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Italy's Industry 4.0 Plan: An Analysis from a Labour Law Perspective¹

Francesco Seghezzi and Michele Tiraboschi ²

Abstract

Purpose. Examining the major challenges posed by Industry 4.0 to workers and employers (e.g. the crisis of subordination, the new roles of skills, the risk of technological unemployment, new decentralized and participatory forms of collective bargaining), this paper sets out to identify actions and perspectives to manage current changes, focusing on workers rather than on those technologies that will be used to work in the years to come.

Design/methodology/approach. Industry 4.0 will be examined adopting a labour law perspective. In the authors' opinion, labour law is not only tasked with providing protection and favouring production, but it has other important functions in historical and political terms.

Findings. Labour law is not doomed to be set aside following the demise of Fordism, but it will innovate over time to enable and balance the new productive model underlying Industry 4.0.

Research limitations/implications. The research contributes to the debate on the new functions of labour law in the Industry 4.0 era.

Originality/value. The originality of the paper lies in its approach, which considers labour law in the context of the Fourth Industrial Revolution.

¹ The present paper summarises the findings of research conducted for the project *INDUSTRY 4EU – Industry 4.0 for the future of manufacturing in the European Union*, which was funded by the European Commission (Budget Heading 04.03.01.08) and promoted by Federmeccanica in collaboration with ADAPT (Italy), the Council of European Employers of the Metal, Engineering and Technology (Belgium), Nordbildung (Germany), and the Chamber of Commerce and Industry of Slovenia (Slovenia). While the paper was the result of cooperation between the two authors, Francesco Seghezzi focused on the sociological and economic sections, while Michele Tiraboschi covered aspects related to labour law and industrial relations.

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Paper type. Issues paper.

Keywords: *Industry 4.0, Labour Law, Industrial Relations.*

1. Industry 4.0 has finally entered the public debate in Italy, though far later than in other OECD countries³. This has occurred as the effects of significant innovation on manufacturing processes, and goods and services from the spread of the Internet, and the entailing interdependence of the digital and the non-digital dimension increase⁴. Institutionally, a major contribution to Industry 4.0 and ensuing engagement on it was initiated by the preliminary survey and its analysis carried out in February 2016 by the Commission on Production, Trade and Tourism set up by Italy's Lower Chamber⁵. The aim of this was to “define a national Industry 4.0 strategy” by “better framing the legal framework needed to promote its realisation”⁶. The parliamentary survey was

³ The debate on Industry 4.0 originated in Germany in 2006 with the presentation of the High-Tech Strategy – within which the Industry Science Research Alliance was created – the aim of which was to coordinate and provide funds to those committed to developing new technology. The strategy was then renewed in 2010 and renamed High-Tech Strategy 2020. The expression “Industry 4.0” comes from the German expression *Industrie 4.0*, which was employed for the first time in 2011 during the Hannover Messe. In January 2011, the promoting committee of the Industry Science Research Alliance started a project on *Industrie 4.0* in cooperation with Acatech – the National Academy of Science and Engineering – and set up a team comprising Siegfried Dais (Robert Bosch GmbH) and Henning Kagermann, who was the President of Acatech. Over the same year, this wording was used by Wolfgang Wahlster – Director and CEO of the German Research Center for Artificial Intelligence – during the opening speech of the Hannover Messe. The topic was also addressed by the European Parliament in the document “*Industry 4.0. Digitalisation for productivity and growth*” and in the *Industry 4.0 Report* produced in 2016 by the European Parliament ITRE Committee (Industry, Research and Energy).

⁴ Significant research on the topic includes the “Fabbrica 4.0” project carried out by Confindustria, “Indagine Industry 4.0” conducted by Federmeccanica and, more recently, the Position Paper on Industry 4.0 produced by the Department of Industry and Innovation of the Research Centre of Assolombarda Confindustria Milano, Monza e Brianza. As for academic work, mention should be made of Francesco Seghezzi and his pioneering work on the topic, specifically: Come cambia il lavoro nell'Industry 4.0?, *Working Paper ADAPT*, 23 marzo 2015, n. 172, Lavoro e relazioni industriali in Industry 4.0, in *DRI*, 2016, vol. XXVI, n. 1, 178-209, and L'impatto della Manifattura 4.0 sulle relazioni industriali, in Various Authors, *La strada verso la Manifattura 4.0 – Progetto di ricerca “Focus Group Manifattura 4.0”*, Centro Studi e Area Industria e Innovazione di Assolombarda Confindustria Milano Monza e Brianza, 2016, 63-68.

⁵ See the substantial piece of research produced by the X Commission of Italy's Lower Chamber, *Indagine conoscitiva su «Industria 4.0»: quale modello applicare al tessuto industriale italiano. Strumenti per favorire la digitalizzazione delle filiere industriali nazionali*, Roma, 30 June 2016.

⁶ See Camera dei Deputati, XVII Legislatura, Bollettino delle Giunte e delle Commissioni parlamentari attività produttive, commercio e turismo, 2016, Allegato, p. 107. The relevance of

followed by a “National Industry 4.0 plan” presented in Milan by the Minister of Economy, Carlo Calenda, and the then Prime Minister Matteo Renzi on 21 September 2016.

Unlike in other countries – e.g. Germany⁷, United States⁸, the UK⁹, Spain¹⁰, and to a small extent, in France¹¹ and the Netherlands¹² – the Italian

a clear legal framework is pointed out in G.K. Hadfield, *The Fourth Industrial Revolution is here. What laws do we need to make sure we all benefit from it?*, World Economic Forum, 2016.

⁷ See, Various Authors, Recommendations for implementing the strategic initiative INDUSTRIE 4.0. Final report of the Industrie 4.0 Working Group, Forschungsunion, Acatech, 2013. In literature, see M. Hermann - T. Pentek - B. Otto, Design Principles for Industrie 4.0 Scenarios: A Literature Review, Technische Universität Dortmund Working paper series, 2015; T. Bauernhansl - M. ten Hompel - B. Voögel- Heuser (edited by), Industrie 4.0 in Produktion, Automatisierung und Logistik: Anwendung, Technologien und Migration, Springer, 2014; U. Sandler (edited by), Industrie 4.0, Springer, 2013.

⁸ The Obama administration started to understand the relevance of innovation in manufacturing as early as 2011, when it promoted the “Advanced Manufacturing Partnership”. It was a working team comprising representatives from universities and employers (MIT, University of Michigan, Berkeley, among others) which organised regional workshops helping to bring together industry and academia. The project developed and in 2014 was rebranded “Revitalize American Manufacturing and Innovation Act”. The purposes of the project were: promoting innovation, ensuring the talent pipeline and improving the business climate. In the USA, the expression Industrial Internet is preferred over Industry 4.0. The former was originally employed by General Electric, which was the first company to disseminate the Industry 4.0 concept in the country. See P.C. Evans - M. Annunziata, *Industrial Internet: Pushing the Boundaries of Minds and Machines*, GE, 2012. In literature, see M. Brettel - M. Klein - N. Friederichsen, *The Relevance of Manufacturing Flexibility in the Context of Industrie 4.0*, in *Research and Innovation in Manufacturing: Key Enabling Technologies for the Factories of the Future. Proceedings of the 48th CIRP Conference on Manufacturing Systems*, edited by R. Teti, Elsevier, 2016, 105-110; F. Almada-Lobo, *The Industry 4.0 Revolution and the future of Manufacturing Execution Systems (MES)*, in *Journal of Innovation Management*, 2015, vol. 3, n. 4, 16-21.

⁹ In 2015, the UK government presented the document “*Strengthening UK manufacturing supply chains. An action plan for government and industry*” in which six priorities are stressed that should facilitate the Industry 4.0 transition: innovation, skills, access to funding, capabilities in small and medium-enterprises, increased cooperation between supply chains and the diffusion of more resilient supply chains. The project “Innovate UK” promoted by the UK Department for Business, Innovation and Skills is also worth a mention. It identified eleven innovation centres – named “catapults” – which should promote research through private-public partnerships on a number of topics (digital manufacturing, medical technology, future cities, among others).

¹⁰ In 2016, Spain’s government and Ministry of Industry, Energy and Tourism presented the Plan “*Industria Conectada 4.0*”, which is based on cooperation between private and public bodies and involves a number of major employers (Indra, Telefónica, Santander). The plan was accompanied by a policy document titled *La transformación digital de la industria española*, which examines the local economic context and the possible implications of Industry 4.0, providing a glossary of key terms. See. Various Authors, *Las tecnologías IoT dentro de la industria conectada 4.0*, EOI, 2016.

government¹³ has not produced a fully-fledged policy on Industry 4.0. Nevertheless, it must be said that some relevant aspects of the Industry 4.0 plan were included in Italy's 2017 Budget Law¹⁴, making them more likely to be implemented. They were incentives¹⁵ – which have reported a widespread use – tax credits and benefits in relation to Industry 4.0 technologies, and investments in staff engaged in research and development (R&D). Other measures – e.g. simplified tax treatment – concerned investments in the following: innovative projects, business accelerators, industrialisation and patents of technology-rich products, network infrastructure (broadband), innovative start-ups, the conclusion of contracts for developing industrial clusters, the diffusion of industrial doctoral programmes, and the creation of links between companies, universities and technical high-schools to develop skills needed in some new occupations (see par. 2).

Given the above, the aim of this paper is not that of observing provisions and other industrial policy initiatives¹⁶ that leave little room for interpretation, as to viewing how these might impact the national system of industrial relations, the challenges posed by Industry 4.0 and work digitalisation¹⁷, more broadly. It might also be that the legal perspective¹⁸ is not the most suitable one to examine phenomena which are yet to be defined as they experience ongoing

¹¹ In 2015, the French government implemented the *Industrie du futur* project, which in 2016 was complemented by a policy document (*Nouvelle France Industrielle*).

¹² See the report *Smart Industry. Dutch Industry fit for the future*, produced by the Dutch Government in 2014 with a number of employers' associations.

¹³ Italy's Ministry of Economy only made available the slides with which the national plan was presented, but no reference was made to a more detailed policy document explaining the guidelines put forward by the Government.

¹⁴ See Draft Law AC 4127-bis, *Bilancio di previsione dello Stato per l'anno finanziario 2017 e bilancio pluriennale per il triennio 2017-2019*.

¹⁵ In relation to the topic discussed in this paper, see: E.M. Impoco - M. Tiraboschi, *La ricerca ai tempi delle economie di rete e di Industry 4.0*, Giuffrè, 2016, p. 1 and 24-40. On the strategies based on the incentives, see E. Ghera, *Le sanzioni civili nella tutela del lavorosubordinato*, relazione al convegno AIDLASS, *Le sanzioni nella tutela del lavoro subordinato*, Alba, 1-3 giugno 1978, in GDLRI, 1979, 305-381.

¹⁶ On the incentives to promote technology innovation, research carried out in companies and cooperation between industry and academia, see M. Tiraboschi, *Inquadramento giuridico del lavoro di ricerca in azienda e nel settore privato: regole, percorsi, incentivi*, in E.M. Impoco - M. Tiraboschi, *op. cit.*, 15-128. A more practical approach is provided by G. Rosolen, *Il credito d'imposta per personale altamente qualificato anche in somministrazione di lavoro*, in DRI, 2016, vol. XXVI, n. 4.

¹⁷ These challenges were also those detailed in the report produced in September 2015 by Bruno Mettling – Deputy CEO at Orange and submitted to the French Labour Minister – where the effects of digital revolution on employee relations are examined.

¹⁸ Here reference is made to those who have been the first to provide a legal analysis of labour digitalisation and platform-based work. See the introductory remarks in P. Tullini, *C'è lavoro sul web*, in Labour Law Issues, 2015, n. 1.

change (e.g. digital manufacturing and the Internet of Things¹⁹). It certainly makes no sense to lend credence to theories predicting doomsday scenarios – e.g. the end of human work²⁰ – on the one hand, or to more optimistic views foreseeing an era of creative idleness²¹, on the other hand. However, it would be sufficient to consider the most immediate consequences of using state-of-the-art technology in production and related services to appreciate the relevance of legal disciplines, particularly labour law. This is the case when attempts are made at successfully governing²² the significant technology innovation underway in our economy and society. Examples of this include the management of business restructuring and professional re-training²³ resulting from the use of technology-rich processes, which are far from easy and call for active labour policies and re-employment schemes which have been lacking in Italy in the labour reforms of the last twenty years²⁴. More to the point, one cannot fail to note the widening mismatch between labour demand and supply. This makes it necessary to rethink the legal and the institutional framework underlying the education and training system and its ties with manufacturing²⁵.

¹⁹ The expression “Internet of Things” refers to “Radio-Frequency IDentification (RFID) tags, sensors, actuators, mobile phones, etc. which, through unique addressing schemes, are able to interact with each other and cooperate with their neighbours to reach common goals”, L. Atzori - A. Iera - G. Morabito, *The Internet of Things: A survey*, in *Computer Networks*, 2010, vol. 54, n. 15, 543. The expression was employed to refer to the use of the Internet to connect a number of objects in the physical world. See D. Evans, *The Internet of Things. How the Next Evolution of the Internet Is Changing Everything*, Cisco, 2011. For an overview of this topic, see S. Greengard, *The Internet of Things*, MIT Press, 2015. More recently, see Various Authors, *The Internet of Things*, MIT Technology Review Business Report, 2014; Various Authors, *Driving unconventional growth through the industrial Internet of Things*, Accenture, 2014.

²⁰ See J. Rifkin, *The End of Work: The Decline of the Global Labor Force and the Dawn of the Post-Market Era*, Putnam, 1995. A more balanced view is provided in World Economic Forum, *The Future of Jobs: Employment, Skills and Workforce Strategy for the Fourth Industrial Revolution*, 2016.

²¹ D. De Masi, *L'ozio creativo – Conversazione con Maria Serena Palieri*, Ediesse 1995.

²² Specifically, “engineering and law should work together to advance the future. And because lawyers and engineers acquired their skills at a university somewhere, the logical entry point for change is education». See, J.M. Ottino - D.B. Rodriguez, *Law and Engineering Should Share Curriculum*, in *The Chronicle of Higher Education*, 1 May 2016.

²³ This is true if one considers that, according to the World Economic Forum, some 7 million jobs will be lost between 2015 and 2020.

²⁴ In relation to Italy's Jobs Act, see the documents and the analysis collected in F. Seghezzi - M. Tiraboschi (edited by), *Politiche attive: ultima chiamata*, Boll. spec. ADAPT, 2016, n. 8.

²⁵ See, E. Massagli, *Alternanza formativa e apprendistato in Italia e in Europa*, Studium, 2016, and A. Teselli, *Formazione professionale e politiche attive del lavoro*, Carocci, 2016. This point is also made by G. Bertagna, *La scommessa di un sistema educativo di istruzione e di formazione di pari dignità*, Rubbettino, 2006.

On this point, many²⁶ have argued in favour of university and research institutions to be managed privately rather than as a public entity²⁷, as is currently the case.

The role of “Industrial Relations Law”²⁸ – that can be defined as the collective dimension of that set of provisions laid down by labour law – is another highly-debated aspect, especially because the National Industry 4.0 Plan and the 2017 Budget Law²⁹ lay much store by this field and seem to better match them with traditional measures concerning work productivity³⁰ and company welfare³¹. In the two provisions referred to above, these measures seem to be modelled upon joint initiatives and forms of decentralised bargaining as though there was an awareness that introducing new technologies and making them effective requires the creation of participative and cooperative relationships between employer and employee³².

Yet the authors of this paper perceive that³³ the social and economic implications of the “New Great Transformation of Work” – which relevant literature has already regarded as the “Fourth Industrial Revolution”³⁴ – can be fully appreciated if this is not merely intended as based on the pervasive use of state-of-the-art technology. Industry 4.0 is not only a technical phenomenon and – as already understood at the turn of the last century³⁵ – goes beyond

²⁶ See, the remarks made by Gianfelice Rocca at the 2016 meeting of Assolombarda (in *Boll. ADAPT*, 2016, n. 34).

²⁷ This issue is also debated elsewhere. See P. Graham, *Frighteningly Ambitious Startup Ideas*, in *Paulgraham.com*, March 2012, and the note made by F. Fazio, *L’idea più coraggiosa? Rimpiazzare le Università*, in *Boll. ADAPT*, 2012, n. 14.

²⁸ A definition of the concept is provided in the editorial by L. Spagnuolo Vigorita that was published the first issue of *Diritto delle Relazioni industriali*.

²⁹ D.d.l. n. 4127-bis, art. 23 (*Premio di produttività e welfare aziendale*).

³⁰ Here reference is made to the tax credit on performance-based pay introduced for the first time in the 2008 Budget Law through par. 67 and 68, Article 1 of Act no. 247/2007.

³¹ See B. Caruso, *«The bright side of the moon»: politiche del lavoro personalizzate e promozione del welfare occupazionale*, in *RIDL*, 2016, vol. XXXV, n. 2, I, 177-207; E. Massagli, *Le novità in materia di welfare aziendale in una prospettiva lavoristica*, in *Le nuove regole del lavoro dopo il Jobs Act*, edited by M. Tiraboschi, Giuffrè, 2016, 598-611.

³² On this topic, see research promoted by Fim-Cisl, *#SindacatoFuturo in Industry 4.0*, ADAPT University Press, 2015, which draws on the study carried out in Germany by IG Metall.

³³ The New Great Transformation, which is the expression employed by K. Polanyi in his 1974 book, is examined at length on the blog *La grande trasformazione del lavoro* managed by ADAPT for *Nòva* of *Il Sole 24 Ore*.

³⁴ On the idea of the Fourth Industrial Revolution, see K. Schwab, *The Fourth Industrial Revolution*, World Economic Forum, 2016. On similar lines, see the final document produced by the X Commission of Italy’s Lower Chamber already referred to in this paper.

³⁵ B. Veneziani, *Le nuove forme di lavoro*, in *Diritto del lavoro e relazioni industriali nei Paesi industrializzati ad economia di mercato. Profili comparati. I. Diritto del lavoro*, edited by R. Blanpain - M. Biagi, Maggioli, 1991, 107-139.

moving away from the three “Aristotelian rules” of labour law, namely place of work (e.g. one’s obligation to work on the employer’s premises), time of work (e.g. performing work over a single time-period) and type of work (e.g. engaging in only one type of job at the time)³⁶.

The changing relationships between the man and the machine and between different production factors – with the latter that enable technology to control value creation – call for a thorough review of the main categories of labour law, especially some fundamental notions such as “subordination” and “business”³⁷ (see par. 4). However, more importantly, it also entails rethinking the links between technological development and the legal framework that enable³⁸ and regulate the new relationships between wealth production and redistribution (see par. 3). This is taking place against a complex background of demographic³⁹ and environmental⁴⁰ changes and globalisation involving both markets and the value production chain, which pose new challenges in terms of sustainability of economic and production processes⁴¹. One example of this is the ageing of the working population. This might have an impact on both occupational health and safety – especially because people can now work

³⁶ *Ibidem*. See also P. Tullini, *op. cit.*, esp. 4, where a question is raised as to whether digital work can be assessed making use of criteria like space and time.

³⁷ In this sense, see: Federal Ministry of Labour and Social Affairs, *Green Paper Work 4.0. Re-Imagining Work*, 2015, esp. 67, where the following question is made: “Are the basic concepts of labour law (such as “employee” or “establishment”) still applicable in the digital world of work?”. See also Germany’s White Paper on Industry 4.0 presented in Berlin on 20 November 2016: Bundesministerium für Arbeit und Soziales, *Weißbuch Arbeiten 4.0*.

³⁸ An interesting contribution to discussions on the sharing economy is provided by G. Smorto, *I contratti della sharing economy*, in *FI*, 2015, vol. CXL, n. 4, V, 221 and ff.

³⁹ See M. Tiraboschi, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in *DRI*, 2015, vol. XXV, n. 3, 681-725. See also M. Barbera, *Cambiamenti demografici, mercato del lavoro e regolazione giuridica*, in *RGL*, 2015, vol. LXVI, n. 2, 243-248. In international literature, see P. Braveman - L. Gottlieb, *The Social Determinants of Health: It’s Time to Consider the Causes of the Causes*, in *Public Health Reports*, 2014, vol. 129, suppl. n. 2, and P. Love (ed.), *Ageing: Debate the Issues*, OECD, 2015.

⁴⁰ See M. Tiraboschi, *Prevenzione e gestione dei disastri naturali (e ambientali): sistemi di welfare, tutele del lavoro, relazioni industriali*, in *DRI*, 2014, vol. XXIV, n. 3, 573-604, e anche a L. Rustico - M. Tiraboschi, *Le prospettive occupazionali della green economy tra mito e realtà*, 2010, vol. XX, n. 4, 931-965. In international literature, see J. Escribano Gutiérrez, *Lavoro e ambiente: le prospettive giuslavoristiche*, 2016, vol. XXVI, n. 3, 679-704.

⁴¹ These are the views contained in the Position Paper on Industry 4.0, which are shared by the authors. The concept of sustainability from a labour law perspective is examined in Eurofound, *Sustainable work over the life course: Concept paper*, 2015.

outside the employer's premises⁴² – and on senior workers' mastery of new technology, due to the lack of proper skills and the difficulty to develop them⁴³. Based on the considerations outlined above, this paper sets out to provide a new conceptual framework to examine Industry 4.0 and its dynamics (both current and future). The analysis will consider the relevant role of technology, but it will also emphasise that of people and employees in new manufacturing processes. Such an approach will also serve the purpose of reasserting the historical and political function of labour law as a branch of law safeguarding employee protection but also production⁴⁴. This means that the demise of the Fordist paradigm will not cause labour law to disappear – far from it. It will help this domain to innovate, making sure the production model underlying Industry 4.0. provides and ensures social justice.

This is the perspective we are most interested in. Simply put, this work is not aimed at reasserting – if from a different standpoint⁴⁵ – the inadequacy of Italy's Jobs Act to regulate modern production processes and the ongoing industrial revolution (see par. 5). The ultimate purpose of this paper is to raise awareness among labour law scholars and industrial relations practitioners of the changes currently underway, which will soon affect the wealth creation chain and thus labour law discourse. This includes the interconnections between producers and consumers (so-called “prosumers”)⁴⁶, between research, production and development; between manufacturing and services; the emergence of the sharing economy and the increasing relevance of the Internet in the production of goods, making aspects like company size completely irrelevant. The changes referred to above will also have an impact on skills development – which calls for a close cooperation between education and industry; on the political, economic and social factors leading to wealth redistribution and labour productivity; and, finally, on the contractual dynamics – both individual and collective – enabling a social and economic model which

⁴² See the *Position Paper on Industry 4.0* already referred to in this paper. See also Assolombarda (ed.) *Indicazioni per la gestione degli aspetti di salute e sicurezza legati al “Lavoro Agile/SmartWorking”*, Dispensa, 2015, n. 1.

⁴³ On the New Great Transformation of Work and the entailing labour law issues, see M. Brollo, *Disciplina delle mansioni*, in *Commento al d.lgs. 15 giugno 2015, n. 81: le tipologie contrattuali e lo jus variandi*, a cura di F. Carinci, ADAPT University Press, 2015, 33.

⁴⁴ An overview of the issue is provided in M. Tiraboschi, *Lavoro temporaneo e somministrazione di manodopera. Contributo allo studio della fattispecie lavoro intermittente tramite agenzia*, Giappichelli, 1991, esp. 88-93 and the bibliography therein.

⁴⁵ See the observations made in F. Seghezzi - M. Tiraboschi, *Al Jobs Act italiano mancano l'anima e la visione di un lavoro e una società che cambia*, in *Il Jobs Act dal progetto all'attuazione* edited by F. Nespoli - F. Seghezzi - M. Tiraboschi, ADAPT University Press, 2015, 11-18.

⁴⁶ The word “prosumer”, which is obtained by merging “producer” with “consumer”, was employed for the first time by A. Toffler in *The Third Wave*, Bantam Doubleday Dell, 1999.

is legally compatible with the Internet of Things and related people and services⁴⁷.

As we will attempt to demonstrate in the concluding part of this paper (see par. 5) it might also be the case that the “National Industry 4.0 Plan” can trigger the long-overdue modernisation process of the Italian labour market, especially if properly implemented with the support of national industrial relations actors⁴⁸.

This might be likely if one considers the January 2014⁴⁹ draft of Italy's Jobs Act, and above all the US Jobs Act enacted in November 2011⁵⁰. In this latter case, and unlike the Italian version, the aim was not that of reforming labour regulation, but to provide people with necessary infrastructure⁵¹ to adapt the US labour market and education system to the profound changes affecting production and workplaces taking place on a global scale⁵².

2. Answering the question as to whether the initiative put forward by the Italian government is part of a national industrial policy⁵³, an evolution of or simply an attempt to move away from it⁵⁴ falls outside the scope of this paper. However, the National Industry 4.0 Plan should be praised in that it no longer makes investments in new technologies dependent on public funds appropriated or steered by political actors or on public contracts fraught with considerable red tape. The plan can be credited with focusing on the promotion of enabling factors, and easy-to-access funds which have nothing to do with what has been notoriously known as the “political market” of the public incentives to employers⁵⁵.

⁴⁷ See Various Authors, *From the Internet of Thing to the Internet of People*, in *IEEE Internet Computing*, 2015, vol. 19, n. 2, 40

⁴⁸ This is one of the main concerns contained in Germany's White Paper on Industry 4.0. Specifically, it is pointed out that work organisation and its social dimension should be seen as linked together and that collective bargaining and co-determination are still the most relevant tools to deal with them also in the digital economy and Industry 4.0-related production.

⁴⁹ See the project outlined by the former Prime Minister, Matteo Renzi, in the e-news of 8 January 2014. Here, priority was given to industrial plans in a key economic sectors (e.g. digital manufacturing) without however attaching relevance to labour reform.

