes beyond what has been seen in the past.

As already noted, the CGIL did not sign either agreement, and campaigned against the change. CGIL's major criticism related to the protection against inflation, which it saw as less than that provided by the 1993 agreement, as well as its fear that the new arrangements would undercut industry-level deals.

The text of the agreement signed in April 2009 makes it clear that greater decentralisation of bargaining is seen as a mechanism to "*re-launch a growth in productivity and therefore of real incomes*".

Despite CGIL's opposition to the framework agreement, most industry agreements, including building, wood and furniture and the chemical industry, have been signed by the industry federations of all the three main union confederations, CGIL, CISL and UIL.

However, Italy's most important industry agreement, both in terms of the numbers covered and its wider impact – that for the metalworking industry – has been an ongoing source of dispute between the confederations and their affiliated federations in the metalworking industry.

This became clear in October 2009, when FIOM, the CGIL affiliate in the metalworking industry, did not sign the deal when it was renewed in October 2009, arguing that the pay increase was too low and that the deal would weaken the national agreement.

The conflict between the unions grew further in September 2010, when representatives of FIM (the CISL affiliate in the metalworking industry) and UILM (which belongs to UIL) signed an additional agreement with the metalworking employers' association Federmeccanica, allowing the October 2009 national agreement to be modified by local deals at company level.

The September 2010 agreement states that these local deals can be reached "*to aid the economic development*" of the company, or to counteract the "*economic and employment effects flowing from the crisis*".

However, these local deals cannot alter minimum pay rates or service-related increments, which remain as set out in the national agreement.

Again FIOM criticised the agreement as weakening the national agreement, while FIM and UILM in a joint statement said that it reinforced it.

The most recent metalworking agreement, reached in December 2012 for the three years 2013 to 2015, was also only signed by FIM and UILM.

The tension between FIOM and the other two metalworking federations has been increased by developments at the vehicle maker Fiat, Italy's largest industrial group.

Fiat initially pushed through changes to working conditions at its Pomigliano plant near Naples in 2010.

This was followed by similar changes at the Mirafiori plant in Turin in early 2011.

In both cases the local agreements implementing the changes were signed by FIM and UILM but not by FIOM and were ratified in workplace votes after the company threatened to move production abroad.

While CISL and UIL argued that these agreements were no different to others signed by affiliates of all three confederations to defend jobs and employment, CGIL argued that they were not the same and in particular that the Mirafiori agreement allowed the company to prevent FIOM representing its members (see section on workplace representation).

In January 2012, Fiat left the employers' association Confindustria and so ceased to be covered by the national metalworking agreement.

The company opposed Confindustria's decision not to make full use of the flexibility provided by legislation introduced in September 2011.

It has subsequently signed an agreement with FIM and UILM, although not with FIOM.

In the meantime at national level relations between the main confederations appeared to have been improved by an agreement that all three signed in June 2011.

This set out clear rules for company-level agreements, whose "*development and extension*" were seen as "*a common objective*" of all the signatory parties.

These company-level agreements can, in the words of the June 2011 text, "*set out ... specific terms modifying the regulations contained in the national collective agreements, within the limits and in line with the procedure that the national company agreements themselves permit*"

In other words the terms of the industry agreement reached at national level can be improved or worsened provided that this possibility has been allowed for in the industry-level agreement itself.

In addition, in the interim, before national industry agreements allowing for these company-level variations have been signed, local negotiators will be able to agree changes on "*work performance, working time and work organisation*"

The framework agreement also laid down the rules on how company-level agreements are to be approved.

However, this move towards greater consensus was disrupted by legislation introduced in September 2011 containing further changes to collective bargaining arrangements.

Actions of the government with Law no. 148 of 14 September 2011 (the conversion with amendments of Law Decree no. 138 of 13 August 2011) which among the "*urgent measures for*

financial stabilisation and development" also set out specific provisions regarding collective bargaining.

One of the most controversial of these is article 8, called "*Support for proximity collective bargaining*".