⁵⁰ A detailed outline of the Jobs Act in the US see *by the President Barack Obama to a Joint Session of Congress* of 8 September 2011 and the official document issued on 12 September 2011, which can be found at the A-Z Index of www.adapt.it (heading: *Jobs Act*).

⁵¹ C. Mancini, *Il settore delle infrastrutture negli Stati Uniti: creazione di lavoro, competenze, formazione in Nòva*, 30 May 2016.

⁵² See M. Ori, *Il Job Act di Renzi, cos'è e come funziona*, in *Linkiesta*, 8 January 2014.

⁵³ On this issue, see the documents collected in F. Onida - G. Viesti (eds.), *Una nuova politica industriale in Italia. Investimenti, innovazione, trasferimento tecnologico*, Passigli, 2016.

⁵⁴ See F. Seghezzi, *Il piano del governo e la mappatura delle imprese*, in *Il Foglio*, 26 September 2016, and F. Seghezzi - M. Tiraboschi, *La vera sfida di Industry 4.0*, in *Avvenire*, 3 October 2016.

⁵⁵ See the Giovazzi report, *Analisi e Raccomandazioni sui Contributi Pubblici alle Imprese*, which was submitted to the Prime Minister, the Minister of Economy and Finances, and to the Minister

After outlining the new technologies enabling the new production paradigm⁵⁶, the expected benefits resulting from the plan are listed in relation to production flexibility. Among them are cost reduction benefitting both customised and large-scale products; a quicker shift from prototypes to industrialised goods; and the increase in product and service quality. The benefits portrayed above are particularly concerned with better qualitative processes, while also taking into account other competitive factors enabling companies to stay afloat in an ever-changing international market.

The plan goes on to briefly describe the progress made thus far by France, Germany, and the United States as regards governance models and funding allocated to Industry 4.0, focusing on the former and on the fact that a number of actors are called into play (e.g. representatives from the institutions, university and private bodies)⁵⁷. The number and variety of actors involved in the governance of the Industry 4.0 process leads one to believe that their role is rather formal. This holds particularly true in consideration of the explicit aim of Minister Calenda, that is to make the whole system leaner and more flexible. The plan then goes into the details and illustrates both key and supplementary actions. The former are based on innovation investments and the skills to govern new technology, while the latter are concerned with enabling infrastructure and public facilities. At the core of both lies a commitment on the part of the government to raise awareness of the relevance of the Industry 4.0 phenomenon and the setting-up of proper governance.

Innovation investments are needed to trigger private actors to put money into technology and services related to Industry 4.0. This should take place by extending the deadline to apply for a number of tax incentives. The significant amount of tangible and intangible assets (e.g. software) that might benefit from this incentive – a detailed list of which is provided in the Budget Law⁵⁸ – speaks volumes for the willingness of the provision to let employers decide on which type of technology they want to invest.

Another action that has been put in place to favour R&D investments is the increase of tax credits on incremental expenditure, which both concern the

of Development, Infrastructure and Transportation on 30 April 2012. The document clearly stressed that employers' focus on the mechanisms of "political market" through which funds are allocated divert attention away from business management.

⁵⁶ The following enabling technologies have been identified: *Advanced Manufacturing, Additive Manufacturing, Augmented Reality, Simulation, Horizontal/Vertical Integration, Industrial Internet, Cloud, Cybersecurity, Big Data and Analytics*.

⁵⁷ Specifically, the following institutional bodies have been involved: Prime Minister's Office; the Ministry of Education, University and Research; the Ministry of Labour and Social Policies; the Minister of Agriculture, Food and Forestry; and the Ministry of the Environment and the Protection of Land and the Sea.

⁵⁸ See art. 3 of the d.d.l. AC 4127-*bis* and Attachment A already referred to.

amount of the maximum contribution provided – now raised to €20 million – and the domestic tax rate⁵⁹. This move – which at first glance might appear as hampering expenditure – should be interpreted as a tool to avoid the use of these funds to cover business costs which have nothing to do with innovation. Lastly, reference should also be made to a set of financial and tax-related initiatives devised to support the creation of Industry 4.0-related start-ups and venture capitals.

As for skills, the plan places emphasis on two measures – namely the establishment of Digital Innovation Hubs (DIHs) and Competence Centers (CCs). The wording and purpose of DIHs call to mind the EU initiative “Digitalise European Industry”⁶⁰ and refers to bodies set up within the local offices of national employers’ associations (*Confindustria* and *R.E.TE. Imprese Italia*) with the aim of building relationships between people operating in industry, research and finance. This should take place by means of awareness-raising initiatives organised by employers concerning the advisability to engage in Industry 4.0 activities and a number of other actions intended to seek private and public funds for planning and development. The ultimate goal of DIHs is thus that of serving as local hubs established by local entrepreneurs, who therefore will support the digitalisation process.

With respect to competence centers, only a small number of them will be created and will be associated with technological parks – which are linked to or complement one another – that would involve actors seen as value generators, i.e. universities, research centers and start-ups⁶¹. The purpose of CCs is that of facilitating the transfer of skills used to govern Industry-4.0 technology and supporting experimentations related to specific projects.

In parallel, there exist further projects concerning skills development. Examples include the implementation of the National Plan “*Scuola Digitale*” (Digital School), initiatives aimed at bringing together universities and local employers, projects involving the alternation of school and work focusing on Industry 4.0, master’s degrees and other courses set up in collaboration with private bodies, and the widening of the number of those who can access

⁵⁹ See G. Rosolen, *Legge di Bilancio 2017: le novità sul credito d'imposta per le attività di ricerca e sviluppo*, in *Boll. ADAPT*, 2016, n. 34. See also E.M. Impoco - M. Tiraboschi, *op. cit.*

⁶⁰ *Digital Innovation Hubs* were funded with €500 million provided through the 2020 Horizon financing line within the European Plan “Digitalize European Industry”. The plan was announced in April 2016 as a part of the initiatives related to the Digital Single Market, through COM(2016)180 final of 9 April 2016, *Digitising European Industry. Reaping the full benefits of a Digital Single Market*.

⁶¹ The concept of Competence Centers was also developed in a number of European countries. See the Dutch model of the top consortia for knowledge and innovation in E. Prodi, *Industria 4.0: dalla vecchia politica industriale a una politica per l'empowerment delle imprese. Il caso dei Paesi Bassi*, in *Nòva*, 19 October 2016.

technical schools. Reference should also be made to the willingness to invest a larger number of public funds in doctoral programmes focusing on Industry 4.0 and based on so-called “innovative” or “inter-sectoral” Doctoral degrees⁶². Compounding the picture are some other supplementary measures, for instance new investments to complete broadband infrastructure, the widening of the Loan Guarantee Scheme for companies and tax credits on productivity-based pay negotiated at the decentralised level⁶³.

3. Looking at the National Industry 4.0 Plan, one cannot fail to note that its main focus is on manufacturing and factory production, more broadly. This seems to strike a discordant note, especially in a time when the Internet makes it possible to connect industry and services, giving rise to new integrated business models⁶⁴, markets, processes and products. It is as though a part of the reasoning went astray, namely that on the Fourth Industrial Revolution, which is not limited to automation of production, as the latter has been in place for years in firms. Rather, this new industrial revolution is concerned with the constant interaction – also by means of online platforms and devices – of research, planning, production, services and consumption, which have an impact on production factors and on demand in terms of sharing and reciprocity (e.g. the sharing economy) as opposed to traditional industrial processes and utilisation of goods. We are under the impression that Italy’s Industry 4.0 plan has been based on such old-fashioned concepts as the supply

⁶² On this point, and in consideration of Italy’s difficulties, see M. Tiraboschi, *Dottorati industriali, apprendistato per la ricerca, formazione in ambiente di lavoro. Il caso italiano nel contesto internazionale e comparato*, in *DRI*, 2014, vol. XXIV, n. 1. Recently, a note issued by the Ministry of Education, University and Research (note no. 1059 of 31 August 2016) implementing the 2015-2020 National Research Plan has clarified the definition of Industrial Doctorates which was introduced in Italian legislation through Ministerial Decree no. 45/2013. On this point, see E. Prodi, *Dottorato industriale e ricerca in azienda: un importante chiarimento del MIUR*, in *Boll. ADAPT*, 2016, n. 33.

⁶³ See, d.d.l. n. 4127-*bis*, art. 23.

⁶⁴ On the scientific impact of technology related to Industry 4.0, see H.C. Pfohl - B. Yahsi - T. Kurnaz, *The Impact of Industry Supply Chain*, in *Innovations and Strategies for Logistic and Supply Chains*, edited by W. Kersten - T. Blecker - C.M. Ringle, Epubli, 2015, 31-58. A more general discussion on the separation between manufacturing and services following technological development is provided in K. De Backer - I. Desnoyers-James - L. Moussiégt, “*Manufacturing or Services – That is (not) the Question*”: *The Role of Manufacturing and Services in OECD Economies*, OECD Science, Technology and Industry Policy Paper, 2015, n. 19. At the core of these models lie so-called Cyber-Physical Systems which can connect physical elements through the Internet, providing new services along with a certain good. On this point, see Acatech (ed.), *Cyber-Physical Systems Driving force for innovation in mobility, health, energy and production*, Acatech Position Paper, 2011.

chain and the value chain⁶⁵. Accordingly, while the discussion takes place at a global and not at a national level, it comes down to matters concerning factories, machinery and enabling technology. However, there is more than meets the eyes. Economic research has pointed out that “future factories” will not be individual companies, but interconnected, highly-populated cities featuring a concentration of resources, technologies and skills⁶⁶. In this sense, the walls between industry and school are broken down, both practically and metaphorically. This will favour the creation of hubs made up of R&D centers and innovative start-ups – to be intended as a means for value multiplication – and “an increase of competitiveness also for small-sized companies”⁶⁷. In this sense, the growing interest towards apprenticeships and the dual system is not coincidental, nor are attempts to revive programmes alternating school and work and inter-professional funds to favour adults’ lifelong learning. Simply put, the promotion of training and the fight against unemployment do not take place only by means of guidance programmes and re-training schemes⁶⁸, but they also reflect the profound changes in terms of planning, production and development.

Compared to other technical and scientific disciplines, labour law and industrial relations appear to have better framed the demise of the Fordist⁶⁹ and the post-Fordist paradigm⁷⁰. This change is not only reflected in work organisation, but also impacts in the founding categories of labour law and on notions like “business” and “employment”, as we have seen already. In some respect, this approach also affects the concept of “a contract”⁷¹, because production based on networks and with no hierarchies challenges traditional contract theory and the command-and-control management model regulated

⁶⁵ A criticism to the time-honoured *global supply chain* and *value chain*, see P. Khanna, *Connectography. Le mappe del futuro ordine mondiale*, Fazi, 2016.

⁶⁶ Among the most relevant contributions to the analysis of this perspective, see E. Moretti, *La nuova geografia del lavoro*, Mondadori, 2013. Along similar lines, see P. Khanna, *op. cit.*

⁶⁷ That was the view of the *Position Paper on Industria 4.0* already referred to.

⁶⁸ That is the assumption made by the public opinion when referring to alternating school and work.

⁶⁹ An overview of the concept of “Fordism” which takes account of all meanings, see B. Jessop, *Fordism and post-Fordism: a critical reformulation*, in *Pathways to Regionalism and Industrial Development*, a cura di A.J. Scott - M.J. Storper, Routledge, 1992, 43-65.

⁷⁰ An overview of the issue is provided in A. Amin (ed.), *Post-Fordism, a reader*, Blackwell, 1994. Fordism has been given a number of interpretations. A review of international literature has been provided in B. Jessop - N.L. Sum, *Beyond the Regulation Approach*, Edward Elgar, 2006, especially the chapter *Fordism and Post-Fordism*, 58-88.

⁷¹ On the role of the employment contract and labour law in the Fordist paradigm, see S. Deakin - F. Wilkinson, *The Law of the Labour Market. Industrialization, Employment and Legal Evolution*, Oxford University Press, 2005.

by Private Law⁷². By introducing the Internet in processes concerning production of goods and services – up to the point of involving consumers in the supply and value chains – the whole manufacturing cycle is turned on its head⁷³. Through sensors, firms can monitor, optimise and update information about goods already sold (e.g. geolocalisation, status, security level) and provide a number of customised services. This can also be done remotely, thanks to cloud platforms and big data regularly generated by the goods themselves and by manufacturing processes.

Members of the value chain are also empowered, with their tasks that are made easier thanks to the use of robots and innovative “man-machine” interfaces that increase their decision-making⁷⁴ and performance.

Due to the increasing relevance attributed to the final consumer in the manufacturing process, the concept of “a service” also changes and is given fresh momentum in manufacturing, to such an extent that the definition of “an entrepreneur” laid down in Italy’s Civil Code is also challenged. This is because the advent of the web and the Internet of Things causes the difference between goods and services⁷⁵ to become increasingly blurred. Against this backdrop, the notion of Industry 4.0 risks being misleading, too, in that it brings to mind the industrial dimension, which is only one of the many aspects that come into play when discussing the Fourth Industrial Revolution.

What seems to be missing in the national plan put forward by the Italian government is a holistic approach to Industry 4.0, which can be used to appreciate the fact that firms are no longer alone in manufacturing and value creation. The traditional spaces for doing business are also being replaced by more innovative industrial districts, technological centres, clusters, science parks, and business networks⁷⁶.

Increasingly, these processes will develop at both global and local level and will depend on wide networks – either formal or informal – which require new and diverse skills to govern them.

⁷² In this sense, see R.J. Gilson - C.F. Sabel - R.E. Scott, *Contracting for Innovation: Vertical Disintegration and Interfirm Collaboration*, in *Columbia Law Review*, 2009, vol. 109, n. 3, 431-502. A classic interpretation of contract theory is provided in O. Hart - B. Holmstrom, *The Theory of Contracts*, MIT Working Paper of Economics, 1986, n. 418.

⁷³ Various Authors, *Industry 4.0 and the consequences for labour market and economy. Scenario calculations in line with the BIBB-LAB qualifications and occupational field projections*, IAB-Forschungsbericht, 2015, 12-13.

⁷⁴ See *Position Paper on Industry 4.0*, cit.

⁷⁵ See Article 2082 of Italy’s Civil Code, according to which the entrepreneur is “the person that performs an economic activity professionally with the aim of producing or exchanging goods or services”.

⁷⁶ See K. De Backer - I. Desnoyers-James - L. Moussiégt, *op. cit.*

These skills will be developed in state-of-the-art knowledge districts and cooperative platforms, where the sharing of goods, services, knowledge and information⁷⁷ will take precedence over capital quantity and ownership. In this context, research centers, universities and innovative start-ups cannot be regarded as merely providers of labour, ideas and knowledge but as major components of a new, network-based, local ecosystem⁷⁸, where the interests and the goals of all those involved are nicely balanced through shared coordination and decision-making mechanisms.

The plan also presents some major shortcomings as regards those involved in the production of capital and labour. On this point, one might note that only a passing reference is made to decentralised bargaining and tax credits on variable pay. This is despite the fact that Industry 4.0 will have an enormous impact on employment and employee relations in terms of skills needs⁷⁹, productivity, trade unions and industrial relations actors⁸⁰. The ongoing industrial revolution will also have an effect on the contractual arrangements and the incentives put in place to regulate and promote the new economic and social transactions⁸¹. In turn, the latter will support innovative processes and bring about a number of social implications that will trigger new approaches to employee representation – which will revolve around the notions of “trades” and “territory” – and welfare (both of a local, occupational and individual nature)⁸².

4. This paradigm shift resulting from the emergence of Industry 4.0 will once again test the relevance of a number of legal definitions and categories laid down in Italy's Civil Code – among other those of “subordination” and a

⁷⁷ These links are seen as key to the approach underlying so-called Open Production. The latter is based on the idea of an integrated and open system to which actors outside the firm contribute. See J.P. Wulfsberg - T. Redlich - F.-L. Bruhns, *Open production: scientific foundation for co-creative product realization*, in *Production Engineering*, 2011, vol. 5, n. 2, 127-139.

⁷⁸ Some reflections concerning the management of complex situations in an Industry 4.0 context are provided in the reviewed definition of the notion of “subjectifying action” in S. Pfeiffer - A. Suphan, *The Labouring Capacity Index: Living Labouring Capacity and Experience as Resources on the Road to Industry 4.0*, Universität Hohenheim Working Paper, 2015, #2. On the cooperation in contexts where value is produced see P.S. Adler - C. Heckscher, *Towards Collaborative Community*, in *The Corporation as a Collaborative Community*, edited by P.S. Adler - C. Heckscher, Oxford University Press, 2006, 11-105. At the national level, see D. Marini, *Le metamorfosi dei distretti industriali*, in *QRA*, 2015, vol. III, n. 2, 265.

⁷⁹ F. Seghezzi, *Lavoro e relazioni industriali in Industry 4.0*, cit., 194-199, and K. De Backer - I. Desnoyers-James - L. Moussiégt, *op. cit.*

⁸⁰ Again, see F. Seghezzi, *Lavoro e relazioni industriali in Industry 4.0*, cit., 203-208.

⁸¹ This is in line with the theory of contracts of Nobel Oliver Hart and Bengt Holmstrom (O. Hart - B. Holmstrom, *op. cit.*).

⁸² See G. Sateriale, *Come il welfare crea lavoro. Guida per contrattare nel territorio*, LiberEtà, 2016, where cities and local areas are discussed.

“factory” – on which capitalistic production has thus far been based. The notion of a “factory” can be called into question in that it is no longer the privileged channel where manufacturing and the exchange of goods and services take place. As for the legal definition of “subordination” – which has been questioned for a while now⁸³ – it seems as if it failed to capture the current working patterns that move away from a Fordist⁸⁴ approach based on command and control. On close inspection, workers are now required to work autonomously⁸⁵ and on a project-by-project basis. Thus how, when and where they perform work is no longer relevant and what matters is the outcome of their work. All of this makes it evident that a gap exists between ongoing technology development and the current legal framework that should regulate the new manufacturing model and the individual, collective and contractual relationships thereof⁸⁶.

One can take cognizance of this gap when looking at the recommendations issued by the German government on Industry 4.0⁸⁷, which give emphasis on the role of consumers in product planning and development⁸⁸. One implication of this state of affairs is that manufacturing becomes more flexible to adapt to unexpected results and different demands. Lean manufacturing has introduced a number of changes that have made standardised production more adaptable⁸⁹ and paved the way for much-discussed flexibility in employment contracts and working time. Conversely, Industry-4.0 enabling technology facilitates mass customisation⁹⁰ which turns production upside down and requires one to

⁸³ See the observations made by A. Supiot, *Beyond Employment. Changes in Work and the Future of Labour Law in Europe*, Oxford University Press, 2001.

⁸⁴ See G. Vardaro, *Tecnica, tecnologia e ideologia della tecnica nel diritto del lavoro*, in PD, 1986, 75-140.

⁸⁵ This point was already made by M. Biagi, *Competitività e risorse umane: modernizzare la regolazione dei rapporti di lavoro*, in Marco Biagi, *Un giurista progettuale. Scritti scelti*, edited by L. Montuschi - M. Tiraboschi - T. Treu, Giuffrè, 2003, 151.

⁸⁶ On the relationship between salaried employment and technology see O. Razzolini, *La nozione di subordinazione alla prova delle nuove tecnologie*, in DRI, 2014, vol. XXIV, n. 4, 974-998.

⁸⁷ See, Various Authors, *Recommendations for implementing the strategic initiative INDUSTRIE 4.0*, cit.

⁸⁸ See M. Dujarier, *Il lavoro del consumatore*, Egea, 2015.

⁸⁹ On the differences and similarities between *lean manufacturing* and *Industry 4.0* see D. Kolberg - D. Zuhlke, *Lean Automation Enabled by Industry 4.0 Technologies*, IFAC, 2015, 1870-1875.

⁹⁰ Here reference is made to the concept introduced in the 1990s referring to the possibility to produce customised goods on an industrial scale. See *Mass Customization*, in G. Salvendy (edited by), *Handbook of Industrial Engineering: Technology and Operations Management*, Wiley, 2001, 684-709. At the national level, see B.J. Pine, *Mass Customization: dal prodotto di massa all'industriale su misura. Il nuovo paradigma manageriale*, Franco Angeli, 1997. Industry 4.0 has contributed to the dissemination of this concept. See, Various Authors, *Industry 4.0 – Potentials for Creating Smart Products: Empirical Research Results*, in *Business Information Systems. 18th International Conference, BIS 2015*, edited by W. Abramowicz, Springer, 2015, 16-24.

review the idea of work and its underlying rules. Among these rules is the principle that “work is not a commodity”, that was codified into the 1919 Versailles Treaty that ended World War I and then laid the foundations for the creation of the International Labour Organisation.

The core of this innovation lies in so-called Cyber Physical Systems⁹¹ which integrate physical with digital space and give rise to new ways to coordinate processes and customise products, while cutting costs and increasing productivity. Yet it is their impact on business organisation, production processes and labour utilisation⁹² that makes them a contributing factor to the transformation of industrial manufacturing⁹³.

The ability to coordinate production processes through real-time, market-related information with the supply chain and consumers requires that manufacturing is optimised “via a network of globally cooperating, adaptive, evolutionary and self-organizing production units belonging to different operators”⁹⁴.

Simply put, it all boils down to digitalisation, which however does not only refer to making productive processes more effective. Rather, it entails moving away from our idea of “a firm” as the only legal entity combining capital and labour and thus governed by bilateral contractual relations between producers and workers.

Hence the emergence of spontaneous practices – which are now well-established – such as co-sourcing, net-sourcing, selective-sourcing, multi-sourcing, back-sourcing, and co-specialization / value added outsourcing –

⁹¹ They are defined as “integrations of computation with physical processes. Embedded computers and networks monitor and control the physical processes, usually with feedback loops where physical processes affect computations and vice versa». See E.A. Lee, *Cyber Physical Systems: Design Challenges*, in *11th IEEE Symposium on Object Oriented Real-Time Distributed Computing*, 2008, 12. A similar definition is provided in E. Geisberger - M. Broy (edited by), *Living in a networked world. Integrated research agenda Cyber-Physical Systems*, Acatech Studie, 2015, 4.

⁹² Acatech has identified the following innovation elements that CPSs can provide to the company: “the units of a smart factory know their fields of activity, configuration possibilities and production conditions and communicate independently and wirelessly with one another; optimized manufacturing of an individual customer product through the intelligent compilation of an ideal production system, taking into account product properties, costs, logistics, security, reliability, time and sustainability; resource-efficient production; tailored adjustments to the human workforce (“the machine follows the human work cycle)”. See Acatech (ed.), *op. cit.*, 26.

⁹³ See the *Position Paper on Industry 4.0*, cit.

⁹⁴ For a more detailed overview of the outcomes outlined in Acatech’s Position Paper and achieved in the “agenda CPS” project, see Geisberger - M. Broy (edited by), *agendaCPS. Integrierte Forschungsagenda Cyber-Physical Systems*, Acatech Studie, 2012.

which are all contributing to forms of co-employment⁹⁵. Yet Italian legislation limits the use of these arrangements – which fall within the name of “network contracts” – because they can be concluded by business operators but not by universities, foundations or other institutions which lack the legal “entrepreneur” status. Equally limited is the possibility to resort to temporary agency work, which lawmakers and relevant literature see as an alternative to temporary work and not as a useful means to help small-medium companies with little capital to access global chains of value production.

The potential of Cyber Physical Systems can be tapped into only if a comprehensive conception of “a firm” and “business network” is developed that is based on cooperation with those contributing to the value chain and giving rise to forms of creative and collaborative economy⁹⁶. On this point, Moretti has pointed out that “physical factories will keep losing importance, but cities with a large percentage of interconnected workers will become the new factories”⁹⁷.

What has been said above is already happening in those areas serving as genuine “brain hubs”⁹⁸ in the context of global production and distribution. Drawing on the traditional notion of industrial districts, brain hubs can be defined as both “knowledge districts” and “local innovation platforms”⁹⁹. This is so because innovation takes place at the local level, usually triggered by “a network of relations and interactions favoured by proximity”¹⁰⁰ that also involves language, culture, and above all critical thinking. In other words, innovation is fostered by an agglomeration of ideas, projects, resources and highly-qualified staff that is increasingly examined by economists¹⁰¹ and that

⁹⁵ See also A. Ross, *The New Geography of Work. Power to the Precarious?*, in *Theory, Culture & Society*, 2008, vol. 25, n. 7-8, 31-49.

⁹⁶ See I. Mandl, *New forms of employment: Developing the potential of strategic employee sharing*, Eurofound, 2016. See also P. Cappelli - J. Keller, *La classificazione del lavoro nella New Economy*, in *DRI*, 2015, vol. XXV, n. 3, 621-666.

⁹⁷ This is the views of E. Moretti, *op. cit.*, 215. A similar approach is taken by K. Schwab, *op. cit.*, 74 and ff.

⁹⁸ See E. Moretti, *op. cit.*, 85 and ff.

⁹⁹ See M. Bellandi, *Piattaforme territoriali per l'innovazione, fra città e distretti industriali*, in *Investimenti, innovazione e città. Una nuova politica industriale per la crescita*, edited by Various Authors, Egea, 2015, 161-166, and A. Gervasoni, *Infrastrutture, capitali, intelligenze, le città come hub di sviluppo*, 345-348.

¹⁰⁰ This is the perspective adopted by G. Garofoli, *Le interrelazioni tra ricerca e industria nei sistemi innovativi locali: i fattori critici*

di successo, intervento alla II Conferència Econòmica de la Mediterrània Nord-Occidental, *La Cooperació Territorial a la Mediterrània Occidental*, Barcellona, 6-7 giugno 2011, p. 2.

¹⁰¹ See the detailed report of the World Bank, *World Development Report 2009. Reshaping Economic Geography*, 2009, esp. 126 and ff. An analysis of scholarly work discussing the relationship between agglomeration and innovation and how the latter affects productivity and growth is

can serve the purpose of creating value, productivity and growth¹⁰² only in globalised markets. The sharing economy itself can be seen as the ultimate expression of both proximity relations and agglomeration¹⁰³.

Within this new conception of doing business, the technological component makes it possible to shelve the notion of workers being dependent upon the dominance of machinery that was typical of Gaetano Vardaro's Beruf¹⁰⁴. The idea based on the worker's willingness to simply perform task – which was at the core of the working process – appears to have become passé thanks to production automation. Concurrently, reliance on production means can be questioned in knowledge economies, as the latter now require a higher contribution from individuals in terms of creativity¹⁰⁵.

One key aspect of this transformation of the ways of doing business is research work, which can be regarded as important as middle management and

offered in G. Carlino - W.R. Kerr, *Agglomeration and Innovation*, Harvard Business School Working Paper, 2014, n. 15-007; S.S. Rosenthal - W.C. Strange, *The Determinants of Agglomeration*, in *Journal of Urban Economics*, 2001, vol. 50, n. 2, 191-229; B.T. McCann - T.B. Folta, *Location Matters: Where We Have Been and Where We Might Go in Agglomeration Research*, in *Journal of Management*, 2008, vol. 34, n. 3, 532-565.

¹⁰² See *OECD Business and Finance Outlook 2016*, 2016, 78 and ff. On the close connection between research, innovation and productivity, see the report *L'innovazione come chiave per rendere l'Italia più competitiva*, Aspen Institute Italia, 2012. On the links between Industry 4.0, globalisation and local dynamics, see the German case discussed in Acatech (ed.), *Industry 4.0, Urban Development and German International Development Cooperation*, Acatech Position Paper, 2015.

¹⁰³ The point is nicely dealt with in N.M. Davidson - J.J. Infranca, *The Sharing Economy as an Urban Phenomenon*, in *Yale Law & Policy Review*, 2016, vol. 34, n. 2, 215-279.

¹⁰⁴ "Entpreneurial" Beruf manages "machinery", whereas working as an employee is based on subordination. Yet this subordination does not only refer to reliance on production output or ownership of production means, but on machinery itself. In relation to the latter, the essence of subordination lies in the fact that human work is seen as a production factor and used accordingly. It is thus placed on the same footing as technology. This means that human work will be instrumental in achieving the employer's production results. It will also entail that this work will have an instrumental function in relation to the technical means used by the employer to reach a certain production outcome. It is true that this machinery will work only because operated by an employee. It is likewise true that, in order to operate these tools, the employee will have to adapt their working activity to their technical features, being the latter a necessary condition to make them function. The technical tool perfectly exemplifies the two-fold function of salaried work, that is that related to production output and that concerning the working tool. Accordingly, employees serve as both a "machine" and a "machine operator". See G. Vardaro, *op. cit.*, 81-82.

¹⁰⁵ An overview of main research on this topic and knowledge workers is provided in H. Zhan - T. Tang - Y. Zhang, *The Research on Characteristics of Knowledge Workers and Their Motivating Factors: A Review and Comparison Study*, in *American Journal of Industrial and Business Management*, 2013, vol. 3, n. 6, 557-564. At the national level, see F. Butera - S. Bagnara - R. Cesaria - S. Di Guardo, *Knowledge Working. Lavoro, lavoratori, società della conoscenza*, Mondadori, 2008.

executives¹⁰⁶ were in post-Fordism. This branch of research focuses on what international literature has termed “intermediate labour markets”¹⁰⁷, which is where innovation and interconnections take place regarding those production processes based on links between intelligent systems¹⁰⁸. These systems are such not because of the massive use of technology, but because of the input of people, creatives, start-uppers, and modern researchers that invent and implement them, therefore contributing to their ongoing development and high-added value.

The complex nature of technology and modern workplaces leads to a reversal in relation to the dependency of employees to employers, in that now the former better govern innovation than the latter do. Moreover, it is not only machinery that generates value but also workers, who provide an active contribution to it¹⁰⁹.

Accordingly, a change occurs to performance that is regulated and defined in the employment contract, significantly affecting the exchange between remuneration and hours worked and paving the way for forms of cooperation where both responsibilities¹¹⁰, decision-making and profits are shared¹¹¹.

In practical terms, this translates into a watering down of those elements constituting traditional subordination – to be intended as the employer’s control over workers’ tasks¹¹² – which results from employees’ economic dependency, lack of capital and production means. As these conditions no

¹⁰⁶ On the obsolescence of managerial and supervisory roles in Industry 4.0, see Various Authors, *Man and Machine in Industry 4.0. How Will Technology Transform the Industrial Workforce Through 2025?*, in *bcg.perspectives*, 28 September 2015.

¹⁰⁷ In this sense, see C. Lanciano-Morandat - H. Nohara, *The Labour Market for the Young Scientists*, in *How Europe’s Economies Learn. Coordinating Competing Models*, edited by E. Lorenz - B-A. Lundvall, Oxford University Press, 2006, 156-189.

¹⁰⁸ See the *Indagine conoscitiva su «Industria 4.0»* already referred to, especially p. 31, where the focus is on the shift between a linear economy to a circular one featuring constantly monitored products and processes.

¹⁰⁹ It is important to point out that a review of the concept of “an employer” is also needed. An innovative proposal has been put forward in J. Prassl, *The Concept of Employer*, Oxford University Press, 2015.

¹¹⁰ A theoretical model, which however fails to consider a labour law perspective, can be found in the idea of business regarded as a Collaborative Community put forward in P.S. Adler, C. Heckscher (edited), *op. cit.*

¹¹¹ See D. Marini, *op. cit.*, 263.

¹¹² Many proposals have been put forward attempting to strike a balance between the need of management to control complex contexts and unexpected situations and that of ensuring staff more freedom so as to express their creativity. In this sense, see the notion of large-scale collaborative creativity in P.S. Adler - C.X. Chen, *Combining Creativity and Control: Understanding Individual Motivation in Large-scale Collaborative Creativity*, in *Accounting, Organizations and Society*, 2011, vol. 36, n. 2, 63-85.

longer apply – either because workers have access to them or because co-management systems are in place – aspects such as fixed working hours and presence at work are not relevant anymore, also because of the potential interconnections characterising Cyber Physical Systems and the value chain in Industry 4.0.

A new debate is about to take place about the regulation of remote working. In this sense, the idea is to move on from traditional teleworking – which still features all the aspects related to employee control and subordination – to modern forms of remote working whereby one can work anytime, anywhere¹¹³. This state of affairs will result in the establishment of virtual offices thanks to the use of online platforms where the employer shares only information needed to perform work.

Consequently, one might easily understand that both Italy's Jobs Act¹¹⁴ and the draft law on “agile working” represent a missed opportunity to innovate national labour legislation. The provision tabled by the Italian government has failed to effectively deal with the labour issues raised by Industry 4.0¹¹⁵. It downplays the importance of aspects like “smart factories” and “smart working” and discuss them only in terms of work-life balance, which is now made easier thanks to new technologies¹¹⁶.

Although the wording “agile working” has even been welcomed by the Accademia della Crusca¹¹⁷ – an authority on research into Italian language – the legislative proposal relative to this form of employment appears to be a misguided attempt to circumvent those occupational health and safety rules laid down by national and EU legislation which apply to remote work performed through ICT tools¹¹⁸. This might be attributed to a

¹¹³ See R. Krause, *Numérisation du monde du travail: défis et besoin de réglementation en droit allemand*, in *Revue de Droit du Travail*, 2016, n. 10, which contains a number of useful references to Industry 4.0.

¹¹⁴ This can be seen in general, but also in particular circumstances (e.g. the rewriting of Article 4 of Act no. 300/1970). See E. Dagnino, *Tecnologie e controlli a distanza*, in *Le nuove regole del lavoro dopo il Jobs Act*, cit., 107-123, and the papers collected in the issue 1/2016 of *Labour Law Issues*.

¹¹⁵ Save for “the right to disconnect”, the parliamentary debate has not taken into account Draft Law no. 229/2016 presented, among others, by Senators Sacconi and D'Ascola, which aimed “to adapt negotiation processes to agile working in the fourth industrial revolution”

¹¹⁶ See Article 13 of Draft Law No. 2233/2016 that defines agile working as “a flexible way of performing salaried employment intended to increase productivity and easing work-life balance”.

¹¹⁷ See the Press Release n. 3 of the Incipit Group working at the Accademia della Crusca, titled “*Accogliamo con piacere il “lavoro agile”*”, 1 February 2016.

¹¹⁸ Reference is made to a “misguided attempt” because, notwithstanding the approval of the provision regulating agile working of 3 November 2016, par. 10, Article 3 of Legislative Decree no. 81/2008 still applies to teleworking and “to workers on salaried employment performing remote work on a continuous basis by means of ICT tools”.

misunderstanding concerning the concept of “teleworking” and “fixed workstation”¹¹⁹, with even the research centre of Italy’s Lower Chamber¹²⁰ apparently confirming that this law has come up short of regulating the ways of working that will be in place in the Fourth Industrial Revolution. Yet the production model associated with Industry 4.0 features a high degree of digitalisation and a close connection with the service sector, thus extending the use of agile working to other industries and trades requiring onsite presence in the past (e.g. manual labour)¹²¹. Needless to say, this form of employment also gives rise to a number of issues, among which is the role of working time which was used to assess performance and safeguard workers¹²². Because of technology, the concept of “place of work” becomes irrelevant and so do rules concerning occupational health and safety, making it more difficult to determine the start and the end of one’s working day. The fact that workers make themselves always available to work leads to the distinction between family and working life becoming blurred, increasing work-related stress and the degree of employee subordination. This state of play has produced a debate about work porosity, whereby working time is no longer based on a clear separation between private and professional lives, but on their alternation and complementarity¹²³, which also entail modern rights. Among them is the right to disconnect, which was codified into law for the first time in France¹²⁴.

¹¹⁹ See the European Framework Agreement on Telework of 16 July 2002 – which was implemented in Italy through Interconfederal Agreement of 9 July 2004. The agreement does not include the fixed workstation among the elements constituting telework. On this point, see E. Dagnino, *Lavoro agile: una questione definitoria*, in #Lavoroagile: misura di conciliazione o il lavoro ai tempi dell’Internet of Things?, Boll. spec. ADAPT, 2016, n. 2, edited by E. Dagnino - M. Tiraboschi.

¹²⁰ See the interpretation provided in the dossier 364/2015 by the Research Centre of Italy’s Lower Chamber concerning the draft law containing provisions promoting smart working A.C. 2014. According to this document, agile working is not prohibited, therefore this law serves the only purpose of derogating from existing rules (e.g. occupational health and safety legislation).

¹²¹ An example of this are maintenance persons, who make use of predictive technology featuring sensors producing data which help preventing issues or malfunctioning. This can take place through connected systems enabling operators to work on machine settings remotely. On this point, see T. Tiraboschi, *Manutentori 4.0: non solo nuove tecnologie ma anche nuovi modi di lavorare*, in Boll. ADAPT, 2016, n. 12.

¹²² On this topic, see the legal and historical reconstruction put forward by V. Bavaro, *Il tempo nel contratto di lavoro subordinato*, Cacucci, 2008, cap. I.

¹²³ See É. Genin, *Proposal for a Theoretical Framework for the Analysis of Time Porosity*, in *International Journal of Comparative Labour Law and Industrial Relations*, 2016, vol. 32, n. 3, 280-300.

¹²⁴ These risks have led lawmakers to discuss the so-called “right to disconnect”, especially following the introduction of France’s *Loi Travail*. On this topic, see S. Tourres, *Lavoro agile e diritto di disconnessione: una proposta francese*, in *Nova*, 4 giugno 2016. More generally, see I. Moscaritolo, *Diritto alla disconnessione: un diritto di nuova generazione?*, in Boll. ADAPT, 2016, n. 30.

The impact of digital manufacturing on labour markets, mobility, and occupational transitions is another aspect that is widely debated in discussions about Industry 4.0. Presently, it is difficult to predict the consequences that the Industry 4.0 paradigm will have on employment, though it might be the case that an overall decline will take place in the number of those employed in traditional manufacturing industry¹²⁵. These projections lead many to call into question the current welfare system – which is based on occupational status¹²⁶ – and to consider the provision of income support as an alternative to those aimed at safeguarding one's earnings¹²⁷. Examples of this include the universal basic income¹²⁸, early retirement schemes for those who have been pushed out of the labour market and are unable to re-enter it due to an increase of the skills level needed¹²⁹ to govern digitalisation, and monetary benefits to be used for training courses helping workers to find new employment. The way things stand now, it might also be important to overhaul the current system of active labour policies as they should consider the fluidity of Industry 4.0 processes – which somehow confirms the theory underlying transitional labour markets¹³⁰ – and elements like transferability of skills and forms of protection safeguarding workers when moving between jobs¹³¹. This is true if one considers that technical skills are given more relevance than soft ones, as the former are needed to manage software and operational models and to fully understand the links between complex systems.

¹²⁵ In relation to the US labour market, see E. Torpey, *Got skills? Think manufacturing*, Bureau of Labour Statistics, 2014.

¹²⁶ See the fascinating re-interpretation of research carried out by U. Prosperetti, *La posizione professionale del lavoratore subordinato*, Giuffrè, 1958. On this point, and on a review of the traditional welfare system, see ADAPT, *Lavoro e welfare della persona. Un "libro verde" per il dibattito pubblico*, 2016.

¹²⁷ See, also for comparative purposes, S. Spattini, *Il nuovo sistema degli ammortizzatori sociali dopo la legge 28 giugno 2012, n. 92*, Giuffrè, 2012, 18-20.

¹²⁸ See P. Van Parijs, *Basic Income: A Simple and Powerful Idea for the Twenty-First Century*, in *Politics & Society*, 2004, vol. 32, n. 1, 7-39. An evaluation of the possible results as compared to the effects of the unemployment insurance, see A. Fabre - S. Pallage - C. Zimmermann, *Universal Basic Income versus Unemployment Insurance*, IZA Discussion Paper, 2014, n. 8667.

¹²⁹ While not directly connected to the "technology" question, see T. Boeri - P. Garibaldi - E. Moen, *A Clash of Generations? Increase in Retirement Age and Labor Demand for Youth*, Inps, 2016.

¹³⁰ G. Schmid, *Sharing Risks of Labour Market Transitions: Towards a System of Employment Insurance*, in *British Journal of Industrial Relations*, 2015, vol. 53, n. 1, 70-93.

¹³¹ French legislation has recently introduced the *compte personnel d'activité*. On this point, see N. Maggi-Germain, *Il "conto personale di attività". Requiem for a dream?*, in *Loi travail: prima analisi e lettura. Una tappa verso lo "Statuto dei lavori" di Marco Biagi?*, edited by L. Casano - G. Imperatori - C. Tourres, ADAPT University Press, 2016, 46-51. In the United States, the Freelancers Union proposed to make use of "portable benefits" for workers operating in the digital economy. More information is provided in M. Saccaggi, *Statuto degli Autonomi: il "dettaglio" tralasciato sulla portabilità delle tutele previdenziali*, in *Boll. ADAPT*, 2016, n. 9.

It is often the case that much relevance is given to the consequences that the fourth industrial revolution will bring on industry, while the effects on administrative services, which are increasingly automatized, are largely neglected. Rather than devising initiatives to modernise specific sectors, the aim should be that of reviewing the planning and management of active policies¹³². Accordingly, occupational retraining in the context of employment services will need to be carefully developed to assist workers in moving between jobs. To this end, two paths should be followed: analysing skills needs at a local level to prepare future talent, on the one hand¹³³. Developing the ability to analyse individual skills by implementing skills certification systems as laid down by Fornero Law, on the other hand¹³⁴.

Investments in new technology, Big Data analysis and management, online platforms and interactive workstations call for new digital skills¹³⁵ which cannot be gained through traditional channels¹³⁶ but by means of innovative and

¹³² In his introduction to Klaus Schwab, op. cit. 3, the author insists on the general and cross-cutting nature of the current transformation, which affects both economic and social sub-systems, involving “entire systems, across (and within) countries, companies, industries and society as a whole”.

¹³³ Rather than a disruptive transformation, we are dealing with a progressive evolution. For example, the expression “labour law territorialisation” has been employed in France to underline the need to move beyond simple skills decentralisation and promote the role of labour policies: “Inscrite dans le cadre juridique de la décentralisation, la territorialisation fait appel à une autre logique: il s’agit d’articuler, lors de la prise de décision, les dimensions économique et sociale autour d’un projet commun structurant le territoire. Pour autant, l’une n’est pas exclusive de l’autre. Si décentralisation et territorialisation obéissent à des logiques différentes, elles s’inscrivent dans une certaine complémentarité » N. Maggi-Germain, *La territorialisation du droit. L’exemple des politiques de l’emploi et de la formation professionnelle continue*, in *Droit et Société*, 2008, vol. 2, n. 69-70, 441-477. More recently, S. Berhuet - C. Tuchsirer, *Les maisons de l’emploi ou l’introuvable politique territoriale de l’emploi*, in *Connaissance de l’Emploi*, 2015, n. 118.

¹³⁴ On the difficulties experienced in Italy to implement a system to clearly identify individual skills in the context of employment services, see Casano, *Il sistema della formazione: fondi interprofessionali, certificazione delle competenze*, in *Le nuove regole del lavoro dopo il Jobs Act*, cit., 471-484.

¹³⁵ On the relationship between technology and skills, see P. Adler, *New Technologies, New Skills*, in *California Management Review*, 1986, vol. 29, n. 1, 9-22; D. Acemoglu - D. Autor, *Skills, tasks and technologies: Implications for employment and earnings*, in *Handbook of Labor Economics*, vol. 4, part B, edited by O. Ashenfelter - D.E. Card, Elsevier, 2011, 1043-1171.

¹³⁶ There exists considerable research on training tools and techniques related to Industry 4.0. See Various Authors, *Educating Engineers for Industry 4.0: Virtual Worlds and Human-Robot-Teams. Empirical Studies towards a new educational age*, in IEEE, *Proceedings of 2016 IEEE Global Engineering Education Conference (EDUCON2016) “Smart Education in Smart Cities”*, 2016; Various Authors *Preparing for Industry 4.0 – Testing Collaborative Virtual Learning Environments with Students and Professional Trainers*, in *International Journal of Advanced Corporate Learning*, 2015, vol. 8, n. 4, 14-20. An evaluation of the “AssistMe” project aimed at introducing collaborative robots is offered in A. Weiss - A. Huber - J. Minichberger - M. Ikeda, *First Application of*

experimental methods¹³⁷ which alternate theory and practice. This is an aspect that has been pointed out in international literature¹³⁸. In other words, in the context of Industry 4.0, technical skills to perform non-routine tasks should complement non-cognitive ones. The main goal of new educational and pedagogical models is to enable workers to successfully manage unexpected situations which are typical of new production cycles. They should be trained to understand physical and digital reality and to examine increasingly complex problems¹³⁹.

The new skills needed by workers¹⁴⁰ and the network-like structure of the supply and the value chain in global markets also have an impact on local, national and international industrial relations systems, especially if one considers the new terms laid down by the employment contracts, which are now based on exchange and sharing. An example is provided by collaborative communities in which aspects like responsibility and autonomy are not rights granted to workers but a necessary condition to enable the smooth functioning of complex and unpredictable productive processes.

Moving on from standardised production in place during Fordism, along with the internationalisation of markets resulting from globalisation make the function of labour law and collective bargaining ineffective as forms of “common rule”¹⁴¹ to regulate the way of doing business, somehow frustrating

Robot Teaching in an Existing Industry 4.0 Environment: Does It Really Work?, in *Societies*, 2016, vol. 6, n. 3. In Italian-language literature, see G. Bertagna, *Il filo rosso della nuova formazione*, in *Lombardia 4.0. Competenze e lavori per il futuro. Materiali del Forum Interuniversitario promosso dalla Direzione generale Istruzione formazione e lavoro di Regione Lombardia nel periodo aprile-luglio 2016*, edited by Assolombarda - Regione Lombardia - Unioncamere Lombardia - Éupolis Lombardia, 2016, 86-96.

¹³⁷ The issue of devising new training and educational models resulting from social and economic changes is nicely dealt with in D. Barricelli (ed.), *Spazi di apprendimento emergenti. Il divenire formativo nei contesti di coworking, FabLab e università*, Isfol Research Paper, 2016, n. 29.

¹³⁸ See. S. Pfeiffer - A. Suphan, *op. cit.*

¹³⁹ In this sense, see L. Orsenigo, *Politiche per la ricerca e l'innovazione*, in *Investimenti, innovazione e città. Una nuova politica industriale per la crescita*, cit., qui spec. 219. See also the report produced by the World Economic Forum, *op. cit.*

¹⁴⁰ See L. Marcolin - S. Miroudot - M. Squicciarini, *Routine jobs, employment and technological innovation in global value chains*, OECD Science, Technology and Industry Working Paper, 2016, n. 1.

¹⁴¹ Reference should be made to outstanding, and still relevant, research produced by Sidney and Beatrice Webb back in 1897: “If, in the absence of a Common Rule, the “small employer”, with his imperfect machinery and insufficient capital, with inferior scientific training and inadequate knowledge of the markets, is enabled to divert business from superior establishments by nibbling at wages, requiring systematic overtime, overcrowding his factory, or neglecting precautions against accident, his existence is not only detrimental to the operatives, but also a clear diminution of the nation’s productive efficiency. Hence the enforcement of a Common Rule, by progressively eliminating the worst equipped employers

the traditional two-fold purpose of labour legislation¹⁴² (i.e. safeguarding both production and workers).

Although many see them as the most appropriate context to engage in industrial relations, firms too risks being inadequate to provide a legal framework that takes account of the new geography of work and innovative forms of agglomeration. This will impact on the revival of collective bargaining taking place at the local¹⁴³ and the individual¹⁴⁴ level. Confirming this aspect is the recent debate held in the US in relation to collective bargaining. Once focused on the company level, collective bargaining is now entering the local level, therefore moving outside the employer's premises¹⁴⁵.

All of this will result in a paradox. So far, the renewal of collective bargaining – which is even more difficult in Italy due to a large number of small and medium-sized companies – has involved striking a balance between the company and the national bargaining level. However, new production dynamics rely on trades and collective bargaining taking place at the local level, on which employee representation will also be assessed. In all likelihood, this new trend will pave the way for a comeback of those “craft unions” in place during the First Industrial Revolution or those forms of local bilateralism that

and concentrating the whole pressure of competition on securing the utmost possible efficiency of production, tends constantly to the development of the highest type of industrial organisation”. Significantly, they also specified that “the Device of the Common Rule is, from the workman's point of view, always the enforcement of a minimum, below which no employer may descend, never a maximum, beyond which he may not, if he chooses, offer better terms”. See, S. Webb - B. Webb, *Industrial Democracy*, Longmans, 1926 (but first printed in 1897), 732 and 715.

¹⁴² In relation to theories concerning internal and external labour markets, reference needs to be made to P.B. Doeringer- M.J. Piore, *Internal Labor Markets and Manpower Analysis*, Lexington, 1971.

¹⁴³ In this sense, see G. Sateriale, *Sindacato 5.0: come, quale*, in *Il Diario del Lavoro*, 27 October 2016. The author acknowledges, if partly, the need to regulate the new geography of work and related processes (i.e. Industry 4.0). For this reason, he points out that “an innovative model of social and employee representation should be necessarily based on the higher involvement of union confederations as opposed to unions operating at industry level and on a new contractual system where local collective bargaining should be seen as a privileged channel for negotiations taking place at the company level. This is without prejudice to a national collective agreement ensuring basic protections to all workers” (emphasis added).

¹⁴⁴ This was the project outlined in Draft Law no. 2229/2016 among others, by Senators Sacconi and D'Ascola, which aimed “to adapt negotiation processes in agile working in the fourth industrial revolution”, which proposed to make use of the certification of the employment contracts to ensure the genuine nature of workers' claims.

¹⁴⁵ See D. Madlan, *The Future of Workers Voice and Power*, Center for American Progress, 2016. A comment in Italian is provided by P. Tomassetti, *E se il contratto del futuro fosse il CCNL? Una provocazione e una ipotesi di convergenza tra modelli contrattuali sulle sponde dell'Atlantico*, in *Boll. ADAPT*, 2016, n. 35.

Biagi Law¹⁴⁶ considered as a privileged channel to regulate Italy's industrial relations¹⁴⁷. The local character of collective bargaining is particularly welcome if one considers that Italy's National Institute of Statistics¹⁴⁸ has calculated that 600 "local labour areas"¹⁴⁹ have developed in our country so far.

5. As already pointed out in the introductory section of this paper (see par. 1), the initial version of Italy's Jobs Act and the National Industry 4.0 Plan had much in common. After admitting the shortcomings of the previous labour reforms and in an awareness that "it is entrepreneurs, and not laws, that create employment"¹⁵⁰, in 2014 the then Prime Minister Matteo Renzi put forward proposals concerning different areas (energy, taxes, red tape) and sectors (manufacturing, digital and ICT industry). Yet measures related to labour market regulation and employee representation remained in the background.

Industry 4.0-related initiatives are neither openly aimed at creating more job opportunities nor intended to limit the consequences of production automation. Nevertheless, the investments set aside to boost employment in manufacturing – one of the sectors employing the largest number of workers in Italy – seem to be in line with the original aim of the Jobs Act in relation to industry digitalisation.