Specifically, article 8 attributes general effectiveness to firm level or territorial contracts stipulated by associations with greater representation on a national or territorial level or by their company representatives, as long as they are signed "*based on a majority criterion related to the aforesaid trade union representatives*".

Numerous, significant subjects are indicated by the law: the duties and classification of personnel; short-term contracts; regulations concerning working hours; contract work including by project and freelance work; dismissal.

All three union confederations and Confindustria saw this as an attack on autonomous collective bargaining.

As a result, in September they added an additional paragraph to the original June agreement, stating that they would stick with the deal they had signed on 28 June.

It was this that led to Fiat leaving Confindustria.

Following the fall of the government in November 2011, the technocratic government led by Mario Monti continued to promote decentralised bargaining, providing significant tax incentives to productivity-linked pay.

In November 2012 under the auspices of the government, the employers and CISL, UIL and the UGL, although not CGIL, signed a productivity and competiveness document.

This proposed changes to the two-tier system of bargaining, giving a greater role to company-level negotiations.

The new document suggested that, in future industry level agreements should provide more possibilities for negotiation at company level on issues such as working time flexibility in order to improve productivity within companies and that part of the inflation-linked pay increase at industry level "*could be allocated to … the second [company] level of negotiation*".

THE RELATIONS BETWEEN DIFFERENT LEVELS OF COLLECTIVE AGREEMENTS

Generally speaking, rulings of Labour Courts recognize that a new collective agreement may make worse the previous employment conditions, with the exception of the respect of the principle of the irreducibility of wage treatments.

In other words, with a new collective agreement should not be possible a reduction of wage.

Nevertheless, with the introduction of Article 8, of Act no. 148/2011, the collective agreements stipulated at company and local level (described as '*proximity bargaining*' by the new legislation) can derogate, even *in peius*, a broad range of employment terms and conditions prescribed by law or national collective agreements.

Agreements are valid and binding for all the relevant employees, provided that territorial or plant agreements are signed by the most representative trade unions at national, territorial or company level and provided that the signatories have the required majority in the relevant bargaining unit.

Article 8 of the new Act, however, allows proximity bargaining to opt out on several issues, providing the resulting agreement still conforms to the Italian Constitution, EU norms and international requirements.

The most innovative, and problematic, aspect of the provisions of art. 8, of Act no. 148/2011, is constituted by the fact that the agreements can derogate even in worse legislation and national collective agreement that, therefore, in relation to changes to working time and worker's tasks, may also have a direct impact on collective wage treatments previously paid to workers.

SIMULTANEOUS APPLICATION OF TWO OR MORE COLLECTIVE AGREEMENTS IN THE SAME COMPANY

On an academic basis, it can be possible in Italy that several collective agreements, of the same level, apply in the same company.

For instance, the situation could be possible in case an employer organisations sign different collective agreements with different employees' trade unions belonging to the same work category.

We had several cases on the matter -e.g. with the metalworkers in the 2009 and 2012 with the SMEs in 2013 and with the employees of the Communication Authority in 2013- when employees' trade unions disagreed between them on signing the renewal of the sectorial national collective agreement.

In such a situation, the different collective agreements apply simultaneously, until the date of expire of the first contract, according to the belonging of the employees to the different trade unions.

One of the cases, *id est* the problem regarding the employees of the Communication Authority, was subject of a decision of the Labour Court of Naples.

The decision of the Court, passed on 12 March 2013, has stated the anti-union behaviour of the Communication Authority and the invalidity of the renewal agreement, because the employer's organisation had excluded, *a priori*, from the negotiations one of the trade union organisations.
Therefore, even reasoning on the text of the article 39, par. 1, of the Italian Constitution, we can argue that two or more collective agreements can be applied simultaneously in the same company, if the employers' organisations ensure the participation to the negotiations to all employees' trade unions.
About the solution of a possible concurrence of collective agreements, as we stated above, the different collective agreements will apply simultaneously in the companies according to the belonging of the employees to the different trade unions.
There is not a problem of concurrence, because the employers will apply one collective agreement to the employees belonging to a specific trade union organisation and the second one to the employees belonging to the other trade union.
It does not exist a hierarchy between the collective agreements involved, because we are talking about contracts of the same level.