On close inspection, statistics confirm that the number of workers in manufacturing is dropping in all OECD countries. Some recent research¹⁵¹ has pointed out that this decrease started in 1980, the year in which the sector employed the largest number of people. Significantly, the share of workers in manufacturing is higher in Italy and Germany than it is in other countries (e.g.

¹⁴⁶ Mention should be made of let. h), par. 1 of Article 2 of Legislative Decree no. 276/2003, which regarded bilateralism as a privileged channel for labour market regulation.

¹⁴⁷ In this sense, see M. Tiraboschi, *Bilateralism and Bilateral Bodies: The New Frontier of Industrial Relations in Italy*, in *E-Journal of International and Comparative Labour Studies*, 2013, vol. 2, n. 1, 113-128 and the bibliography therein.

¹⁴⁸ The National Institute of Statistics (ISTAT) regularly releases data on the number of people employed and those looking for a job in a given "local labour system". The information used to provide estimates is based on surveys carried out on the workforce considering 611 local labour systems. These are sub-regional geographical areas where the bulk of the labour force lives and works. They have been identified by ISTAT in the 15th Census on the Population and Housing, according to a new methodology recognised at the European level (Euro).

¹⁴⁹ Against the context of the new geography of work, a more detailed identification of local labour markets should consider not only workers' mobility, but also local production, the number of business networks and industrial districts in the area, the degree of interaction between school and industry, the rate of tax evasion, the number of workers coming from abroad, and local collective bargaining and welfare systems.

¹⁵⁰ See M. Renzi, *eNews 381*, in *www.matteorenzi.it*, 8 January 2014.

¹⁵¹ See D. Rodrik, *Premature Deindustrialisation*, National Bureau of Economic Research, 2015.

United States, the UK, and France)¹⁵². Rather than an exception in the international scenario, this trend can be seen as Italy's delay in the transition towards the service economy.

These indicators suggest that taking on the challenges posed by Industry 4.0 should be considered as a way to modernise national industry and not to increase the number of workers in manufacturing, as was the case in the past. This transition would step up job quality in the sector (in terms of specialisations, economic value and protections) while also increasing labour productivity, more broadly. However, this will take place provided that an evolution of the national industrial relations system is put in place – particularly at a local level¹⁵³ – which should help to create networks between school and businesses¹⁵⁴ and prompt change when national legislation fails to do so.

A further element that upholds the importance of looking at the National Industry 4.0 Plan from a labour law perspective and not only from a technological one concerns workers' skills¹⁵⁵ and trade evolution. New trades and skills are enabling factors at the time of using new technologies adopted in the value creation chain and favour the matching of labour demand and supply in innovative contexts.

As seen, this can be done only if institutions and rules governing local labour markets are modernised, thus laying the foundations of a new “Labour Market Law”. Unlike the skills certification system laid down in Fornero Law¹⁵⁶, this new legal paradigm should facilitate occupational transitions¹⁵⁷ and the link

¹⁵² See OECD, *Employment by activities and status*, OECD.Stat. Data collected on 10 November 2016.

¹⁵³ On p. 43 of the *Position Paper on Industry 4.0* already referred to, it is stressed that “one of the challenges of Industry 4.0 will concern the industrial relations system and the need to move away from the concept of “guaranteed pay” and perfectly defined, routine tasks. Evidently, the national collective agreement will provide the general framework within which employment relationships will be defined, but aspects like productivity and new tasks resulting from Industry 4.0 are to be dealt with at a local level”.

¹⁵⁴ On the relationship between school and industry, cf. A. Balsamo, *Reti scuola-impresa: un modello d'integrazione tra scuola e lavoro per l'industria 4.0*, ADAPT University Press, 2017. On the networks comprising university and industry cf. M. Tiraboschi, *Dottorati industriali, apprendistato per la ricerca, formazione in ambiente di lavoro. Il caso italiano nel contesto internazionale e comparato*, cit.

¹⁵⁵ See, M.R. Weise - C.M. Christensen, *Hire Education Mastery – Modularization, and the Workforce Revolution*, Clayton Christensen Institute for Disruptive Innovation, 2014. See also L. Casano, *Istruzione e formazione, ovvero il tassello mancante della grande trasformazione del lavoro*, in *Nova*, 15 settembre 2014.

¹⁵⁶ See par. 51, Article 4 of Act no. 92/2012, and the rights to lifelong learning and skills certification. On this point, see G. Bertagna - L. Casano - M. Tiraboschi, *Apprendimento permanente e certificazione delle competenze*, in *La nuova riforma del lavoro*, edited by M. Magnani, M. Tiraboschi, Giuffrè, 2012, 398 and ff.

¹⁵⁷ Cf. G. Schmid, *op. cit.*

between an innovative education and training system¹⁵⁸ and the labour market, also when adults are involved.

Against such a complex background, one should recall that nearly half of Italian workers possess low technological skills¹⁵⁹, which makes it difficult for the National Industry 4.0¹⁶⁰ plan to take off. This is also because of the fact that Italy features a large number of small- and medium-sized enterprises¹⁶¹. This will hold even truer if the Industry-4.0 phenomenon will be examined only from a technological point of view and not from a labour law perspective, as we have attempted to do in this paper.

¹⁵⁸ See the *Position Paper on Industry 4.0*, cit., esp. par. 3.4 titled “The educational system”.

¹⁵⁹ Cf. OECD, *OECD Skills Outlook 2015: Youth, Skills and Employability*, OECD Publishing, 2015.

¹⁶⁰ On this point, see Airi, *Nota di approfondimento su Industria 4.0*, 2016.

¹⁶¹ See the *Position Paper on Industry 4.0*, p. 46.

Industry 4.0 and Human Resources Development: A View from Japan

Michela Riminucci ¹

Abstract

Purpose. The paper aims at analyzing the approach of the Japanese Government towards the impacts of the fourth industrial revolution.

Design/methodology/approach. The paper discusses the application of the Frey and Osborne model to the Japanese labor market as a way to analyze the repercussions of computerization. Furthermore, it provides an overview on the most recent policies devised by the Japanese Government in order to prepare the society for the change, with a specific focus on strategic planning for human resources development.

Findings. In the case of Japan, there is a lack of official data that can be used to apply the Frey and Osborne model. The plans of the Japanese Government are ambitious and comprehensive, but do not seem to be based on a full feasibility analysis tailored on the current situation of the Japanese labor market.

Research limitations/implications. The research draws its conclusions from previous contributions in order to broaden the dialogue on the fourth industrial revolution outside of the US and EU.

Originality/value. The paper adds to the debate on the way in which national governments could deal with the fourth industrial revolution.

Paper type. Issues paper.

Keywords: *Computerization, Employability, Industry 4.0, Japan, Society 5.0, Labour Law, Labour market, Productivity*

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1. Introduction

Industry 4.0 is a term that gained much attention in the European Union with reference to the most recent developments in the manufacturing industry. It was coined in Germany as *Industrie 4.0*,² but it has a close connection with similar concepts that are used in other countries, such as smart factories or internet of things. The model is aimed at integrating some of the latest technological advancements – for instance, information and communication technology (ICT), or big data analysis – into the industry. The number four, instead, is a reference to the fact that it is supposed to represent the fourth industrial revolution, although it is an on-going process and its disruptive effects, if any, are yet to be seen.³ In a recent briefing by the European Parliament Research Service,⁴ the four fundamental transitions that affected European industries to a great degree in the last three centuries were summarized as follows:⁵

Table 1: Industrial revolutions

Time periods	Technologies and capabilities
First: 1784-Middle 19 th century	Water- and steam-powered mechanical manufacturing
Second: Late 19 th century-1970s	Electric-powered mass production based on the division of labor (assembly line)
Third: 1970s-Today	Electronics and information technology drives new levels of automation of complex tasks
Fourth: Today-	Sensor technology, interconnectivity and data analysis allow mass customization, integration of value chains and greater efficiency

Source: European Union, 2015

² It might be worth noting that in Japanese the term Industry 4.0 (pronounced half in English and half in Japanese: *indasutorii yon ten zero*) is used solely with reference to the German model. See, only in Japanese: <https://dictionary.goo.ne.jp/jn/278685/meaning/m0u/> (accessed November 25, 2017).

³ F. Seghezzi, *La nuova grande trasformazione: lavoro e persona nella quarta rivoluzione industriale*, ADAPT University Press, Milano, 2017, pp. 151-177.

⁴ R. Davies, *Industry 4.0: Digitalisation for Productivity and Growth*, European Union, Brussels, 2015, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568337/EPRS_BRI\(2015\)568337_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568337/EPRS_BRI(2015)568337_EN.pdf) (accessed November 25, 2017).

⁵ It must be noted, however, that there is no consensus among scholars with reference to the third and fourth revolutions (for example, they could be grouped in a single computer revolution).

As pointed out in Table 1, the advantages deriving from the fourth and most recent phase of European industrial development are supposed to be many: improvements in speed, quality and flexibility of the production are just a few examples. However, at the same time, a number of challenges can be foreseen. Among them, without doubt, there is the issue of future employability of workers, and, consequently, of how to develop the professional profiles that will be needed from now on. Indeed, since many low-skilled employees are likely to be replaced by machines in a decade or two, there seems to be the concrete risk of generating a mass of unemployed or underemployed people, if no specific action is taken. Yet, on the other hand, if the transition goes well, workers might benefit from a reduced burden of menial work and might be able to focus on more fulfilling tasks.⁶

In the European Union, the Federal Ministry of Labor and Social Affairs of Germany has discussed many of the abovementioned challenges in detail in its “Work 4.0” White Paper,⁷ a document that the Ministry has elaborated through a public dialogue based on a previously published Green Paper.⁸ In terms of maintaining individual employability over time, for example, the White Paper contains some useful policy recommendations, including actively supporting the main transitions in each worker’s life, monitoring future skilled-labor needs and providing continuous education and training for long-term skills development.⁹ However, there is at least another country not located in Europe that is well-known for its technological advancement: Japan. In the following sections, the Japanese situation will be analyzed, in an attempt to broaden the dialogue on employability to a more global scale.

2. Previous research and its reception in Japan

Albeit being geographically distant, Japan, as an active member of the international community, is usually observing what happens in the so-called West¹⁰ quite attentively. That is why a 2013 working paper on the occupations that are most likely to be replaced by machines in the near future written by

⁶ R. Davies, *Industry 4.0: Digitalisation for Productivity and Growth*, cit., pp. 6-7.

⁷ Federal Ministry of Labour and Social Affairs, *White Paper: Work 4.0*, Berlin, 2017, <http://www.bmas.de/EN/Services/Publications/a883-white-paper.html> (accessed November 25, 2017).

⁸ Federal Ministry of Labour and Social Affairs, *Green Paper: Work 4.0*, Berlin, 2015, <http://www.bmas.de/EN/Services/Publications/arbeiten-4-0-greenpaper-work-4-0.html> (accessed November 25, 2017).

⁹ Federal Ministry of Labour and Social Affairs, *White Paper: Work 4.0*, cit., pp. 100-114.

¹⁰ In Japanese, the less relative but equally broad term *obei*, meaning Europe and North America, is used.

two British scholars, C. Frey and M. Osborne, in the framework of the Oxford Martin Programme on the Impact of Future Technology,¹¹ had much resonance also in Japan.¹² In their research, Frey and Osborne tried to analyze how computerization – defined as “job automation by means of computer-controlled equipment” – might affect 702 occupations. They also referred to previous research according to which the job market is gradually polarizing, in the sense that the demand is increasing for “high-income cognitive jobs and low-income manual occupations,” whereas it is decreasing for “middle-income routine jobs.”¹³

One of the most interesting aspects of Frey and Osborne’s research is that they focused on the content of each occupation – *i.e.* the tasks performed by each worker – and classified them according to their susceptibility to computerization. Such an analysis was made possible thanks to the existence of the Occupational Information Network Service O*NET OnLine,¹⁴ sponsored by the United States Department of Labor. As noted also by Japanese scholars,¹⁵ the very existence of this kind of “occupational information” is of key importance for researchers. Also in Japan there are similar examples,¹⁶ although the relevant data was not gathered directly by the Ministry of Health, Labor and Welfare, but by the Japan Institute for Labor Policy and Training (JILPT) through on-line surveys, and they represent only a limited part of the Japanese labor market.

Frey and Osborne based their work on two pairs of opposite concepts: routine/non-routine tasks and manual/cognitive tasks. Routine tasks are rule-based activities that can be performed by machines, whereas cognitive tasks relate to knowledge work, although they also noted that the extent of what they called routine tasks could be expanded through technological advancement in the future – *i.e.* former non-routine tasks might become

¹¹ Later published as C. Frey and M. Osborne, *The Future of Employment: How Susceptible are Jobs to Computerisation?*, in *Technological Forecasting and Social Change*, 2017, vol. 114, issue C, 254-280.

¹² S. Matsumoto, *Toward a New Dawn – The Importance and Potential of Quantifying Occupational Information*, in *JILPT Research Eye*, July 20, 2016, <http://www.jil.go.jp/english/researcheye/bn/RE014.html> (accessed November 25, 2017).

¹³ C. Frey and M. Osborne, *The Future of Employment: How Susceptible are Jobs to Computerisation?*, *cit.*, p. 258.

¹⁴ <https://www.onetonline.org/> (accessed November 25, 2017).

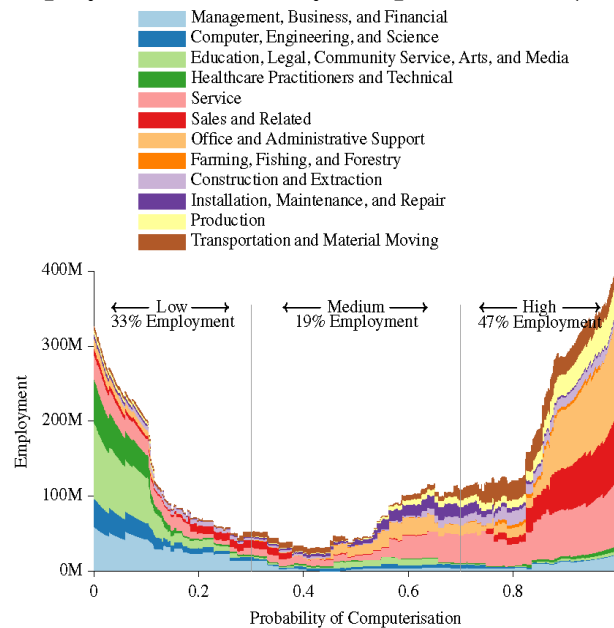
¹⁵ S. Matsumoto, *Toward a New Dawn – The Importance and Potential of Quantifying Occupational Information*, *cit.*

¹⁶ See the JILPT Research Report No. 146 (<http://www.jil.go.jp/english/reports/documents/jilpt-research/no.146.pdf>) and No 176 (http://www.jil.go.jp/english/reports/jilpt_research/2015/no.176.html).

routine tasks over time, for example driving.¹⁷ In order for machines to be able to carry out what were originally non-routine tasks, it is indispensable to collect big amounts of data that can be used to check the performance of technological substitutes in comparison with humans – and nowadays such big data exists, to some extent. Moreover, it is well-known that computers can perform better when processing batch activities and can ensure unbiased decision-making, therefore their introduction in originally non-routine tasks might even be beneficial, in some cases. Finally, robots and similar could free the human workforce from the less satisfying jobs.

What Frey and Osborne's research revealed is that around 47% of the total number of US workers might be substituted by machines relatively soon, and such percentage might even increase depending on the technological advancement that takes place in the meantime. This high-risk group includes transportation and logistics, office and administrative support workers, and workers in production and sales. Instead, the low-risk category includes, among others, management, business and finance, education, healthcare, arts and media, and the legal sector (see Graph 1).¹⁸

Graph 1: Employment affected by computerization (US)



Source: Frey and Osborne, 2017

¹⁷ C. Frey and M. Osborne, *The Future of Employment: How Susceptible are Jobs to Computerisation?*, cit., p. 260.

¹⁸ C. Frey and M. Osborne, *The Future of Employment: How Susceptible are Jobs to Computerisation?*, cit., pp. 265-267.

Of course, the abovementioned research had many limitations admitted by Frey and Osborne themselves, one of which is particularly interesting from the point of view of a legal scholar: it is, in fact, impossible to foresee how much the legislation of each country will be open to the change, considering the inevitable political concerns that will surround the matter. Therefore, it might as well be possible that some of the more computerizable jobs will be reserved in any case to humans by national legislation. Furthermore, a certain number of subjective biases in the selection of data are bound to remain and to be reflected in the results. Frey and Osborne, in order to mitigate possible issues regarding the O*NET data and the way in which they filtered it, adopted a mixed approach by hand-labelling 70 occupations as fully automatable on the basis of O*NET tasks and job descriptions, and by selecting O*NET variables corresponding to the potential bottlenecks to computerization (see Table 2). However, they admitted that, even by applying this method, a certain degree of subjectivity remained.¹⁹

Table 2: O*NET variables

Computerization bottleneck	O*NET variable	O*NET description
Perception and manipulation	Finger dexterity	The ability to make precisely coordinated movements of the fingers of one or both hands to grasp, manipulate, or assemble very small objects.
	Manual dexterity	The ability to quickly move your hand, your hand together with your arm, or your two hands to grasp, manipulate, or assemble objects.
	Cramped work space, awkward positions	How often does this job require working in cramped work spaces that requires getting into awkward positions?

¹⁹ C. Frey and M. Osborne, *The Future of Employment: How Susceptible are Jobs to Computerisation?*, cit., pp. 263-264.

Creative intelligence	Originality	The ability to come up with unusual or clever ideas about a given topic or situation, or to develop creative ways to solve a problem.
	Fine arts	Knowledge of theory and techniques required to compose, produce, and perform works of music, dance, visual arts, drama, and sculpture.
Social intelligence	Social perceptiveness	Being aware of others' reactions and understanding why they react as they do.
	Negotiation	Bringing others together and trying to reconcile differences.
	Persuasion	Persuading others to change their minds or behavior.
	Assisting and caring for others	Providing personal assistance, medical attention, emotional support, or other personal care to others such as coworkers, customers, or patients.

Source: Frey and Osborne, 2017

Finally, the study is based on US data, therefore it might be difficult to replicate it in other areas in the world – or to compare it with similar studies from other countries – especially in the case of lack of data or of big differences between the variables that were collected or taken into consideration. Quite interestingly, in the case of Japan, as it was mentioned before, the outcomes divulged by Frey and Osborne gained much attention, so much so that the two scholars were asked to develop a joint research with the Nomura Research Institute (NRI) in order to apply the same method to

Japan. The results have highlighted some issues that need to be solved in order to produce a more substantial analysis of the country.

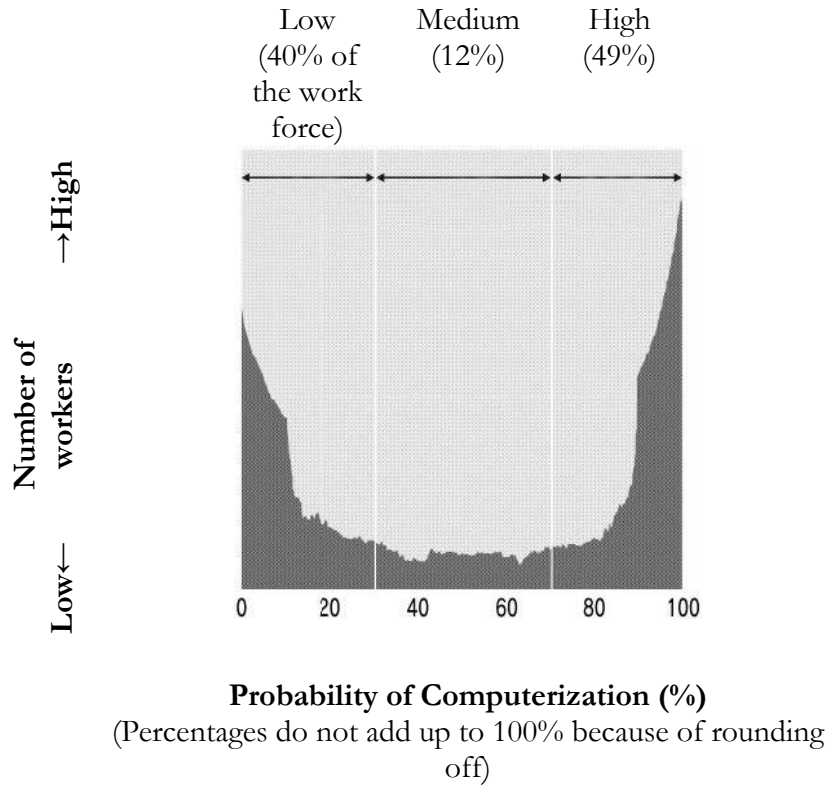
3. The results of the NRI joint research

The results of the NRI joint research were published in a news release in Japanese dated December 2, 2015.²⁰ A summary of the whole project including some more general considerations on Japan has also appeared on the Nikkei newspaper.²¹ The analysis was based on data collected by the JILPT on 601 occupations and the same algorithm used in the 2013 working paper on US employment was applied, reaching the conclusion that 49% of Japanese employment could be computerized in the near future (see Graph 2). However, as duly admitted by Osborne himself, the results are not really comparable to his original research because of the differences that existed between the two sets of data that were used, therefore the fact that the percentage is higher in Japan than the US might have no special meaning.²²

²⁰ Nomura Research Institute, *Nihon no rōdō jinkō no 49% ga jinkō chinō ya robotto nado de daigae kanō ni* [49% of the Japanese Working Population Could be Replaced by Artificial Intelligence, Robots and Similar], News Release, 2015, https://www.nri.com/jp/news/2015/151202_1.aspx (accessed November 25, 2017).

²¹ Issue of Monday, December 12, 2016. Available in Japanese, for subscribers, also on the website of the Nikkei: <https://www.nikkei.com/article/DGKKZO95962940Z00C16A1KE8000/> (accessed November 25, 2017). Its English version can be downloaded from the website of the Oxford Martin School: <https://www.oxfordmartin.ox.ac.uk/coverage/view/2086> (accessed November 25, 2017). However, it is worth noting that the newspaper article is in some cases oversimplified with regard to Japan and contains some common misconceptions on the country, for example on cultural homogeneity (Japan's heterogeneity might be less evident when compared to the United States or to the United Kingdom, but there are many minorities and regional differences in terms of language and culture), high job security (which is now more of a thing of the past, since around one third of the working population is currently made of atypical workers) and unemployment rates (in the sense that it would be important to take into consideration also the number of inactive workers, which in Japan amounted to 44.18 million people in 2016, according to the Statistics Bureau of Japan). Of course, nor Frey nor Osborne are Japanologists and these oversimplifications do not compromise the general value of their research. Moreover, for example, their observations on Japan as being a latecomer in the ICT revolution can definitely be shared.

²² Nomura Research Institute, *Coexistence with Artificial Intelligence*, in *Iakyara*, 2016, vol. 234, 2-7, <https://www.nri.com/~media/PDF/global/opinion/lakyara/2016/lkr2016234.pdf> (accessed November 25, 2017).

Graph 2: Employment affected by computerization (Japan)

Source: Nikkei, 2016

A list of one hundred jobs that are more likely to be performed by machines in a few years and a list of one hundred occupations that instead are less susceptible to automatization were published in the news release as well, but they were not ranked in order of probability of computerization. Once again, jobs in the arts, teaching, and, for example, jobs in the medical and legal sectors were considered less likely to be performed by artificial intelligence. This list also includes some peculiar professions, such as disk jockey, *manga* artist, aromatherapy expert, and sommelier. For some reason, however, the complete results of the study have yet to be released.

In any case, the research is still at such an early stage that it is difficult to elaborate a thorough assessment of it. Apart from the original flaws in the methodology – especially in terms of lack of objectivity – briefly summarized

in the previous section, the data used in both cases is based on surveys, which could as well include a number of biases by the respondents, depending for example on the way in which the questions were asked and interpreted. This seminal research, however, has undoubtedly the potential to uncover some of the underlying structural issues of the Japanese labor market that affects productivity²³ and causes labor shortages in some routine jobs, both of which might be substantially improved by means of computerization. Moreover, it is certainly useful for identifying the skills that are, for now, less likely to be replicated by robots, and on which future professional development could focus (see Table 2 above). The question of how the Japanese society will welcome the change remains open, but some observations on the matter will be presented in the next section.

4. Japanese society and artificial intelligence

Obviously, it is not an easy task to analyze the impact of an increased number of robots in a given society. In particular, it would be especially challenging to assess the level of acceptance by people to such a revolutionary change. Many robots, however, have already made their appearance in the everyday lives of Japanese people without causing disruptive effects. Although, of course, there is no proof of a specific high tolerance to working machines, it might ensure a certain degree of accustomization. Moreover, less conventional robots were developed for social purposes in Japan from relatively early years. For example, perhaps also many Europeans and Americans still remember the robot dog Aibo, by Sony.²⁴ Moving to more recent products, the humanoid social robot Pepper developed by SoftBank²⁵ and capable of interacting with people has gained much international attention as well. A less famous, but equally interesting robotic companion because of its allegedly therapeutic effects is Paro,²⁶ a machine shaped as a white seal developed in order to help patients with dementia.

Therefore, Japan has, at least, a documentable history of friendly robots that might have paved the way towards a smooth transition. This impression is confirmed also by a recent research once again by the NRI, according to which

²³ Japan has the lowest productivity among G7 countries, according to the OECD statistics on the level of GDP per capita and productivity, http://stats.oecd.org/Index.aspx?DataSetCode=PDB_LV (accessed November 25, 2017).

²⁴ Quite interestingly, Sony has announced the release of a renewed Aibo just this month: <https://www.sony.net/SonyInfo/News/Press/201711/17-105E/index.html> (accessed November 25, 2017).

²⁵ <https://www.ald.softbankrobotics.com/en/robots/pepper> (accessed November 25, 2017).

²⁶ <http://www.parorobots.com/> (accessed November 25, 2017).

Japanese people are in fact quite comfortable with robots, although they do not use them that much.²⁷ A last example in this regard could be the 2014 advertising campaign by Nissan under the motto “innovation that excites.” In a series of commercials, humanoid robots substitute a street cleaner and even a mother who is transporting her child in a stroller, therefore suggesting that these activities might be performed by machines in the future.²⁸ Curiously, nobody commented in a negative way against the commercial, at least to the knowledge of the author. Therefore, Japanese people seem to be quite aware that they can be replaced and do not seem to feel particularly threatened by it. This might be one of the reasons why the Japanese government has started a quite optimistic strategical planning towards Industry 4.0 and beyond, as it will be explained in the next section.

5. The plans of the Japanese government

The Future Investment Strategy (FIS) published by the Cabinet of Japan on June 9, 2017, is probably the most recent document of a certain length and detail revolving around Industry 4.0 and produced by the Japanese executive.²⁹ In its introduction, the long-term economic stagnation is identified as one of the main issues affecting the country, although it is not limited only to Japan. According to the document, its solution can be found in the full realization of what is called “Society 5.0,”³⁰ which will integrate not only into the industry, but also into the society the innovations of the fourth industrial revolution. In

²⁷ H. Nitto, D. Taniyama and H. Inagaki, *Social Acceptance and Impact of Robots and Artificial Intelligence – Findings of Survey in Japan, the U.S. and Germany*, in *NRI Papers*, 2017, No. 211, 1-15, <https://www.nri.com/global/opinion/papers/2017/np2017211.html> (accessed November 25, 2017).

²⁸ See the full list here (available only in Japanese, but the videos can also be found on YouTube): <http://www.nissan.co.jp/AP-CONTENTS/POSTOFFICE/ANSWERS/5141.html> (accessed November 25, 2017). The two commercials mentioned in the paper are the one on the “intelligent parking assist” and the one on the “emergency break.”

²⁹ Prime Minister of Japan and His Cabinet, *Mirai tōshi senryaku 2017: Society 5.0 no jitsugen ni muketa kaikaku* [Strategy for Future Investments 2017: Reforms Towards the Realization of Society 5.0], 2017, http://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/miraitousi2017_t.pdf (accessed November 25, 2017). A very short summary in English was contained in a document presented by Japan at the G20 in Germany in 2017: <http://www.mofa.go.jp/files/000272312.pdf> (accessed November 25, 2017).

³⁰ Because it comes after the (1) hunter-gatherer society, the (2) agrarian society, the (3) industrial society and the (4) information society, as stated in the FIS.

this paper, the section of the document on strengthening the development and best use of human resources³¹ will be summarized.

First, a series of policies aimed at expanding investments on human resources and human resources development in order to improve individual working skills is presented. Among them, there is, for example, the revision of IT skills standards so that they respond to the needs of the fourth industrial revolution; the cooperation between industry, government and academia for the development of practical skills; the support of universities as institutions for the development of IT skills; the expansion of IT skills lifelong training; the formation of IT specialists who can lead the industry; the implementation of IT education – such as programming – in primary and secondary schools.

Moreover, in terms of promotion of working styles leading to improvements in productivity and innovation, the plans are even more ambitious and include many amendments to the existing legislation, such as: to realize a diverse and flexible way of working by further limiting long working hours, correcting unreasonable differences in treatment between typical and atypical workers, and promoting the acceptance of side jobs and independent working; to increase wages; to promote diversity; to further support female workers; to support young people through career awareness initiatives; to promote the employment of people with disabilities.

Last but not least, in terms of labor market reforms aiming at higher productivity and growth, a Japanese version of O*NET will be developed in order to collect occupational information and increase its visibility, the labor mobility of elder workers will be promoted by enhancing their career education, and a labor dispute settlement system that ensures more certainty – for example by determining a monetary compensation in case of unfair dismissal – will be designed. Further actions in terms of foreign workers, robot revolution and information exchange between citizens and the public administration are also envisaged as future strategies, although they will not be discussed in detail in this paper.

To conclude with some final observations on the Japanese plan, first it must be pointed out that many – if not all – of the proposed policies are at the same time ambitious and in need of a more concrete elaboration. Moreover, when compared to the German “White Paper” mentioned above, Japanese documents seem to be more focused on the changes that might be needed in order to prepare the society for Industry 4.0 and beyond, instead of thoroughly analyzing the problems that might be posed by such a big transformation,

³¹ Prime Minister of Japan and His Cabinet, *Mirai toshi senryaku 2017: Society 5.0 no jitsugen ni muketa kaikaku* [Strategy for Future Investments 2017: Reforms Towards the Realization of Society 5.0], cit., pp. 90-101.

although such issues might be inferred from the proposed policies. Finally, how much this new model actually matches – or at least could be compatible with – the current Japanese labor market is a question that remains unanswered.

Regarding the latter, in particular, it must be noted that the services sector is the one that is expanding the most in Japan, now covering more than 70% of the employment.³² It is true that such a broad category includes both routine and non-routine tasks in the definition by Frey and Osborne, but research shows³³ that for some reasons the skills that are relatively more requested by this sector – at least in Japan – are medical knowledge, cleanliness, qualifications and certificates related to the job, likeability, social intelligence/good manners, human skills – *i.e.* the ability to create good relationships –, speaking skills – *i.e.* the ability to speak in a comprehensible way –, and reliability. Instead, in a quite counter-intuitive way, foreign language skills, mathematical skills, computer skills, the ability to innovate and leadership seem to be relatively less appreciated. The whole picture, therefore, seems to be quite different and somewhat distant from the governmental expectations.

6. Conclusions

Keynes wrote in the thirties that he imagined a future in which people would work for a maximum of fifteen hours a week.³⁴ All the remaining time could be dedicated to improving themselves. As a matter of fact, in the past, self-development was a prerogative of wealthy people who did not need to work, but it could be said that one of the promises of economic development was to increase the general accessibility of a way of living once reserved only to some. However, that pact has been kept only to a certain extent. In some cases, it could even be said that ICT had a negative impact on human lives, since information management has gradually become more and more difficult and technology has actually deprived people of their spare time, instead of ensuring that they can enjoy a more comfortable life.

Therefore, in a way, it could be said that Society 5.0 is an attempt to regain control on such innovations and make them serve the good of the people. What can be considered positive in the Japanese approach is that it did not

³² S. Matsumoto, *Capabilities, Aptitudes, Consciousness and Behavior Required in Service Industries: From the Data Analysis of "50,000 Workers Web Occupational Trend Survey,"* in *The Japanese Journal of Labour Studies*, 2016, No. 666, 40-57.

³³ S. Matsumoto, *Capabilities, Aptitudes, Consciousness and Behavior Required in Service Industries: From the Data Analysis of "50,000 Workers Web Occupational Trend Survey,"* cit., p. 47.

³⁴ Later reprinted as J. Keynes, *Economic Possibilities for our Grandchildren*, in *Essays in Persuasion*, W. W. Norton & Co., New York, 1963.

limit its view only to the industry, but it embraced the society as a whole. This intuition is present also in Europe, but it is split in a number of separate projects that were developed over time. It might be a good idea, then, in terms of governmental planning, to connect all the dots. Moreover, the Japanese approach shares with the European counterparts a positive focus on empowering workers in the medium and long term, although the feasibility of such strategy remains an open question, considering the many issues that still exist.

From the latter perspective, legal mechanisms that have been put in place in order to solve other issues – such as inequalities in the workplace – could definitely be expanded and implemented more attentively in order to support any individual in her or his quest to develop and make the best use of their own skills. For example, an effective protection against discrimination and a punctual implementation of the “equal work for equal pay” principle could become real triggering factors towards Society 5.0 because they have the potential to improve the conditions of atypical workers. However, what is clear from the short overview offered in this paper is that, apart from the lack of legal tools, there is still a lack of data on the basis of which the transition to a new model of work based on employability and actual skills can be developed and analyzed. In Japan, it seems that they will try to solve the problem by creating a local version of O*NET, but the issue of the biases that might affect such databases remains.³⁵

³⁵ Although different ways of collecting data that are not based on surveys and therefore are less prone to personal biases have already been developed. See, for example, the WollyBi project, which analyses online job vacancies, instead: <http://www.wollybi.com/en/> (accessed January 12, 2018).

Individual Differences in Interpersonal Deviance and the Mediating Role of Organizational Culture

Benjamin A. Olabimitan, David E. Okurame¹

Abstract Purpose. This study aims to evaluate individual differences in interpersonal deviance and how organizational culture can mediate these differences among federal civil servants in Nigeria.

Design/Methodology/Approach. The study adopted a cross-sectional design and Purposive sampling technique in selecting civil servants from south-western Nigeria, who are the participants in this study.

Findings. The results of a multiple regression analysis revealed that individual differences collectively predicted interpersonal deviance, while a locus of control also had independent influence on interpersonal deviance. Gender was not a significant factor in interpersonal deviance and organizational culture fully mediated the influence of age on interpersonal deviance.

Research limitations/Implications. The study focused on interpersonal deviance within federal civil service in south-western Nigeria, its indicators, how organizational culture can mediate these indicators, and how management can prevent this behaviour in the federal civil service.

Originality/Value. This study will contribute significantly to the country's ongoing efforts, which are aimed at preventing deviant behaviour in federal civil service and making civil service more responsible in its duty of faithfully carrying government programmes.

Paper type. Issues paper.

Keywords: *locus of control, age, educational qualification, tenure, organizational culture and interpersonal deviance.*

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1. Introduction

An organization goes through rigorous processes of recruitment and training to function at optimum levels and have the best chance at success; whether or not this goal will be achieved depends on employees and employee's deviant behaviour. The role of civil service in the success of a government's organization is critical. Civil service functions as the engine room, the unseen hand behind government's activities, and the vital organ of a government that is essential to the sustainable socio-economic development of any nation (Anazodo, Okoye & Chukwuemeka, 2012). Acknowledging this fact has brought to the forefront a need to focus attention on factors that can impede the optimum performances within civil service and the lack of success in implementing laudable programmes of government which may result from this hindrance. One such factor that has been identified in literature is deviant behaviour in workplace (Fagbougbe, Akinbode, & Ayodeji, 2012).

Deviant behaviour in the workplace refers to the voluntary actions of organization members that violate significant organizational rules, and in doing so, threaten the well-being of the organization and/or its members (Robinson and Bennett, 1995). According to Onyeonoru (2002), it is when an employee's behaviour intends to promote personal aspirations - that differ from those of the organization - using organizational means or instrumentality, with serious consequences for the organization.

Because of the critical role of civil service to the success or failure of any government and its programmes, behaviourists focused on global organizations are becoming more interested in identifying the factors that sustain deviant behaviour in the workplace, especially in civil service; the consequences for organizations in developing economies like Nigeria are enormous (Onuoha & Ezeribe, 2011), as such behaviour can be disruptive and negatively affect the organization's prosperity (Lasisi, Okuneye & Shodiya, 2014). Studies in the past have contributed immensely in promoting sustainable and equitable economic growth, as is evident in East Asia, where civil service has been judged to play a pivotal role in fostering rapid economic development (Anazodo et al, 2012).

Deviant behaviour in the workplace has been investigated under various names, such as counterproductive behaviour, unethical behaviour, antisocial workplace behavior, organizational delinquency, and workplace deviance, to name only a few (Penney & Spector, 2005). Robinson and Bennett (1995) grouped the behaviour along two dimensions: Organizational, where the organization is harmed; and Interpersonal, where a fellow employee is the target. Each of these operates differently, yet both are counterproductive and destructive to the effectiveness of the organization.

Interpersonal deviance can occur in the form of political deviance or personal aggression. Political deviance involves workplace interaction that puts other individuals at personal or political disadvantages. Behaviours of this type include workplace incivility, showing favoritism, gossiping about co-workers, blaming co-workers or competing non-beneficially (Robinson and Bennett, 1995). Employees who are targets of such behaviour are less satisfied with their jobs, more likely to resign, and depressed or anxious.

Personal aggression, on the other hand, involves behaving in an aggressive or hostile manner towards other individuals. Sexual harassment, verbal abuse, physical assaults, sabotaging the work of co-workers, stealing from co-workers and endangering the lives of co-workers are all forms of personal aggression (Robinson and Bennett, 1995; Everton, Jolton and Mastrangelo, (2007). Employees who have been victims of aggression from co-workers have more physical and emotional health problems and are less committed to their organizations; often they are depressed and have less job satisfaction than those who have not been victims of aggression (Everton et al, 2007). Although individuals are the first and most impacted victims of workplace aggression, the organization faces the costs of these actions as well. To the organization, the costs may be in terms of tarnished reputations and increased insurance premiums (Bronikowski, 2000; Coffman, 2003), lower productivity, lost work time, inferior quality, medical and legal expenses, and a damaged public image (Fleet and Griffin (2006). In addition, these behaviours have economical, sociological and psychological implications (Omar, Halim, Zainab, Farhadi, Nasir, & Khairudin, 2011). Employees who have been the target of deviance may experience more turnover, damaged self-esteem, increased fear and insecurity at work, and both psychological and physical pain (Ferris; Spence; Brown & Heller, 2012).

For instance, Americans alone experience over 1.7 million violent victimizations at work annually, while nearly 11% of British workers reported being bullied at work every six months; the organizational costs of such behaviour are staggering (Muafi, 2011). Another study found that 33-75% of all employees have engaged in some deviant action, and as many as 42% of women have been sexually harassed at work (Robinson & O'Leary-Kelly, 1998). About 25% have reported knowing about substance abuse by fellow workers, one in every fifteen employees has been threatened with violence at work and the annual costs to organizations have been estimated to be as high as \$4.2 billion for workplace violence (Robinson & Greenberg, 1998).

In Nigeria, theft, fraud and sabotage among employees, as well as playing mean pranks, acting rudely, and arguing have been identified as some of the fastest growing deviances among Nigerian workgroups in recent years (Fagbougbe, Akinbode, & Ayodeji, 2012).

Unfortunately, interpersonal deviance remains prevalent in civil service, despite its negative impact on development (Aquino, Lewis, & Bradfield, 1999; Bennett & Robinson, 2000); hence, it continues to have serious consequences for development of the country as a whole, since civil service is responsible for the implementation of the government's laudable projects. Therefore, there is vast need for the government and for individuals to discourage and prevent interpersonal deviance within our walls.

These observations, and other negative implications of interpersonal deviance in government programmes, has led the past and present governments in Nigeria to invest billions of naira on anti-deviant behaviour agencies/institutions, such as the Code of Conduct Bureau (CCB) and its twin sister, the Code of Conduct Tribunal, set up by the federal government in 1990 to instill high level of morality in the conduct of government business and to ensure that the actions and behavior of public officers conform to the highest standard of morality and accountability. The National Strategy for Public Service Reform (NSPSR) strategy document provides a common vision and a long-term agenda - including an ethical and accountable workforce with a changed work culture - to guide the rebuilding and transformation of the Federal Public Service to a world-class standard for achieving Nigeria's Vision 20:20:20. (Adebisi, 2005; Owolabi, 2004). These agencies were in addition to a series of Civil Service Reform implemented by the government for a similar purpose. The central objective of all these initiatives, commissions and actions was to implement an ethical society in order to curb deviant behaviour in the civil service.

Despite all these government efforts, it had been observed that civil servants' involvement in interpersonal deviant behaviour continued unabated (Fagbohunbe, et al, 2012). As result of this observation, controlling the increasing prevalence of deviant behavior and the costs associated with it in civil service - and by extension, public service - has become crucial for the prosperity of public organizations and for the country at large. Even when deviants constitute a minority in organizations, the impact they have on productivity, performance, and staff morale can be colossal.

The importance of government policies and programmes, and the civil servants being the implementers of these policies and programmes, has made studying the problem of interpersonal deviance in civil service more scientifically relevant now than ever before. For if the current level of interpersonal deviance in civil service should continue unabated, Nigeria and Nigerians will continue to be at disadvantage in global business practices, which demand high ethical behaviour through the process of fair governance and responsible civil service that thus provides effective and efficient service delivery.

Even though studies have established a significant link between individual factors and interpersonal deviance (Bennett and Robinson, 2003) and that the prevailing culture in an organization could determine if an employee will engage in deviant behaviour or not, not much has been done on Nigerian civil service and on how individual differences could predict interpersonal deviance, and then how organizational culture could mediate the differences in individuals among federal civil servant.

Researches have suggested a wide range of reasons why employees engage in interpersonal deviance, ranging from negative job cognition (Lee & Allen, 2002), job related stress, dissatisfaction, and hosts of demographic variables (Muafi, 2011). Others have argued that different variables may explain different types of deviant behaviour in the workplace (Everton, Jolton, and Mastrangelo, 2007; Parks and Mount, 2005). Likewise, studies have also suggested that perceived organizational culture could mediate the influence of these factors on interpersonal deviant behaviour (Fleet and Griffin, 2006).

Individual factors, such as personality characteristics and demographic variables, are the more likely reason for interpersonal forms of deviance (Robinson & Bennett, 1995). Due to differences in the personalities of employees, it is widely believed that some people are, by nature, prone to be deviant, while others are less likely to be (Robinson & Greenberg, 1998).

Research on the locus of control and deviant behavior in the workplace have been more consistent. The internal locus of control is positively correlated with the process of making ethical decisions while the external locus of control is negatively associated with the process of making ethical decisions, and studies have linked ethical decision-making with deviant behaviour (O'Fallon and Butterfield, 2005). Thus, externals are more likely to engage in deviant behaviour compared to internals. For instance, studies on violence in the general aggression literature, as well in the work domain, have investigated the role of attributes, stress, and threat; all these variables have been found to correlate with the locus of control (Martinko, Gundlach, and Douglas, 2002). The causal reasoning perspective of deviant behaviour in the workplace (Martinko, Gundlach, and Douglas, 2002) proposes that the attributions an individual makes regarding the cause of workplace events creates emotions and behaviors that result in deviant behavior. In this relationship, individual differences either independently or synergistically affect cognitive process through attributions or perceptions, which leads to deviant behavior.

Likewise, Spector (1975) proposed the organizational frustration model, which states that the frustration of an individual results in emotional and behavioral reactions. The emotional response is anger and may result in increased psychological provocation. In response to this frustration, individuals engage in several actions, including an attempt to find alternatives that allow for the

attainment of their goal and which may result in deviant behavior directed at co-workers. Later, it was found that the locus of control moderated this relationship in such a way that individuals with an external locus of control were more likely to respond to frustration in ways relative to individuals with an internal locus of control (Storms & Spector, 1987).

However, a study has shown that personality variables accounted for only a small portion of variance in individual factors that could predict deviant behaviour (Robinson & Greenberg, 1998). Males engage in aggressive behavior more than females do (Appelbaum and Shapiro, 2006) and there has been a long-established belief that females - including business persons and students - are more ethical than males, hence less likely to engage in deviance than men. While in some studies there are no differences found between women and men, whenever there are differences, women are found to be more ethical than men (O'Fallon & Butterfield, 2005). Studies have also revealed that women are more likely to hold higher values compared to men, resulting in a lower likelihood of engaging in deviant behavior (Appelbaum et al, 2005). Males have been found to engage more in aggressive behavior in the workplace compared to their female counterparts (Appelbaum et al, 2007), and in reviewing fourteen studies that examined gender, Ford and Richardson (1994) found that seven of those studies showed that females act more ethically than males, yet there were no difference between males and females in the seven other studies.

To explain these differences in gender, the relationship between the role of moral situations and deviant behaviour has been used several times. Empirical results show that men may make more ethical decisions in situations where the moral intensity was extreme. Thomas in 1986 had earlier carried out meta-analysis of fifty-six DIT (Defining Issue Test) studies, including over 6,000 men and women. He concluded that women score significantly higher than men at every age and education level (Rest's Defining Issues Test (DIT) is an instrument often used when measuring moral development). Literature suggests that women score higher in ethical reasoning than men, and in a study on ethical training, positive effects of training were only observed in women (Ritter, 2006). Thus, it was expected that women would engage in workplace deviance less than their male counterparts.

Studies has also shown that employees with less tenure are more likely to commit deviance than those with higher tenure (Appelbaum and Shapiro, 2006; Gruys and Sackett, 2003). There are several reasons why temporary and new workers are more likely to engage in deviant acts. Most times, new employees have low status and rank in the organization's hierarchy, low wages, few opportunities for advancement, short tenure, and little chance to develop relationships, as well as being socially isolated and disposable (Greenberg & Barling, 1996). Once employees gain tenure and identify more with their

organizations, however, they are less likely to engage in theft and other deviant acts (Robinson & Greenberg, 1998). Therefore, the longer an employee is a member of an organization, the more unlikely it is that he will act unethically and engage in deviance (Appelbaum, et al 2005).

Length of education has also been implied to be an individual variable that can influence interpersonal deviance. According to VanSandt, Sheppard and Zappe (2006), an important factor in the development of moral judgment is the length of formal education. An individual with a longer length of formal education is more aware of the social world and his place in it. With each level of education attained, an individual's moral awareness increases (Vansant et al, 2006). Thus, education correlates positively to ethical decision-making, as the more education an individual possesses, the less likely it is that he will act unethically and engage in deviant acts (Appelbaum et al, 2005). Nevertheless, with recent events in public and private organizations, it is undoubtedly the managers with more education who make unethical decisions and generally engage more in interpersonal deviance. This may be connected to the fact that these deviant behaviours are related to the offices being occupied by these individuals; if the less educated employees receive similar opportunity, the rate of deviance among them may be higher, since other forms of deviant acts are still higher among the less educated workers than the more educated ones.

Age is an important individual factor in indicating interpersonal deviance, too, as older employees seems to exhibit less aggression, tardiness, substance abuse, and voluntary absenteeism, and are more likely to be honest than younger employees (Appelbaum et al, 2007). Younger members of the workforce are commonly linked to an epidemic of moral laxity, and more occurrences of theft have been found among younger employees (Greenberg and Barling, 1996); however, absenteeism related to being sick is somewhat higher among older employees than younger ones (Ng & Feldman, 2008). Surprisingly, the research on age has shown mixed results concerning ethical decision-making and workplace deviance (Appelbaum et al, 2007).

While studies have shown that these individual differences may be responsible for interpersonal deviance, studies have also revealed that organizational culture can become a crucial factor on whether or not interpersonal deviance will be expressed by members of an organization (Fleet and Griffin (2006). Organizational culture is the source of the employees' shared insights on the organization's procedures, policies, and practices. Culture determines which actions are morally correct and acceptable to the organization. Through the culture of these organizations, employees have a clear idea of behaviours that are acceptable, and an idea of how to interact with their coworkers through formal and informal socialization. An employee's intent to engage in deviant

behavior may be mitigated by an organization's culture, since specific ethical codes can discourage inappropriate behaviour (Kim, Lee, & Yim, 2016). Literature on organizational culture postulates that culture in general can have a significant influence on the commitment that employees demonstrate and can significantly reduce deviance. According to Martins and Martins (2003), global research indicates that organizational cultures create high levels of commitment to the organization and performance on job. Norms and values imposed by organizations could hinder an individual from engaging in unethical and deviant acts. What is acceptable and what is not acceptable within an organization are all embedded in organizational culture, and therefore, the culture of an organization can be an influential factor have an impact on the whole organization. The culture of an organization can be seen in values and visions of its leaders, and the experiences, beliefs and rituals of its employees, the reward and incentive system, and organizational norms about performance and behaviour (Fleet and Griffin, 2006). Based on the literature that was reviewed above, the following hypotheses were formulated and tested in this study:

Hypotheses:

1. Locus of control, age, highest educational qualification and tenure will independently and collectively indicate interpersonal deviance.
2. The culture of an organization will mediate the influence of individual differences on interpersonal deviance.
3. Men will score significantly higher on interpersonal deviance than women.

2. Method

Design and Participants

The study adopted a cross-sectional design method. 957 federal civil servants from six federal secretariats in Southwestern Nigeria were selected using purposive sampling technique. The participants consisted of 568 males (59.4%) and 389 females (40.6%). 489 of the participants ages range between 41-60 (51.1%), 227 are within the age range of 36-40 (23.7%), and 241 are within 18-35 years (25.2%). 347 (36.3%) and 610 (67.7%) have been working with federal civil service for between 5-10 years and above 10 years, respectively. Their educational levels varied thus: 141 (14.7%) possess School Leaving Certificate, 279 (29.2%) possess Ordinary National Diploma/National Certificate of Education or its equivalents and 537 (56.1%) had Higher National Diploma/Bachelor's Degree or its equivalent and above.

Measures

Locus of control was measured with Spector's (1988) 16-item Work Locus of Control Scale, designed to assess control beliefs in the workplace. The scale is scored in such a way that externals receive high scores. Sample items include: *A job is what you make of it; On most jobs, people can pretty much accomplish whatever they set out to accomplish; Promotions are given to employees who perform well on the job; It takes a lot of luck to be an outstanding employee on most jobs; People who perform their jobs well generally get rewarded.* The scale's scoring format is a summated rating system with six response choices, ranging from Disagree very much = 1 to Agree very much = 6. Externals receive high scores while internals receive low scores on the scale. The author reported a cronbach alpha of .72 for the scale, whereas the researcher in this study obtained a cronbach alpha of .68.