RECENT TRENDS OF COLLECTIVE BARGAINING IN ITALY

By the end of the first decade of the new century, the italian scenario of collective bargaining, described above, changed radically.
At the time when the crisis began, the critical industrial relations and the weak legal framework could not keep up with the pressing economic problems, particularly with reference to the well known FIAT case.
In the early months of 2009, some separate agreements were concluded without the consent of the CGIL.
At that time, in order to face the strong competition coming from an increasing globalization of markets, FIAT requested changes in work conditions (shifts, workers' duties, illness, industrial peace), threatening otherwise to relocate some plants in other countries.
The demands translated into collective agreements at company level, which Fiom-CGIL refused to sign. The story is exemplary.
The joined front of the big labour unions broke down, although that front had been the linchpin of the mutual recognition between the social partners and of the self-regulation of labour relations.
This resulted in a loss of balance between the different interests at stake. In September 2010 Confindustria withdrew from the previous national collective agreement dated 2008.

Its aim was to meet the demand of FIAT, which had pressed for greater freedom of negotiation at the company level.

Against this background, FIAT decided to get out of the collective agreement system.

The intent was achieved by: A) setting up new companies. B) Reaching, for each of those, a new collective agreement at plant level, always without signature of CGIL. C) Bringing to an end its relationship with Confindustria in January 2012.

The social partners understood that the trade union system could no longer be based on the unity of action.

This unity became just a possibility and as such could no longer be the hinge of self-regulation. In other words, trade unions realized that a framework of rules on representativeness and the conclusion of collective agreements - which was essential to compensate for the loss of that unity - could no longer be postponed.

The social partners tried to solve these problems through the Frame Agreement of 28 June 2011 and the Protocol of 2013, concerning the conclusion of collective agreements (respectively, at firm level and national level), this time signed also by the CGIL, as well as by Confindustria, CISL and UIL.

The attempt to recover the unity of action was renovated through the Agreement of 31 May 2013 and especially through the consolidated agreement (Testo Unico) on trade union representation, which was signed on 10 January 2014 by all the mentioned parties.

The latter agreement deals with the representativeness of trade unions, which is measured as the average of the number of members (percentage of affiliates) and the electoral data (percentage of votes that trade unions received during the elections of RSU, the bodies of union representation at plant level).

The representativeness so measured is necessary for admission to the negotiations for the conclusion of national sectoral collective agreements.

The unions which have, within the scope of the national agreement to be concluded, a representative average of not less than 5% are entitled to negotiate.

Through these agreements the social partners have tried to revitalise the factual trade union system, the goal being to rediscover the ability to manage labour relations.

All that is true, but it is also undeniable that such rules identify procedures for the conclusion of collective agreements.

As a matter of fact, the social partners naturally are no longer able to find that unity of action, which in the past had often led to the signature of collective agreements.

It is too early to see whether these new procedures will give big confederations the ability to once again build consensus and regulate labour relations.

Nevertheless, it is worth reminding that it is thanks to such ability that in the past decades the workers' confederations were recognised by the employers' union as its interlocutor within the factual trade union system.

The Frame Agreement of 28 June 2011 and the related agreements of 31 May 2013 and 10 January 2014 are the current core of the Italian Labour and Industrial Relations system.

The 1993 Frame Protocol was partially subject to a recast by the Frame agreement dated 22 January 2009.

In the 2011-2014 Frame Agreements the main red flag items are the following: (i) unions representativeness measurement schemes, (ii) the 5% minimum threshold, (iii) the validity of collective bargaining and the majority principle.

Erosion and renewal of collective bargaining associated with these developments makes forecasts difficult on Industrial Relations in Italy.

The development will depend largely on the way the collective bargaining the main actors will act (CGIL, CISL, UIL and Confindustria).

The traditional Italian system of industrial relations is based on national collective bargaining agreements and a quasi-controlled decentralized collective bargaining.

The strategy of firm-level and participatory collective bargaining can be expected to have considerable effects on the development of collective bargaining in Italy.