Deviant behaviour in the workplace can be measured by a 27-item interpersonal deviance scale developed by the researcher. The researcher obtained coefficient internal reliabilities of .78 scales. The scale is composed of seven response choices, ranging from Never = 1 to Daily = 7. Those who score high on this scale are more likely to engage in deviance behaviour directed toward co-workers than those who score low on the scale. Sample items include: *Hide files of those who have hurt you in workplace; Give into ethnic/tribal considerations when making decisions; Hoarding useful information from workers because of differences in religious beliefs; Creating unofficial factions in workplace; Intentionally lied against others; Openly embarrass co-workers at work.*

Organizational culture was measured with Deshpande, Farley, and Webster's (1993), organizational culture scale. The scale contains a total of sixteen questions, representing the sixteen possible descriptions of the culture in an organization, using a seven-point response format that ranges from Strongly disagree = 1 to Strongly agree = 7. The authors reported internal reliabilities of .82 and internal reliabilities of .79 was reported for the present study. Examples of items on the scale are: *My organization is a very formalized and structural place, established procedures generally govern what people do; My organization is very production oriented, a major concern is with getting the job done without much personal involvement; The head of my organization is generally considered to be a coordinator, an organizer or an administrator; The glue that holds my organization together is loyalty and tradition, commitment to this firm runs deep; My organization emphasizes human resources, high cohesion and morale in the firm are important; My organization emphasizes competitive actions and achievement, measurable goals are important.*

Statistics

Hypothesis 1 was tested using multiple regression analysis, hypothesis 2 was tested using *Structural Equation Modeling (SEM)* multiple regression analysis, while hypothesis 3 was also tested using t-test for independent group.

3. Results

Table 1. Summary of Multiple Regression Analysis Showing the Influence of individual differences on interpersonal deviance.

Predictors	B	T	P	R	R ²	F	P
Locus of control	-0.161	-5.035** *	< .01	0.18		7.9	<.01
Age	-0.052	-1.445	0.149		0.03	19	01
Educational qualification	-0.038	-1.173	0.241				
Tenure	0.030	0.858	0.391				

* $p < .05$, ** $p < .01$, *** $p < .001$

The result on the table showed that locus of control, age, educational qualification and tenure jointly predicted interpersonal deviance among federal government civil servants ($R^2 = 0.03$, $F(4,995) = 7.92$, $p < .001$). These variables accounted for 3% of the change observed in the self-report of interpersonal deviance among the federal civil servants. The result further showed that locus of control ($\beta = -.16$, $t = -5.04$, $p < .01$) was a significant, independent predictor of interpersonal deviance, while age ($\beta = -.05$, $t = -1.45$, $p > .05$), educational qualification ($\beta = -.04$, $t = -1.17$, $p > .05$), and tenure ($\beta = .03$, $t = 0.86$, $p > .05$) did not have significant independent influence on interpersonal deviance among the federal government’s civil servants.

Table 2. Summary of t-test for independence group showing the difference between male and female on interpersonal deviance.

		N	Mean	S.D	T	Df	Sig.
Interpersonal Deviance	Male	513	36.36	22.13	.974	955	>.05
	Female	444	35.02	20.29			

The results on Table 2 revealed that gender has no significant statistical influence on interpersonal deviance ($t(955) = .974$; $p > .05$). Though the results show that males obtained more interpersonal deviance scores (mean = 36.36) compared to their female counterpart (mean = 35.02), the difference is not significant enough to conclude that significant statistical differences exist between the two groups. Therefore, this hypothesis is rejected.

Table 3

Hypothesis 3 was tested using structural equation modeling analysis consistent with Baron and Kenny's (1986) instruction for testing mediation hypothesis. Baron and Kenny (1986) proposed that 3 simple and 1 multiple regression analyses must be carried out on each of predictors that had significant influence on the dependent variables. For mediation to be significant, the following four conditions must hold simultaneously: I. The independent variable must significantly predict the mediator when used as a dependent variable; II. The mediator must significantly predict the dependent variable; III. The independent variable must significantly predict the dependent variable; IV. Both the independent variable and the mediator must jointly/significantly predict the dependent variable and the unique contribution of the mediator must be significant in the joint prediction (Lawal and Babalola, 2016). The result summary is presented in Table 3.

Table 3: Summary of the SEM multiple regression analysis based on Baron and Kenny (1986) four step multiple regression mediation analysis showing the mediating effect of organizational *culture on the relationship between individual differences and interpersonal deviance.*

	Coef.	St.Er	β	Z	Sig
Organizational culture<- (Path A)					

Age	2.11	0.65	0.10	3.24*	0.00
Tenure	-1.30	1.03	-	-1.27	0.21
Educational Qualification	0.69	0.53	0.04	1.32	0.19
Work locus of control	-0.05	0.06	-	-0.79	0.43
			0.02		
Interpersonal Deviance<- (Path B)					
Organizational Culture	0.43	0.04	0.32	10.32** *	0.00
Interpersonal Deviance<- (Path C)					
Age	-1.95	0.97	-	-2.01*	0.05
Tenure	2.63	1.54	0.06	1.71	0.09
Educational Qualification	-0.73	0.79	-	-0.93	0.35
			0.03		
Work locus of control	-0.23	0.09	-	-2.64**	0.01
			0.09		
Total Direct Effect					
Interpersonal Deviance<- (Path C)					
Organizational Culture	-0.30	0.05	-	-6.42***	0.00
			0.22		
Age	-1.31	0.96	-	-1.38	0.17
			0.05		
Tenure	2.24	1.50	0.05	1.49	0.14
Educational Qualification	-0.52	0.77	-	-0.68	0.50
			0.02		
Work locus of control	-0.24	0.08	-	-2.87**	0.00
			0.09		
Indirect effect (specific contribution of the mediation effect)					
Interpersonal Deviance<- (Path i)					
Organizational Culture	0.00	(no	0.00	0.00	0.00

	path)				
Age	-0.64	0.22	-0.02	-2.89**	0.00
Tenure	0.39	0.32	0.01	1.24	0.21
Educational Qualification	-0.21	0.16	0.01	-1.29	0.20
Work locus of control	0.01	0.02	0.01	0.79	0.43

* $p < .05$, ** $p < .01$, *** $p < .001$

As shown in Table 3, 'Path A' showed a significant statistical effect of age ($\beta = .10$, $z = 3.24$, $p < .001$) on organizational culture, which was necessary for mediation analyses to proceed. When the independent variables were held constant, the effect of organizational culture on interpersonal deviance ($\beta = .32$, $z = 10.32$, $p < .001$) in "Path B" was also significant. The direct effect of age ($\beta = -.07$, $z = -2.01$, $p < .05$) was also associated with the mediator having direct effect on interpersonal deviance in "Path C," which was also statistically significant. In "Path C," the direct effect of age ($\beta = -.05$, $z = -1.38$, $p > .05$) was fully mediated by the introduction of organizational culture ($\beta = -.22$, $z = -6.42$, $p < .01$) on interpersonal deviance. The mediation effect of organizational culture was found to be indirectly responsible for the influence of age ($\beta = -.02$, $z = -2.89$, $p < .01$) on interpersonal deviance. The result of the sobel test demonstrated that organizational culture fully mediated the relationship between age and interpersonal deviance ($z = 3.12$, $p < .001$).

4. Discussion

The study examined the influence of individual differences (locus of control, age, educational qualification and tenure) on interpersonal deviance and the mediating role of organizational culture. This is necessary, given the fact that deviance can be disruptive to the function of an organization, and the victim of such behaviour may experience more turnover, damaged self-esteem, increased fear and insecurity at work, as well as psychological and physical pain (Ferris; Spence; Brown & Heller, 2012). Moreover, the costs of this behaviour to organizations include tarnished reputations and higher insurance premiums, among others (Bronikowski, 2000; Coffman, 2003).

Identifying the individual differences that indicate interpersonal deviance among federal civil servants and how culture could mediate these variables will go a long way in preventing interpersonal deviance in civil service, thereby reducing the vices associated with such behaviour. The study's outcome revealed that individual differences jointly predicted interpersonal deviance in

terms of locus of control, age, educational qualification and tenure, thus confirming the results of an earlier study conducted by Muafi (2011), who found a significant increase in interpersonal deviance attributed to employees' individual variables in both the United States and Australia. These results have also been supported by Fagbohunge et al (2012), whose study found a significant relationship between demographic variables and interpersonal deviance among work groups in Nigerian. This implies that the differences in individuals' locus of control, age, tenure and educational qualification all interact together to influence interpersonal deviance.

Furthermore, the results revealed an independent influence of locus of control on interpersonal deviance, and this finding is being supported by Appelbaum et al (2007), who found a significant positive relationship between satisfaction, marginal position of employees, and internal locus of control, as well as that both satisfaction and marginal position are negatively correlated with deviant behaviour in the workplace. This finding may be connected with the fact that individuals who are have a high internal locus of control are more likely to attribute success or failure in life to personal efforts, and thus, are more likely to be in control of the situation around them. Unlike those with a high external locus of control, these employees may be more satisfied with the things around them, hence they engage less in interpersonal deviance.

Despite the fact that age has been an important predictor of interpersonal deviance in past studies (Ng & Feldman, 2008; Appelbaum et al, 2007), results from this study did not reveal an independent relationship directly between age and interpersonal deviance. Educational qualification, too, could not independently sway the prediction of interpersonal deviance, which is also contrary to earlier findings (Appelbaum and Shapiro, 2006; VanSandt, Sheppard and Zappe (2006). VanSandt et al (2006) had found a significant positive relationship between morality and deviant behaviour, and later, morality was found to correlate with length of education. Nor could tenure independently predict interpersonal deviance, thereby contradicting previous studies by Appelbaum, et al (2005) and Appelbaum, et al (2007) which identified tenure as a significant predictor of interpersonal deviance.

Age, tenure and educational qualification had no significant independent prediction on interpersonal deviance, contrary to previous findings. This may be related to recent occurrences within the country, the uncertainty of the future, unstable government policy, and perceived insecurity outside secular jobs, among other factors, regardless of age, tenure or educational qualification. Due to this uncertainty, employees that are young and old, highly educated and not, have short tenure and long may not bring about significant differences among civil servants; this may worsen if such an employee scores high on external locus of control, and therefore, sees more of a bleak future in

and outside of the organization. Moreover, employees who are not even certain of life outside the organization - or if they disengage from the organization - may do things both ethical and unethical to secure a future outside of the organization. Age, education and tenure may be irrelevant in whether or not employees will engage in deviant behaviour if these employees are in an uncertain situation and do not feel secure.

The study did not find any significant differences in men and women on interpersonal deviance. Though men are scoring higher on mean scores, the differences are not significant enough to make such a conclusion and this finding is partially supported by O'Fallon and Butterfield (2005), who reviewed several studies on gender differences in workplace deviance, and found that in some of the reviewed studies, there were no differences between men and women; whenever there are differences, however, women were more ethical than men. An earlier study by Ford and Richardson (1994) reviewed fourteen studies, seven out of which revealed that females do act more ethical than males. Gender affirmation policy and gender sensitivity in workplace might have been responsible for the not very clear-cut commission of interpersonal behaviour between men and women.

Finally, when individual differences were regressed on organizational culture, the effect of age was the only statistically significant variable, which was necessary for further mediation analyses to proceed. When all these variables were held constant, the effect of organizational culture on interpersonal deviance was also significant, which was also necessary for further mediation analysis to proceed. The direct effects of age and locus of control were significantly associated with the mediators, among others, directly affecting interpersonal deviance in "Path C," and were statistically significant, though the effect of locus of control was not significant when regressed on the mediator, and hence, did not qualify for further analysis. Further analysis revealed the direct effect of age was mediated by the introduction of organizational culture on interpersonal deviance. Decomposing the mediation effect, organizational culture was found to be indirectly responsible for the influence of age and also reduced the influence of other variables on interpersonal deviance.

These results are supported by Fleet and Griffin (2006), who found organizational culture to be a crucial factor in whether or not deviant behaviour in the workplace will be expressed by members of the organization, and by Kim, Lee, and Yim (2016), whose study revealed that an employee's intent to engage in deviance may be mitigated by the organizational culture, as specific ethical codes can discourage inappropriate behavior. Although only the effect of age was fully mediated in the study, a close observation of the particular contribution of an organization's culture revealed that such a

contribution reduces the statistical value of the individual variables on interpersonal deviance.

5. Conclusion and Recommendation

The study revealed that all the individual variables examined collectively predicted interpersonal deviance among the federal civil servants in this study and that organizational culture fully mediated the influence of age on interpersonal deviance.

Regular training on need to take charge of one's own destiny should be implemented in such a way that employees will begin to see themselves as being responsible for their own personal growth and development within and outside the ministries, instead of seeing their destiny as something predetermined by forces that exist outside of themselves. Employees should be trained in such a way that they begin to see what happens to them as being decided by their own actions and inactions, thereby able to control their actions internally. This will go a long way in reducing the current rate of deviant behavior in government ministries.

Although education, tenure and age do not independently influence employees' engagement in interpersonal deviance, all of these variables jointly predicted interpersonal deviance, meaning that they had at least a little influence, even if it was not statistically significant in this study. Nonetheless, it should be seen how these variables could be controlled in order to remove or minimize their influence on interpersonal deviance in federal civil service. Employees can engage in on-site training and such training can target employees with lower levels of education in particular. Regularly workshops should also be organized for young employees on how to avoid interpersonal deviance. Mentoring could be introduced as part of these core activities aimed at reducing deviance in ministries, wherein young employees can be attached to older ones, who will guide them. This will go a long way in reducing deviant behaviour among the younger employees and become part of the culture in these ministries in the near future.

Consistent anti-deviant culture should be made visible in all federal ministries and there should be a socialization process in place that would allow all new members to become acquainted with this culture.

The scope of this study is limited to federal civil servants in Southwestern Nigeria only, which suggests that some of the findings may be limited to the extent to which such a conclusion can be drawn. Moreover, a single study like this cannot examine all the important issues that could address the menace of interpersonal deviance in government ministries; other variables such as situational factors and other dimensions of deviant behaviour in the workplace,

and organizational deviance should be explored. However, these shortcomings did not in any way affect the objectivity of this study.

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The Process towards Labour Formalisation in Ecuador over the Last Decade

Raúl Lorente Campos and Adoración Guamán Hernández ¹

Abstract

Purpose. The aim of this paper is to analyze the transition from informal to formal labour in Ecuador in the last decade.

Design/ methodology/ approach. The analysis will focus on two current challenges: the inclusion of self-employed workers and that of unpaid home workers (TNRH) in the national social security system.

Findings. Ecuador has become an interesting case with significant changes in terms of formalisation, labour market composition and the evolution of the labour and social security legal framework.

Research limitations/implications. Although significant progress, economic and labour informality is still a major issue in Ecuador, as it affects some 50% of its working population.

Originality/ value. The paper presents some proposals concerning public policies aimed at promoting formalisation and decent work by adopting a gender perspective.

Paper type. Issue paper.

Keywords: *Formalisation, Informal work, Productive Structure, Labour Policy, Social Security System.*

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1. Introduction

One of the biggest challenges in the promotion of decent employment is concerned with informal work. Aware of this situation, the International Labour Organization (ILO) has emphasised actions promoting the transition of economic and labour activity from informality to formalisation. The approval of the 204 Recommendation of the ILO on the transition of the informal to formal economy (2015) – the first international regulation specifically addressing this problem – should be seen as a guide to design and implement more effective policies for the promotion of work formalisation on a global level (Monereo & Perán 2016; Baz 2016).

Concretely, in 2013 the ILO regional office in Latin America developed the program for the promotion of formalisation (FORLAC) with the aim of assisting governments and social actors in consolidating policies and strategies to facilitate the transition from the informal to the formal economy in the region. Among other things, the program was also intended to generate and disseminate knowledge on the transition towards a formal economy.

As is well known, the promotion of formal employment is an urgent issue in Latin America and the Caribbean, where labour market informality is well rooted (Capecchi 1988; Portes, Benton & Castells, 1989). In this sense, it is estimated that around 130 million people work in informal conditions, that is 47.7% of the workers in the region (ILO 2013a).

The Ecuadorean labour market, which will be examined in this paper, confirms this trend. As we will see below, half of the population engaging in paid work operates in the informal sector. However, this state of affairs should not play down the significant progress made in the last decade. Between 2007 and 2016, the economically active population increased by 1.5 million people, and unemployment dropped to 4.4% (ENEMDU - INEC March-2017), one of the lowest rates in Latin America.

The most relevant feature is the increase in the number of those who register with social security, that has gone up by 20 percentage points. In 2006, there were 1.5 million people registered to the IESS, whilst in 2016 this figure rose to 3.5 million people. Another significant aspect that was reported in this decade is the extension of social security to non-salaried, stay-at-home workers, through the “unpaid home workers program” (TNRH).

Therefore, it is safe to argue that there have been steps towards formalization, although more must be done to promote formal and decent labour. Against this background, this paper sets out to examine paid work in Ecuador and the implementation of reforms and proposals devised to tackle informal labour. Emphasis will be given to the advisability to overhaul the national social security system in order to make it possible for all to benefit from it. The

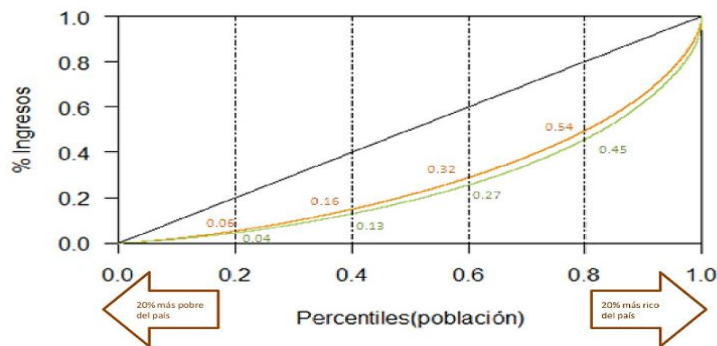
analysis will prioritise a gender perspective, which should be the starting point of any political measure regarding employment and care work.

2. The Evolution of the Labour Market in Ecuador in the Last Decade

The economic growth experienced by Ecuador in the last decade is the most relevant one in its recent history and one of the most significant in Latin America. In real terms, GDP growth was steady between 2007 and 2016, on average higher than 5% (Ecuadorian Central Bank, BCE). Importantly, this growth took place in a context of a global recession, though certainly favoured by the high price of crude oil, Ecuador's main export commodity. This economic growth has been spectacular in some years (e.g. in 2011 it was equal to 8%, whereas in 2008 and 2012 it was higher than 6%).

The process of economic growth in the country in the last ten years also featured a rather socially-inclusive character. As can be seen in Diagram 1, the Lorenz curve in Ecuador for 2015 is closer to the 45th line – which shows that income was evenly distributed among the population – than it was in 2009 (INEC - ENEMDU), pointing to a more favourable trend after this year.

Diagram 1. Lorenz curve in 2009 and 2015



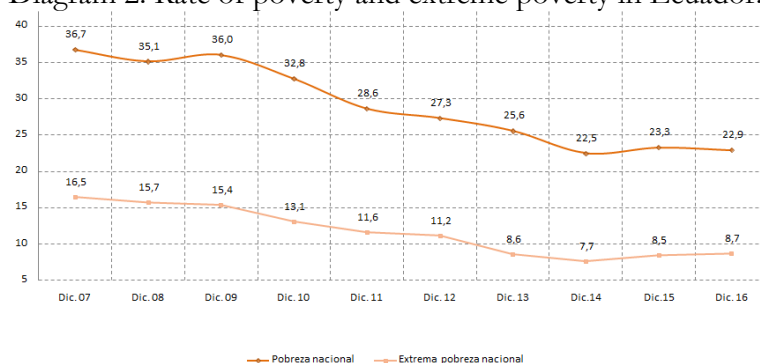
Note: the green line indicates 2009, the orange one refers to 2015.

Source: ENEMDU (INEC). Elaboration: Central Bank of Ecuador (BCE in Spanish).

The even distribution of income amongst the population is also reflected in the reduction of poverty in the country. Between 2007 and 2016, the poverty rate dropped by 13.8 percentage points – involving 22.9% of the population at the end of the reference period – with the extreme poverty rate that was almost

halved. Although the extreme poverty rate in 2007 was 16.5%, it was reported at 8.7% in 2016 (INEC).

Diagram 2. Rate of poverty and extreme poverty in Ecuador.



Source: INEC – ENEMDU. Elaborated by BCE.

Note: The share of poor, indigent or those experiencing extreme poverty is calculated as a percentage of the total population in a given year.

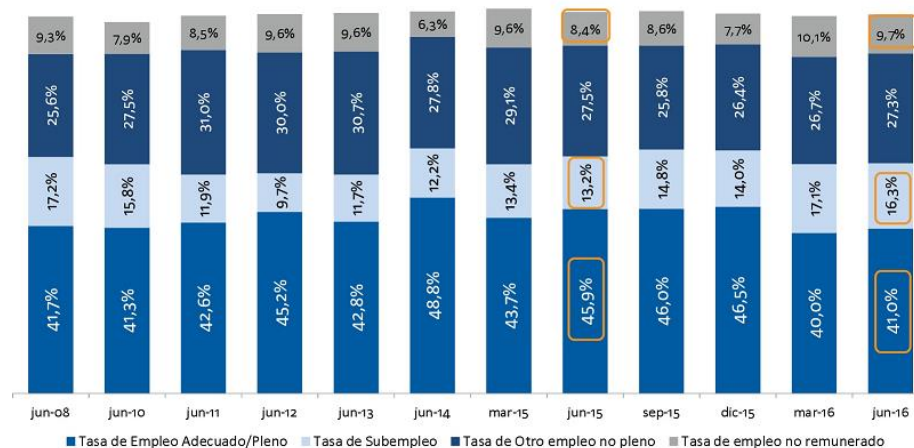
Economic growth has also affected paid work, in that it improved variables (see the following section). The table and diagram below provide some statistics concerning paid work:

Table 1. Composition of population in relation to employment: A national overview

	dec-2007	dec-2008	dec-2009	dec-2010	dec-2011	dec-2012	dec-2013	dec-2014	dec-2015	dec-2016	mar-2017
Total Population	13.682.302	13.878.704	14.081.060	14.279.685	14.478.129	14.682.556	15.872.755	16.148.648	16.404.531	16.714.929	16.738.420
Working Age Population (PET)	9.309.490	9.648.996	10.032.716	10.291.500	10.533.003	10.864.147	11.200.371	11.159.255	11.399.276	11.696.131	11.726.450
Economically Active Population	6.336.029	6.385.421	6.548.937	6.436.257	6.581.621	6.701.014	6.952.986	7.194.521	7.498.528	7.874.021	8.084.382
Employment	6.019.332	6.005.395	6.125.135	6.113.230	6.304.834	6.424.840	6.664.241	6.921.107	7.140.636	7.463.579	7.728.968
Adequate / Full Employment	2.737.158	2.858.659	2.565.691	2.875.533	2.996.566	3.118.174	3.328.048	3.545.802	3.487.110	3.243.293	3.112.953
Underemployment	1.155.872	957.978	1.071.615	889.255	706.458	603.890	809.269	925.774	1.050.646	1.564.825	1.726.030
Unpaid work	557.146	523.928	582.204	528.991	505.484	537.431	493.182	508.476	574.061	660.893	879.801
Other employment not full	1.504.000	1.649.349	1.778.578	1.765.688	2.056.875	2.018.582	2.019.279	1.924.634	1.981.205	1.978.071	1.994.537
Not Classified jobs	65.155	15.481	127.047	53.763	39.451	146.763	14.463	16.421	47.614	16.497	15.648
Unemployment	316.697	380.026	423.802	323.027	276.787	276.174	288.745	273.414	357.892	410.441	355.414
Economically Inactive Population	2.973.460	3.263.575	3.483.779	3.855.244	3.951.382	4.162.884	4.247.385	3.964.734	3.900.748	3.822.110	3.642.068

Source: ENEMDU (INEC). Own elaboration.

Diagram 3. Employment evolution (*) at the national level.



* The employment category includes waged and independent workers. Note: Non-classified workers are excluded (0.3%)

Source: ENEMDU (INEC). Elaborated by INEC.

2.1. The slow path towards decent employment

The decent/adequate employment² category includes 3,113,000 workers (March 2017), that is 40.3% of the employed population. There has been a growing trend recently, although it has been below overall employment growth. In December 2007, 2,737,000 workers with decent/adequate employment were reported out of a total of 6,019,000 workers (45.47%). This leads one to stress that at the end of this period, the share of decent/adequate employment reduced by 5 percentage points in relative terms. The growing evolution of this variable between 2008 and 2014 was offset by a reduction in the last few years, during which the economic crisis has worsened employment conditions, resulting in a negative net wage in the ten-year period under evaluation. At any rate, it is evident that this variable continued adjusting and showed a high degree of elasticity in relation to the economic cycle, especially during recessions³.

² The category of decent/adequate employment includes those workers whose salary is equal to or higher than the minimum wage, established in 2017 at 375 USD, those working the standard 40-hour workweek, and therefore are full-time workers and voluntary part-time workers (who work up to 40 hours and do not wish to work additional hours).

³ The decent/adequate employment rate stood at 46.5% of total employment in December 2015, dropping to 41.2% in December 2016 (INEC. ENEMDU).

The underemployment category includes 1,726,000 workers (ENEMDU, INEC March 2017)⁴. The “other non-full employment”⁵ category includes nearly 2 million workers (1,995,000 people). The “unpaid work” category includes 880,000 workers. As of March 2017, the unemployed in the country were 355,000 – indicating a 4.4% unemployment rate – one of the lowest in the region, though it increased in the last couple of years.

The above data reveals that Ecuador does not have a serious problem in terms of unemployment (Guamán & Lorente, 2017), but issues can be seen in relation to low-quality employment. This means that 60% of workers do not enjoy decent or adequate employment. Presently, the improvement of this figure is one of the biggest challenges faced by the Ecuadorean labour model.