The shift in the balance of power in favour of firms resulting from recent law reforms (Article 8, Law no. 148/2011) can be mitigated, at least to some extent.

Firms seeking to derogate from collective agreements also have to make compromises.

Firms' interest in maintaining industrial peace acts as an incentive to recognize and take account of the other sides interests, based on a strengthening of the unions' decentralized power.

At the same time, this strengthening is also making the employers' associations attractive again to firms as bodies representing their interests.

The employers' associations and the related unbound tendency phenomena are increasing.

Monitoring unions' tasks in connection to decentralized collective bargaining could determine a deep investigation on unions/employers interests in the negotiation and derogations in industrywide collective agreements.

In recent years a good deal of conflict among trade unions and between government and trade unions (in particular CGIL) has revolved around proposals to relax the law on dismissals and allow scope for local workplace agreements.

The decentralisation process has started.

In 2011, a new set of provisions was introduced permitting further negotiated derogation (known as proximity bargaining, Art. 8, Decree Law no. 138/2011, converted with amendments into Law no. 148/2011) both from the provisions of sectoral agreements and from certain aspects of statute law, provided the changes accord with the Italian constitution, EU-level requirements, and international obligations (EIRO 2012).

This new provision call into question the relationship between national and company bargaining, which now seems to be developing towards a decentralization of the system, strengthening the role of company agreement; in particular, it questions for the first time the previous leading role of law and national collective agreements in regulating labour relations.

The regulatory type of intervention (direct regulation), as opposed to auxiliary or promoting support, in the article's inscription gives company and local agreements a power of derogation with a binding effect for all the workers (*erga omnes* effect), which, as seen above, national contracts still lack.

In fact, Article 8 gives effect to company collective agreements on important labour law themes (such as workers' main tasks, flexible contracts, working time, some aspects of employment procedure, employment relations and dismissals - paragraph 2) as long as broad economic policy objectives are taken into account and it is signed in accordance with the majority principle for representativeness (paragraph 1).

As a consequence, proximity bargaining could be the means to increase employer's power by relaxing inflexible statute law on relevant aspects of employment relationship for the purpose of increasing the employment rate or merely making employer's organisation more efficient.

Even if this mechanism seems to guarantee autonomy of collective actors it involves a lower level of bargaining and it is prerogative of law to identify wide margin of action with a binding effect for all the workers.

Hence, the legal derogation model to enforce proximity bargaining could be defined as a legal model for regulative deregulation through the *erga omnes* effect.

It strengthens the role of legal norms to regulate industrial relations (and consequently employment relations) even beyond a broadly shared social norms system and, recently, has been applied many times at company level even clashing with the social norms set by national collective bargaining.

As a consequence, decentralised collective bargaining has become increasingly important thanks much more to a legal choice than a collective ones.

By using (or abusing) proximity bargaining each company is able to agree on several working conditions according to functional flexibility choices made at this lower level, such as different wages according to different productivity or work time adjustment on production cycle (so-called plant saturation).

Before Article 8, Decree Law no. 138/2011, the boundaries of company level concession bargaining were contained, after Article 8 work organisation and employment relations because of the excess of rigidity could be entirely bargained by decentralised agreements with respect to functional flexibility.

Giving a specific normative competence (in particular concerning efficacy and functions) to collective autonomy at company level has increased the importance of this level of bargaining. The debate, although in different terms, is focused on the contrast between the faculty of company agreements to freely adopt concessive disciplines (with regard to national agreements) for employment relations and the revival of strengthened policy coordination, which is more or less technically justified.

The conceptual layout of decentralized agreements has developed through a specialization of their functions in comparison with those carried out by sectoral bargaining, by paying attention to specific workplace features (organizational, technological, productive, etc.).

This trend leads to company agreements which diversify their areas of intervention compared to those of national collective agreements.

However, diversification cannot be the only justification for the existence of two levels of collective bargaining.

In fact, because of the variables (economic, political, etc.) that affect the structure and dynamics of collective bargaining, the diversification of functions can produce overlap or even a total absence of coordination between the two levels of bargaining and generate conflicts within the social norms area.