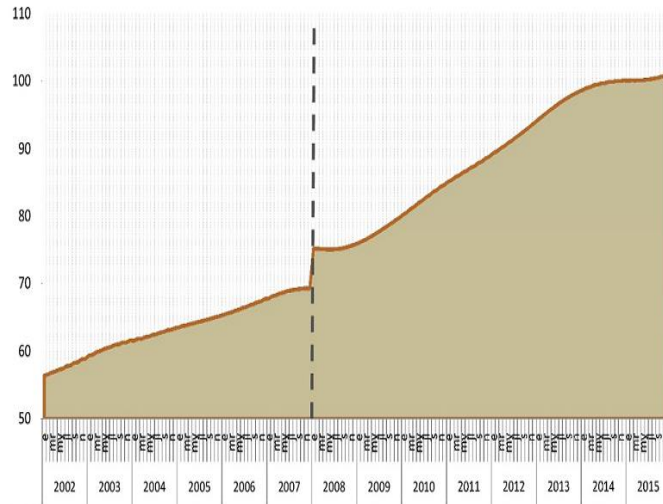
2.2. Growth in real salaries

A second factor is the significant growth in real salaries in the last 15 years in Ecuador. As can be observed in Diagram 4, between 2002 and 2016, real wages practically doubled, from an index value of 56 to 102 (in 2014 the index value was 100). The purchasing power of wages almost doubled in just ten years, indicating a reduction in the poverty index as well as growth of household consumption. This process of economic and social development in Ecuador has helped the country to expand and to train a part of the working class with the qualifications needed to strengthen the development process. This is the starting point for the transition towards full economic and social development and for poverty reduction, although it is true that implementing measures promoting the transition from the informal to the formal labour market should be an ongoing process. Paid work “formalisation” is taking place in Ecuador, as reflected in the Social Security (IESS) affiliation index in this period, yet it is necessary to accelerate and expand this process in the near future, especially considering the magnitude of the phenomenon.

⁴ This category is further divided into “underemployment due to insufficient income”, which includes those with a monthly salary below the minimum wage, who work 40 hours or more a week and are available to work additional hours, and “underemployment due to insufficiency of working time”, including those who work part-time for lack of an alternative: they work fewer hours than the standard 40 hours per week yet they wish to and are willing to work longer hours. This sub-category does not consider remuneration, although it is assumed that in most cases it does not reach the minimum wage.

⁵ This category includes those whose salary is less than the minimum wage, who work less than 40 hours a week and do not have the desire and/or availability to work additional hours.

Diagram 4. Evolution of the Real Salary. Real salary index (2014=100, 2002-2016).



Source: INEC. Elaborated by: Central Bank of Ecuador (BCE)
*2007 change of series.

Table 2. Real Salary average⁶, 2014=100

2007	69,0
2008	74,9
2009	77,6
2010	82,5
2011	86,8
2012	91,4
2013	96,9
2014	100,0
2015	100,2
2016	101,8
2017*	103,8

*4-month average

Source: Labour Ministry, BCE. Own elaboration.

2.3. Minimum Wage Growth (Unified Basic Salary)

The third significant factor is the 10% increase of the minimum wage or the Unified Basic Salary (SBU) over the 2009-2014 time-period (e.g. from USD 218 to USD 340). From that date, pay raises have been less significant (4%), standing at USD 375 in 2017. These increases have always been higher than the inflation rate, making employees' purchasing power constantly depending on this wage floor, especially between 2009 and 2014. This significant and sustained growth of the minimum wage shows the government's unequivocal willingness to dignify the wage floor and to extend this growth to other forms of remuneration. In light of the evolution of the average real wages referred to above, we can argue that the policies laid down have been successful.

In January 2017, INEC set the Average Family Basic Basket at USD 701.9 – with family income being slightly lower – estimating coverage of the basic basket at 99.72%.

⁶ This refers to the value of the average nominal wage divided by the consumer price index of the reference month. It is expressed as an index whose base is 2004 = 100.

Table 3. Evolution of the minimum wage in Ecuador (SBU)

2009	218 \$
2010	240 \$
2011	264 \$
2012	292 \$
2013	318 \$
2014	340 \$
2015	354 \$
2016	366 \$
2017	375 \$

Note: quantities in USD

Source: CONADES.

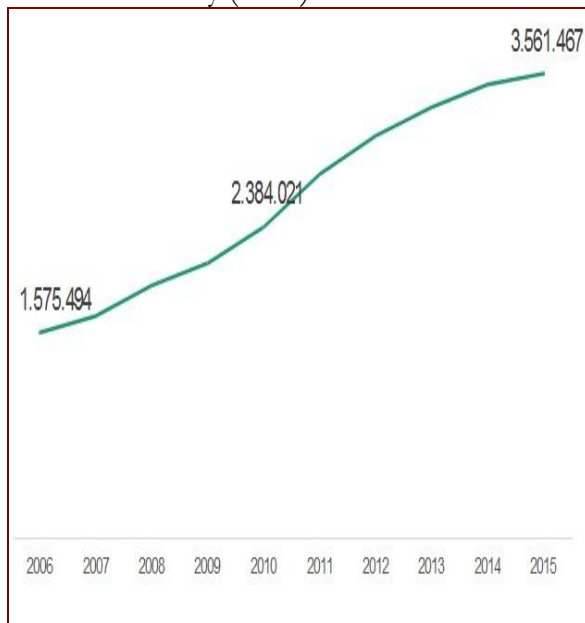
2.4. The increase in the number of those registered with the Social Security System

The fourth factor that we must take into account when analysing the Ecuadorean labour market is the upward trend regarding registration with the social security system. The effectiveness of the reforms is reflected in the qualitative and quantitative growth of the scope of the system. According to the data released by the Coordinating Ministry for Social Development (MCDS), coverage of the Ecuadorean Institute of Social Security (IESS) increased from 1.5 million members in 2006 to more than 3.5 million as of December 2015.

Practically, 2 million more workers have registered with the IESS in 10 years (+126%). In relative terms, it can be observed that in the 2003-2007 period, affiliation to social security concerned 25% of the working population, taking into account both dependent and independent workers (INEC). In 2007, 19.8% of the working population was affiliated to IESS, 9.7% to other insurances, and 70.5% did not have any social security at all. In 2016, the scenario was different, since 32.8% workers were registered with IESS, 12.4% with other social security schemes and 54.8% were not affiliate to any social security scheme. In the last year, registration decreased, as did the share of those in decent and adequate employment. Statistics relating to March 2017

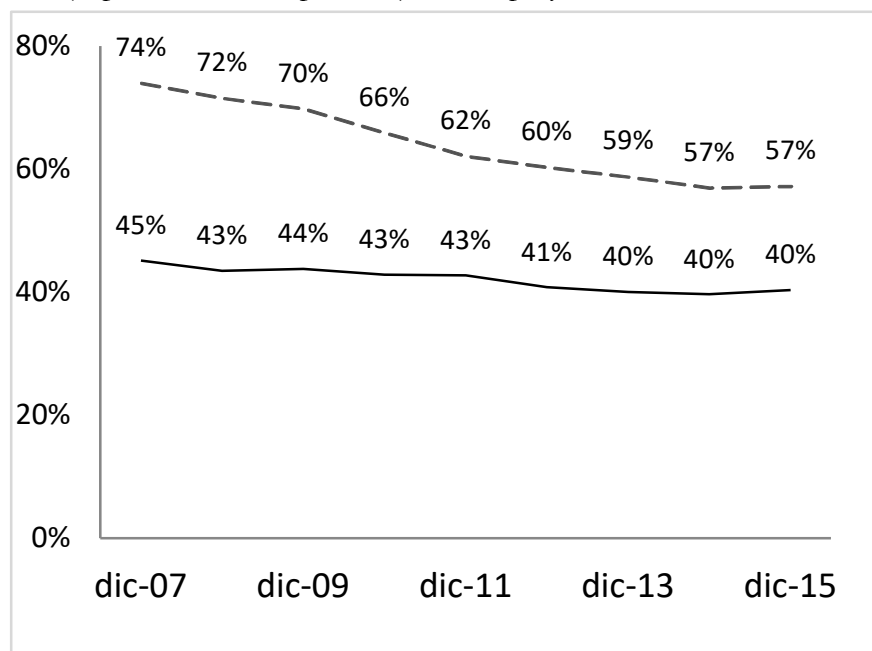
show that 29.1% of the working population was affiliated to IESS, 13.2% to other social security and 57.7% of workers lack any social security at all. Despite significant progress, the information we have shows that a number of barriers still exist in relation to informality. The National Plan for Good Living (PNBV) recalls the obligation of monitoring the affiliation of dependent workers and generating incentives and procedures for the voluntary registration of self-employed and non-paid workers.

Diagram 5. Number of active members affiliated to the Ecuadorean Institute of Social Security (IESS)



Source: administrative register of the IESS, December 2015.

Diagram 6. People in employment without social security in relation to the total (dependent or independent) and employment in the informal sector



Note: The dashed line corresponds to employment (dependent and independent) without social security in relation to total employment. The continuous line refers to employment in the informal sector. Source: ENEMDU – INEC.

From a qualitative point of view, the data shows two fundamental aspects: the low level of contributions / benefits of the system and the inequality between contributions and benefits awarded under various social security schemes, in particular between the general scheme and the special schemes concerning military and police officers (Guamán et al. 2016).

Furthermore, and although the system is based on solidarity as a guiding principle, disproportions can be seen in terms of benefit value, not only within those provided by IESS and the special regimes (the police and the army), but also within the general scheme. There is an inverse proportion between wages and benefits, which is typical of a contributory system but it is more pronounced in this case. Thus, it would be necessary to introduce redistributive mechanisms and appropriate minimum limits to ensure solidarity of the system.

From a demographic point of view, it must be taken into account that Ecuador has a suitable context for the development of a universal social security system,

with sufficient benefits linked to a decent standard of living (Guamán et al. 2016).

3. The magnitude of labour in the informal sector in Ecuador

Assessing the scope of informal work in Ecuador raises methodological issues resulting from the definition of the “informal work” category itself. According to the definition used by the INEC⁷ in the formal sector, two types of workers are identified. Firstly, employees who report working in production units with 100 employees or more, since it is assumed that these units adopt a Single Taxpayers Registry (RUC); secondly, employees reporting working in production units with less than 100 employees and that adopt a Single Taxpayer Registry (RUC). In the informal sector, this definition includes people who declare themselves as working in production units with less than 100 workers and that do not have RUC. There are also those who consider themselves as home workers, and lastly there’s a category comprising “non-classified” workers who state that they do not know whether the production units where they work have RUC or not.

In labour terms, the classification of employment in the formal economy is linked to the business or economic activity of the production unit the worker operates in, the applicable tax regime, invoices and registration with the RUC. The application of RUC in the productive unit is the only criteria enabling one to classify a worker as being part of the formal economy, and this criterion does not take into account all the possible situations relative to the worker and the social security system. Article 15 of the IESS's portfolio insurance, collection and management Regulation (Resolution number: CD 516) establishes that if the employer fails to produce a registry, the Affiliation and Coverage Unit will go on and enter worker in the system with their ID or with RUC. Assumably, even without RUC, an employer can be prompted to register his/her employees. Of course an employer with RUC may not register their workers with the social security system, acting illegally even though they are part of the formal labour sector.

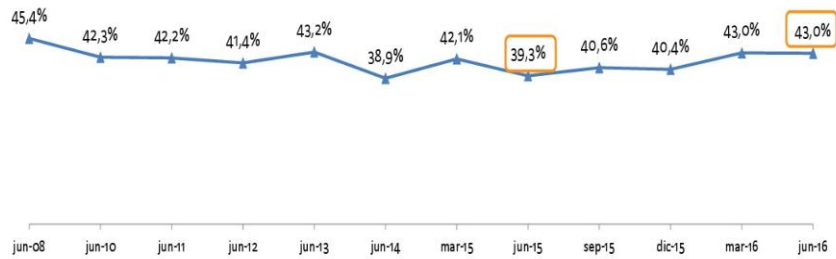
Lastly, a worker (either a dependent or independent one) operating in the informal economy is a worker who works on his/her own account and does not have RUC, or who works for/with a company which does not provide him/her with invoices for him/her services or production. Evidently, this

⁷ INEC (2015): Actualización metodológica: Empleo en el sector informal y la clasificación de los ocupados según sectores; Julio.

INEC (2016): Metodología para la medición del empleo en Ecuador; Septiembre: [http://www.ecuadorencifras.gob.ec/documentos/webinec/EMPLEO/2016/Septiembre-2016/Nota%20metodologica%20final%20actualizada%20\(Septiembre-16\).pdf](http://www.ecuadorencifras.gob.ec/documentos/webinec/EMPLEO/2016/Septiembre-2016/Nota%20metodologica%20final%20actualizada%20(Septiembre-16).pdf)

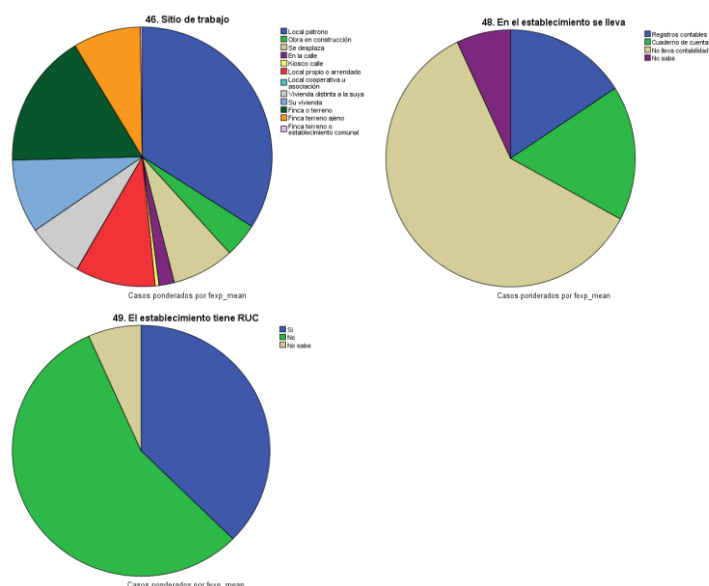
classification is not in line with the labour categories discussed above, although decent/adequate employment can be found in the formal economy and the rest of the categories (underemployment, other non-full employment, and non-classified employment) are seen as being part of the informal sector. Some available data is presented below:

Diagram 7. Ecuador's total share of employment in the informal sector



Source: ENEMDU (INEC)

Figure 8: 1. Place of work: Lugar de trabajo: variable *proxi* to informality⁸.
 2. Work establishment with Accounting Records
 3. Work Establishment with RUC



Source: INEC – ENEMDU Microdata 2016. Own elaboration.

In Ecuador, but this also happens in other nations in the region, more than 4 out of 10 workers work in the informal sector of the economy. This may represent nearly half of total employment in the country, with important manufacturing sectors which escape the work of National Accounting.

This significant share of workers operating in the informal sector, which has not diminished in recent times, also shows links with the economic cycle, as informal work is performed to deal with economic difficulties. This aspect is confirmed by the 3.7 percentage point growth rate of employment in the informal sector in 2016 due to the crisis, frustrating the progress made in the previous seven years⁹.

⁸ The workplace can be used as an indicator of the employment relationship and its degree of formality, so can the conditions of work linked to this relationship. Only 44% of the workers work in a specified place: 34% operate on the employer's premises and 10% on their own premises. Some 38% work on site, which is a particularly high percentage. 24% in the field, 8% in foreign land and 16% on land owned by an individual or a number of people.

⁹ Comparing the data of the recent trajectory of informal employment with the evolution of economic growth in Ecuador, a correlation emerges. The size of the informal sector shrunk by 6.5 percentage points over the period of economic growth (i.e. between 2008 and 2014). This reduction is due to the relative growth of formal versus informal employment, and to a certain

It also shows that informal work prevails in rural areas, as here the percentage of informal workers is twice as high as that reported in urban areas (59.3% against 29.1%).

Tough with some fluctuations, the employment rate stands at 64%. This also indicates that the problem in Ecuador, as in the rest of countries of the region, is not the volume of occupation but its characteristics, and due to this the transition towards the formal sector becomes a matter of urgency.

Table 4. Sectorization of the employed population (15 and older)

		dec-2007	dec-2008	dec-2009	dec-2010	dec-2011	dec-2012	dec-2013	dec-2014	dec-2015	dec-2016	mar-17
National	Formal Sector	41,0%	43,9%	43,7%	47,2%	46,5%	48,7%	49,3%	50,9%	50,5%	47,6%	47,0%
	Informal Sector	45,1%	43,5%	43,8%	42,8%	42,7%	40,8%	40,1%	39,7%	40,4%	43,7%	45,6%
	Domestic Work	3,3%	3,5%	3,4%	2,9%	2,3%	2,5%	3,1%	3,2%	2,7%	2,8%	2,8%
	Not Classified	10,6%	9,2%	9,1%	7,1%	8,4%	8,0%	7,5%	6,2%	6,5%	6,0%	4,5%
Urban	Formal Sector	54,1%	56,2%	57,3%	60,8%	59,9%	62,5%	61,9%	60,6%	60,8%	56,6%	57,9%
	Informal Sector	34,0%	33,2%	32,6%	31,2%	32,5%	29,8%	29,8%	30,9%	31,3%	35,2%	34,9%
	Domestic Work	4,3%	4,2%	4,1%	3,4%	2,7%	2,9%	3,6%	3,8%	3,2%	3,3%	3,7%
	Not Classified	7,7%	6,4%	6,0%	4,6%	4,8%	4,9%	4,7%	4,7%	4,7%	5,0%	3,5%
Rural	Formal Sector	15,5%	19,1%	17,2%	20,5%	19,6%	21,2%	23,6%	31,0%	28,7%	29,6%	26,7%
	Informal Sector	66,7%	64,2%	65,6%	65,7%	63,2%	62,8%	61,1%	57,6%	59,5%	60,6%	65,8%
	Domestic Work	1,5%	1,9%	2,0%	1,8%	1,6%	1,7%	2,1%	2,2%	1,6%	1,8%	1,2%
	Not Classified	16,3%	14,8%	15,2%	11,9%	15,6%	14,3%	13,2%	9,3%	10,1%	7,9%	6,3%

Source: ENEMDU (INEC). Own elaboration.

It is equally important to stress the high incidence of informality among women which somehow resembles the existing gender gap in paid work. Women in Ecuador report a significantly low employment rate, low levels of decent/adequate work, registration with social security, lower contributions and benefits, lower wages. They also experience a much greater incidence in relation to labour informality (Guamán et al. 2016).

4. Regulation Reforms towards the Formalization of Employment: Social Security as a Point of Departure towards Formal Employment

The legal framework of the social security system in Ecuador has undergone major changes in recent times. Since the enforcement of the 2008 Constitution, many reforms have been implemented aimed at building a universal and sustainable social security system including the majority of the working population.

The changes in the last decade could be seen as a combination of the following factors: a) Labour inspections; b) Compulsory affiliation to the social security

extent, to the fact that a larger number of jobs are performed in the formal sector. In the last stage, concurrently with the slowdown of economic growth and the recent crisis, informal employment is growing again. In just one year, from June 2015 to June 2016, it increased by 3.7 points.

system for certain new professional categories, i.e. domestic workers; c) Incentives to affiliate certain professional groups, among others non-dependent workers (artists and transport workers) and unpaid homeworkers (TNHR).

One of the most innovative and much-debated moves has been the recognition of unpaid homework (TNHR). Article 34 of the Constitution states that the right to social security “includes people who engage in unpaid work at home...”. The second paragraph of Article 369 of the Constitution states that “benefits for persons performing unpaid homework and care work will be financed by state contributions” establishing a shared responsibility between the family and the state (MCDS 2015: 25).

It should be underlined that the contribution of women¹⁰ in unpaid homework and care work makes up 15.4% of GDP (MCDS 2015: 11). The reasons that have been used for justifying their inclusion in the social security system are mainly two: home or care work benefits the whole society and the recognition of the right to a public pension prevents poverty, exclusion and discrimination. This new right is intended to strengthen the autonomy of home helps, most of whom are women¹¹.

In order to apply the Law for Labor Justice and Recognition of Work in the Home, the Regulation for the affiliation of persons performing unpaid home work was approved through Resolution C.D. 492 of 6 August 2015. As stated in Article 1 of the Regulation, the unpaid home worker is understood as a person who carries out unpaid work in the household, exclusively performing personal care tasks without receiving any economic remuneration and without carrying out any of the activities set out in the guidelines (MCDS 2015). Their protection is ensured only when they are not covered by other social security schemes.

The contribution base depends on family income (Family Economic Unit) which considers four levels: income less than 50% of the minimum wage; income between 50% and 100% of the minimum wage; between 100% and 150% of basic income; and above 150% of basic income. The lower contributions will be proportionally compensated by more substantial subsidies from the state.

¹⁰ Women undertake 99.8% of unpaid work of the PEI.

¹¹ The number and percentage of women is especially high among the IEP: according to the ENEMDU Survey, in December 2013, housewives were 1,834,188, equivalent to 43.18% of persons in the IEP, 99.8% of whom were women and less than 0.2% men. 66% of them were less than 50 years old. Both the number and percentage of unpaid household workers is significantly lower among the employed EAP: 542,743 people, which amounts to approximately 8% of the EAP. The percentage of women performing this work within the EAP is also lower than 69%.

However, two problematic aspects can be underlined. In the General Social Security System (SGO), access to pensions means longer contribution careers, that is the provision of 240 or more forms of contributions to IESS. This period exceeds the 15-year timeframe stated in article 29.2.a) of Agreement no. 102 of the ILO on minimum standards of social security for access to retirement or old-age benefits, and we therefore believe that there some amendments are needed.

The second aspect is a more general one and refers to the role of social security protection for unpaid work. As we have already stated, we agree with establishing regulations that specifically protect those who are mostly engaged in unpaid work, i.e. women. As stressed in the report by the Coordinating Ministry of Social Development, women are placed at a disadvantage by the “gender” labour division and by policies that increase women’s economic dependency, including at an old age, failing to acknowledge the productive contribution of domestic unpaid labour (MCDS 2015: 38 and ff.). The report also foresees a practically constant distribution of the inactive population among men and women in the next decades (70% inactive women and 30% inactive men in 2013, changing to 67% and 33% in 2053, respectively).

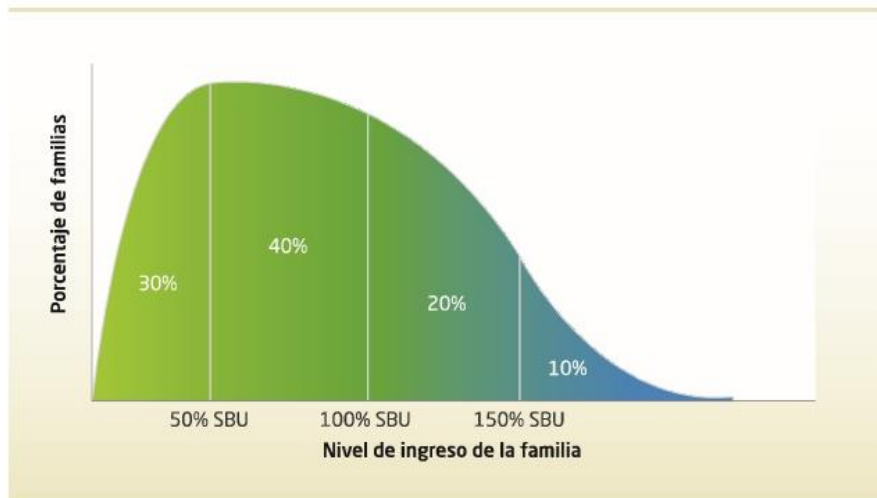
According to the report’s forecast, the proportion of women who undertake unpaid work at home does not vary significantly, going from 43% in 2013 to 41% in 2053 (MCDS 2015: 53). The stabilisation of this percentage seems problematic, since it would acknowledge a sexual division in terms of labor to the detriment of women. In order to reduce it, and in addition to other educational and labor measures, rules should be established to increase women’s pensions, so that they are motivated to engage in paid work. Examples of this include contribution repayments during certain periods in which women are out of work because child care and/or other career duties.

Diagram 9. Forecast of the evolution of people covered by membership scheme for home-based, unpaid work



Source: Cover model, ILO-COV, ILO. Elaboration: Coordinating Ministry of Social Development MCDS (2015)¹²

Diagram 10. Income distribution of families with unpaid workers in the household



Source: National Survey of Employment, Unemployment and Underemployment (ENEMDU)
 Elaboration: Coordinating Ministry of Social Development MCDS (2015)

¹² MCDS (2015): Afiliación a la Seguridad Social del Trabajo No Remunerado del Hogar: Estudio de sostenibilidad financiera y actual. Quito. MCDS Coordinating Ministry of Social Development.

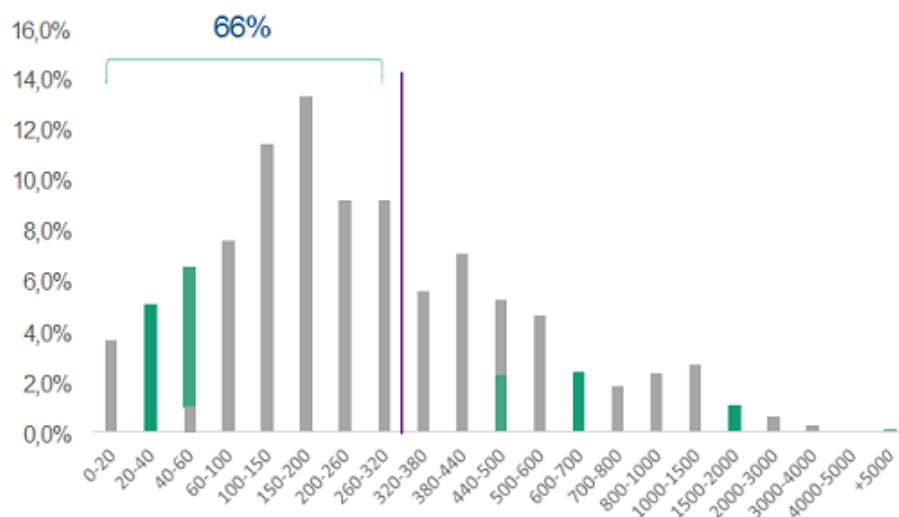
5. Some Proposals for the Future: Universality of the Social Security System as a Path towards Formalization of the Labour Market

As we have pointed out, in order to guarantee system sustainability, it is necessary to continue, and if necessary to accelerate, participation in the social security system, and thereby reducing the share of the working population in the informal sector.

In this sense, the first proposal refers to compulsory registration with social security for all non-dependent workers, first through a transition period that encourages workers to join voluntarily and shows the benefits of affiliating to the system. Obviously, self-employed or independent workers should pay their own social contributions, thus incentivizing means to reduce the costs of those who cannot afford the current rates of 20.6%, without limiting access to protection measures. In order to comply with the incentives and procedures for self-employed workers mandated by the PNBV, it should be necessary to modify current regulations to include specific measures, similarly to the ones addressing young workers laid down in Article 38 of Regulation 516 of 2016.

Contribution-based economic support will help to overcome another major obstacle. It should be noted that 70% of the country's independent workers report an average income that is lower than the basic salary of USD 375 calculated in 2017 (USD 354 in 2015). All this must be seen in a context that is not entirely negative, since Ecuador is faring well if compared with other countries in the region. On average, it reports a higher average wage and in the last ten years is experiencing significant growth of real wages, thus expanding consumption.

Diagram 11. Distribution of incomes of self-employed workers (USD)



Source: ENEMDU (INEC). December 2015.

The second proposal is to reform “Peasant” Social Security (SSC). It should be remembered that the number of agricultural workers in Ecuador, between 1.9 and 2 million in the primary sector (INEC), is affected by the 290,000 SSC leaders who are mandatorily registered with SSC¹³. This raises the challenges of expanding the base of contributors, making it as one of the main objectives that of affiliating all people working in these rural activities and not just one person per household (the leader). This would increase contributions and the rights associated with membership (e.g. pension). In this sense, we consider that in the medium term, social security affiliation could be extended through the SSC to 1,5 million out of a total of two million rural workers (the ENEMDU registers 2,016,907 employees in the “agricultural, livestock, hunting, forestry and fishing” sectors in 2016).

This would mean a 5-fold increase in the number of those receiving a social insurance in the countryside and coverage for the risks of disability, occupational accidents and old age or retirement for 1.2 million workers. The

¹³ In 2012, 289,551 people were registered as heads of families, SSC contributors. In 2015, this number increased to 350,553 (IESS, 2015). In the classification of the employees by branches of activity carried out by the ENEMDU, the following sectors: “agriculture, livestock, hunting, forestry and fishing” employed 28.6% in 2012 (27.2% in June 2016 of the total of employees in the country). This is the activity that most weighs on the occupation (also with a lot of difference with respect to the following activity, which is commerce) and a volume of employees of 1,884,245 people (2,016,907 for 2016).

latter are currently excluded from these measures and the system of family affiliation provides them with insufficient protection.

However, widening the recipient base may also require a review of the system and the amount of contributions. In other words, changes are needed as regards: a) Extension of the membership base, b) A substantial increase in the amount of retirement benefits, and c) Increased membership requirements, linking the specificity of peasants' social insurance to low income or low family income, and traditional farms.

In this sense, we suggest that the reduced sub-scheme contribution to the IESS is kept (22.5% of the basic income at a monthly rate of 2.5%), and that this is extended to farm workers, not only to the head of the household. This extension of the base of contributors to the general group of workers would increase the base of contributors to the system and would expand the retirement or old age pension to all members.

Furthermore, it is a more accurate reflection of the people under this scheme and of the community's levels of productivity. This process would help multiply the number of contributors to the SCC to between 6 and 9 people, based on the average number of members of each unit grouped under the head of household. This would lead to a significant increase in the number of contributors to the system. In a more conservative situation of 6 active members per family unit grouped under a head of household, the number of contributors increases from 350,553 contributors (IESS Register, 2015) to more than two million contributors (Guamán et al., 2016).

This more accurately reflects the rural, and largely indigenous, reality of Ecuador, and more specifically the importance of traditional agriculture. It contemplates the impact that this subsystem of the Peasant Social Security system has on the social empowerment of these communities and on the construction and development of community cohesiveness. It also helps to analyse the important work carried out by these communities in terms of food sovereignty, agricultural diversity, and helps dignify rural communities, reducing the phenomenon of urban migration that ultimately uproots, assimilates and impoverishes the population.

By way of conclusion, it should also be noted that we are examining a social security regime originally intended as a means for guaranteeing the subsistence of those families who may lack essential resources in the event of retirement, disability or death. However, this aim is no longer enough within the current constitutional framework; the SSC must evolve along the lines suggested above.

6. Conclusions

The scenario outlined above shows that the transformation that must be promoted in Ecuador's labour market is wide-ranging and must have short, medium and long term goals, with a clear progress schedule towards higher rates of decent work. This process must be adapted to the peculiarities and idiosyncrasies of the country, and to the strategic importance of employment in rural areas and the closeness of rural populations to their environment, thus avoiding the flood of rural migrants towards the urban environment. The process must also be modelled upon the particularities of indigenous communities that require specific policies and, possibly, different development initiatives.

In general, the challenge of modernising the labor market in Ecuador is mainly concerned with boosting overall participation and activity rates. First and foremost, it should increase the rate of female activity to match that of their male counterparts, overcoming gender gaps that limit women participation in the labour market.

The above conditions suggest that the problem in Ecuador, as is in the rest of the countries in the region, is the volume of employment but its characteristics, and thus it is important to lift the bulk of labour from underemployment and informal activity towards formality and regulated forms of labour relations. The country must contemplate, as one of its fundamental pillars, the affiliation to the obligatory insurance of IESS. For this to happen, it is necessary to concentrate efforts on increasing salarization – e.g. the total number of salaried workers as compared to the total employed – thereby reducing the share of low-income self-employed workers engaged in informal activities¹⁴.

In this regard, Ecuador must carry on with the policies that have promoted an unprecedented expansion in the last decade, the 10% increase in overall employment, and to whatever extent possible the expansion and acceleration of affiliation to the social security system. It is necessary to continue to encourage the voluntary affiliation of different groups of workers to the social security system (such as unpaid home workers), the obligation of affiliation for all commercial work, both dependent and independent one, and the expansion

¹⁴ The literature highlights the positive relationship between higher GDP per capita in PPT and lesser weight of self-employment. Ecuador is at an intermediate point in the context of Latin America with a 44% self-employment, a percentage similar to Colombia and Peru, lower than Bolivia (60%) and significantly higher than that of the most advanced countries: Brazil, Chile, and Argentina. In contrast, Spain's salaried rate stands at 83.14% (EPA, INE), in Ecuador according to ENEMDU's data we can approximate that it is at 56.43%, more than 25 points less, showing a disproportionate weight of self-employment in activities of very low productivity, low value-added and unprofitability.

of supervisory mechanisms and corrective sanctions laid down by the government.

This is a complicated process that requires reflection, flexibility and policies so that, in the transition from informality to formality, the least possible forms of employment are lost and destroyed. It also requires workforce mobility towards work in full and adequate employment, with all labour rights, including affiliation to the social security system.

The investment effort of both the public and private sectors in the mobilisation of all available capital resources is thus a necessity. In the last decade, Gross Capital Formation has practically tripled at constant prices, going from approximately USD 5 billion to USD 15 billion in 2007; social spending in relation to GDP has more than doubled and tax collection in relation to GDP has increased by more than two percentage points (BCE and Ministry of Finance). This data gives us an optimistic view regarding the country's potential for change and transformation.

Ecuador's economic planning, through the National Secretariat of Planning and Development and the Second National Plan of Good Living, can be seen as a long-term program that considers the transformations we have suggested above. The strategy for long-term accumulation, distribution and redistribution includes focusing on the country's production of services with high added value, expanding industrial production and reducing the relative weight of primary production, including extractivism. This radical transformation of the productive model, that should change the country's profile towards the middle of the 21st century, requires a labor market centred on workers' skills and the high value of the services and goods that they produce. The investment effort made by the state concerning different levels of the education system is certainly indented to pursue this objective.

This transition involves a change in which the primary sector, especially agriculture, loses its primacy to the benefit of the industrial sector, and especially to the tertiary sector, whose high-productivity and added value services should expand. In this sense, we believe that it is strategically vital for the country to invest primarily on workers, education, health services, tourism, financial services, telecommunications and energy. Additionally, these branches also feature better and more adequate employment ratios, meaning that improvements in these activities would lead to higher quality employment.

The agricultural and retail sector should gradually abandon the prominent role in terms of volume of employment, increasing their productivity through the incorporation of capital. Policies that have been effective in improving employment and reducing informality have to be continued. Economic growth, for example, has a positive correlation in the creation of formal employment, particularly by providing it with an inclusive qualitative character.

Other policies benefitting the worker (Dignification of the minimum wage and domestic employment -both remunerated and TNRH-, Constituent Mandate 8 about prohibition of outsourcing...) are also effective in reducing informality. Equally important is effective inspection and sanctioning policies, which penalise non-affiliation to social security (increasing the powers of the Labour Inspection and Comprehensive Criminal Organic Code). In addition, we consider it necessary to undertake reforms that limit compulsory part-time work, as well as the provision of public services such as nurseries and other care facilities for dependents, thus favouring labour participation of those who perform most of these tasks, e.g. women.

It is crucial to consider the difficulties of the formalisation process, subject to economic structural constraints: a notable structural rigidity towards the informal sector, linked to the preponderance of micro productive units and low productivity, and the varied nature of workers as far as their specialisation is concerned. It is therefore necessary to continue with public policies (education, higher education, business training, financial and microcredit services, industrial and science policy, technology and innovation) that increase the labour productivity of micro, small and medium enterprises so that they can afford the higher labour costs such as compliance with the minimum wage and the social security affiliation of their workers.

Social security measures should first of all grant workers access to the system as affiliate-contributors and then help them expand their sources of funding and access to benefits. Simultaneously, it is necessary to plan the future sustainability of comprehensive social security financing, which will possibly demand reforms and a redesign of state subsidies contributing to the system. This way, an integrated, social protection system can be put forward that combines and coordinates the contributory social security subsystem with the non-contributory subsystem.

Particular Aspects Regarding the Separation of Working Time from Rest Time for Offshore Workers Under Romanian Legislation in light of the Requirements laid down in Directive 2003/88/EC

Răzvan Anghel ¹

Abstract

Purpose. The analysis aims to clarify two practical and theoretical issues regarding the definition of working time from rest time that occurs in practice, particularly in the case of workers on marine oil drilling platforms, namely the issue of on-board rest periods and the issue of the time needed for workers' transportation to the marine drilling platform and back to shore

Design/ methodology/ approach. The analysis considers some examples in Romanian national courts case law, examined in light of Directive 2003/88 provision and CJEU case law.

Findings. Offshore workers have a unique situation that determines the organisation of working time, which must be considered when dealing with a case involving these workers. If the issue of on-board rest periods appears to be quite clear in the national case law, then the issue of time required for workers to be transported to and from the marine drilling platform seems to still be problematic for national courts, especially since there is an ongoing scientific debate about whether and when travel time should be considered working time, according to CJEU case law.

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Research limitations/implications. As of right now, there are too few cases regarding offshore workers, particularly cases that focus on the organisation of working time. The cases that do exist mainly deal with salary rights rather than the employer's obligation to respect the maximum working time or the minimum rest time; thus, those issues are only dealt with incidentally.

Originality/value. This analysis contributes some clarifying details on the boundaries of working time and rest time for offshore workers. Furthermore, it emphasises the important distinction between the legal regime of working time for the purpose of health and security and the legal regime of working additional overtime for the purpose of salary rights determination.

Paper type. Issues paper.

Keywords: Romania, offshore workers, working time, rest time, travel time

1. Introduction

The situation of offshore workers presents a discrepancy in the normal organisation of working time. Often these employees cannot return to their own residences at the end of their average work hours, as going to the workplace involves a means of transportation that is not available to all employees, some of whom have no options for reaching the workplace and are required to attend special training sessions for transport safety (naval or air).

As a result, there have been issues concerning the differentiation of working time from rest time during periods in which the employee does not carry out the activity stipulated in the individual employment contract, when they are merely at the workplace or on their way to work.

2. The notion of offshore activity and offshore worker

Directive 2003/88/EC on certain aspects of the organisation of working time² defines offshore activity because it is included among those activities for which EU Member States may introduce derogations.

Under Article 2 (8) of the Directive, offshore activity is defined as follows: “work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel.”

² OJ L 299, 18.11.2003

For a complete understanding of this definition, there are the relevant provisions of Directive 2013/30/EU³, which defines the offshore concept at Article 2 (2) as “situated in the territorial sea, the Exclusive Economic Zone or the continental shelf of a Member State within the meaning of the United Nations Convention on the Law of the Sea.” This definition is reproduced and continued in Article 2 (24) of Law 165/2016 on the safety of offshore oil operations⁴ with some explanatory elements⁵. At the same time, Directive 2013/30/EU also contains more definitions establishing the notion of offshore installation (in article 2 p.(19),(20),(21) (a), (b), (c))⁶.

Directive 2003/88 does not define the concept of an offshore worker. However, such definition is found in Regulation (EU) 2016/399⁷ which, at Article 2 (20), defines the offshore worker as “a person working on an offshore installation located in the territorial waters or in an area of exclusive maritime economic exploitation of the Member States, as defined under the international law of the sea, and who returns regularly by sea or air to the territory of the Member States.”

³ On safety of offshore oil and gas operations, *OJ L 178, 28.6.2013, p. 66–106*

⁴ Published in M.Of. nr. 572/28.07.2016;

⁵ According to this definition offshore means “located in the inland maritime waters, the territorial sea in the contiguous zone and in the exclusive economic zone or on the Black Sea continental shelf under the jurisdiction of Romania, within the meaning of the United Nations Convention on the Law of the Sea concluded at Montego Bay Jamaica) on December 10, 1982, ratified by Law no. 110/1996”.

⁶ Article 2 of Directive 2013/30 contains the following definitions:

(19) ‘installation’ means a stationary, fixed or mobile facility, or a combination of facilities permanently inter-connected by bridges or other structures, used for offshore oil and gas operations or in connection with such operations. Installations include mobile offshore drilling units only when they are stationed in offshore waters for drilling, production or other activities associated with offshore oil and gas operations;

(20) ‘production installation’ means an installation used for production;

(21) ‘connected infrastructure’ means, within the safety zone or within a nearby zone of a greater distance from the installation at the discretion of the Member State:

(a) any well and associated structures, supplementary units and devices connected to the installation;

(b) any apparatus or works on or fixed to the main structure of the installation;

(c) any attached pipeline apparatus or works;

⁷ of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), *OJ, L 77/1 of 23.03.2016;*

3. Special regulation of the working time of offshore workers

According to Article 17 (3) (a), Directive 2003/88 allows for Member States to derogate from Articles 3-5, 8 and 16⁸ in the case of activities where the worker's place of work and his domicile are remote from one another, such as offshore activities, and Article 20 (2) allows Member States to extend the reference period in Article 16 (b)⁹ to 12 months for workers principally engaged in offshore activities.

The derogations referenced in Article 17 (3) may be established by laws and regulations, collective agreements or other agreements concluded between the social partners – however, they must be expressly determined by the Member States as this article itself is not sufficient enough to exclude offshore activity from the application of the directive provisions. In several situations, the CJEU has determined that the provisions of Article 17 on derogations imply the manifestation of the State's will to exclude some activities from the application of the provisions of the Directive, and they are not sufficient in and of themselves to be opposed to workers¹⁰, by the employer or by the national courts.

It should be emphasised that Directive 2003/88 does not allow for derogations from the provisions of Article 2, which defines working time. As a result, collective agreements or even state regulations cannot establish other definitions of working time for the offshore workers, either expressly or implicitly, by declaring that the working time of such workers exclude or include certain periods. Subsequently, the definition of a period as working time or rest time must be made in accordance with Article 111 of the Romanian Labour Code as interpreted in compliance with the definition at Article 2 of Directive 2003/88 and CJEU case law.

For offshore activity in Romania, the organisation of working time regulation is encompassed by the provisions of Order no. 822/2007 of the Ministry of

⁸ regarding daily rest, break time, weekly rest, night work and reference periods;

⁹ Regarding maximum weekly working time;

¹⁰ CJUE judgement (Second Chamber) of 21 October 2010 in the case C - 227/09 in the procedure regarding *Antonino Accardo e.a. vs. Comune di Torino*, par.46 and 51; In this view, CJUE stated that “*where European Union law gives to Member States the option to derogate from certain provisions of a directive, those States are required to exercise their discretion in a manner that is consistent with general principles of European Union law, which include the principle of legal certainty. To that end, provisions which permit optional derogations from the rules laid down by a directive must be implemented with the requisite precision and clarity necessary to satisfy the requirements flowing from that principle*”. Judgement of the Court (Second Chamber) of 21 October 2010 in the case C - 227/09, cited, par.55;

Economy and Finance¹¹, which establishes that by means of collective bargaining, the following shall be set for the offshore workers: working time, working hours and working conditions, according to the legal provisions. It is significant that the order, in accordance with Directive 2003/88, does not permit establishing a notion of working time itself by means collective bargaining.

It is also noteworthy that this normative act defines offshore work in Article 1 by assuming the definition of offshore activity is contained in Article 2 (8) of Directive 2003/88.

Therefore, in these respects, collective labour agreements concluded by each offshore employer and the unions governs the organisation of working time for offshore workers.

4. Specific issues related to the delimitation of working time from rest time during the activity on-board marine oil drilling platforms

In judicial practice, two specific issues have been identified regarding the delimitation of working time from rest time for offshore workers in litigation related to the work carried out on oil drilling platforms:

- The first problem was qualifying the periods during which the worker is not planned to work and does not work but is merely on board the drilling rig as working or rest time;
- The second problem was qualifying the periods during which the worker is transported to the marine platform or to the shore and the training period required for that purpose as working or rest time.

4.1. General aspects of working time organisation on-board marine oil drilling platforms

Examples of working time organisation on-board marine oil drilling platforms are provided in court rulings from cases concerning wage claims. Thus, in a collective labour agreement concluded by a company operating offshore oilfield operations, a 12-hour shift work program was established for a period of 14 days, including Saturdays and Sundays, followed by a 14-day free pay period and a 15% turn-over payment¹²; for the employees to whom this organisation of working time is applied, Saturdays and Sundays are normal working days, so their salary is determined on the base of its normal rate, the

¹¹ on the organisation of working time for offshore staff , published in M.Of. no. 537/08.08.2007;

¹² Facts presented in the reasoning of civil sentence no. 3704/08.04.2016 of Bucharest Tribunal – 8th Section for labour litigations and social security cases, available at <http://www.rolii.ro/hotarari/587e9e07e490096c2700442d>;

continuous shift allowance granted to them representing the consideration for the work done on Saturdays and Sundays as mentioned¹³. For these employees, the additional work is only the work done “over the turntable,” this being determined as the difference between the number of productive hours to be achieved according to the turntables of that month - with possible adjustments - and the number of hours worked by the employee during that month¹⁴. This form of offshore employees' working time organisation is common to petroleum exploitation, and similar collective labour agreements are also concluded in other countries¹⁵.

In this way, the employees perform 4 additional working hours a day for 10 working days, i.e. 40 hours plus an additional 48 hours in 4 days of weekly rest. They receive 8 free hours in 10 working days within the following 14 calendar days and so they have 80 free hours in compensation, respectively. This results in 8 hours of unpaid additional work for which the employees receive a 15% increase in the monthly salary, calculated at 168 hours, although a minimum 75% increase should be granted for only 8 hours according to Article 123 (2) of Labour Code – and that represents a higher amount so that no additional salary entitlements are to be paid¹⁶.

4.2. The issue of inactive periods when the worker is on board the marine drilling platform

The problem arose because of offshore workers' claims that the entire 24-hour period of a day should be considered working time, and therefore, the period exceeding 8 hours per day should be paid as overtime, since they remain at the workplace - that is, the marine platform - even though they are not working, nor are they scheduled to work or perform an on call service; but for reasons that concern the work safety or needs, they may be required at any time to intervene.

¹³ As it results from the reasoning of the civil decision no.510/CM of 16.11.2016 of Constanța Court of Appeal, 1st Civil Section, ECLI:RO:CACTA:2016:024.000510;

¹⁴ Constanța Court of Appeal, 1st Civil Section, civil decision no. 130/CM of 05.04.2017, ECLI:RO:CACTA:2017:024.000130 available at. www.rolii.ro;

¹⁵ For example item 3.0 of Offshore Agreement related to offshore oil operations applicable from 01 May 2014 to 30 April 2016 concluded between social partners in Norway, available at <https://nelfo.no/Documents/Norsk%20Teknologi/Arbeidsliv/Offshore%20Agreement%202014-2016.pdf>, accessed at 15.10.2017;

¹⁶ Constanța Court of Appeal, 1st Civil Section, civil decision no.461/CM of 13.06.2012, Constanța Court of Appeal, 1st Civil Section, civil decision no. 130/CM of 05.04.2017, ECLI:RO:CACTA:2017:024.000130; Constanța Court of Appeal, 1st Civil Section, civil decision no.510/CM of 16.11.2016 ECLI:RO:CACTA:2016:024.000510 available at. www.rolii.ro

Particularly, this problem has arisen in the case of medical staff providing specialised assistance on board the marine drilling platforms, in which case, additionally, the CJEU's case law on the status of physicians performing on-call duty in the medical unit is invoked.

In the judicial practice, such claims were rejected on account of the fact that the employees worked in the shift program established under the collective labour agreement. In addition, they did not provide additional work¹⁷ being the case of an unequal work program defined by art.113 par.2 of Labour Code and carried out under the conditions established in art.114 par.2 of Labour Code with regards to the weekly working time taken together with art.114 par.4 of Labour Code, meaning that the reference period for which the working time exceeds 48 hours, including overtime, is set at 12 months¹⁸. From this perspective, it is necessary to analyse the qualification of periods during which the employee is at work without performing any activity.

Firstly, in the SIMAP case¹⁹, the Court of Justice has established that the entire period during which the medical staff performs on-call duty must be regarded as working time, including intermittent periods of inactivity - provided that the worker is at work - but should not be considered as working time and, consequently, should be included in the rest period, the time for home on-call duty. Thus, the Court held that “even if the activity actually performed varies according to the circumstances, the fact that such doctors are obliged to be present and available at the workplace with a view to providing their professional services means that they are carrying out their duties in that instance.”²⁰

In other cases, the Court then held that periods of on-call duty at the workplace constitute working time, the reason being that, in such a situation, the worker is at the employer's disposal and exercises his function or duties²¹.

¹⁷ Prahova District Court, 1st Civil Section, civil sentence no.1249/24.04.2016 (the appeal was rejected by Ploiești Court of Appeal - 1st Civil Section with the civil decision no.2679/07.12.2016, ECLI:RO:CAPLO:2016:018:002679); Bucharest Court of Appeal 8th Civil Section for labour conflicts and social security cases, civil decision no.1229 of 27.02.2017 and civil decision no.1427/07.03.2014, available at www.rolii.ro;

¹⁸ Constanța Court of Appeal, 1st Civil Section, civil decision no.211/CM of 19.06.2017, RO:CACTA:2017:024.000211; Constanța Court of Appeal, 1st Civil Section, civil decision no. 7/CM of 17.02.2016 available at www.rolii.ro;

¹⁹ CJEU – Judgement of 3 October 2000, in the case C-303/98, the procedure Sindicato de Médicos de Asistencia Pública (Simap) vs. Conselleria de Sanidad y Consumo de la Generalidad Valenciana, available at www.curia.eu;

²⁰ Par. 48 of the judgement;

²¹ CJUE – Sixth Chamber, *Ordinance of 3 July 2001, in the case C-241/99, the procedure Confederación Intersindical Galega (CIG) c. Servicio Galego de Saúde (Sergas)*, ECLI:EU:C:2001:371, par.33 and 34 available at www.curia.eu;

The issue of including in the working time notion some periods when the worker does not actually work and when, to a certain extent, may even rest, has only actually become a real issue in the Jaeger²² case where this theory was developed to its current extent.

It must be noted that, in order to reach this conclusion, the CJEU considered, firstly, that medical doctors should remain alert and active throughout the on-call duty period at the workplace; and during that period, they may be asked to provide medical services for as long as necessary, without any limitation, according to the legislation. As CJEU stated, the decisive factor in considering what constitutes working time, within the meaning of Directive 93/104, is that doctors are required to be available at the place established by the employer and to be able to provide their services immediately. In fact, those obligations which make physicians unable to choose the place at which they are on stand-by are recognised as being part of their duties. In the Court's view, the conclusion cannot be affected by the fact that the employer provides a room where medical staff members can remain if their professional services are not required. Finally, the Court also took into account that, in such circumstances, the periods in which the doctors' services are not required may be short and subject to frequent interruptions; as it stands, these doctors are required to intervene whenever necessary, not only in cases of emergency, but also to oversee their patients' condition or undertake administrative work²³.

It is vital to the development of the CJEU case-law that, in the aforementioned judgment, the Court states that “an employee available at the place determined by the employer cannot be regarded as being at rest during the periods of his on-call duty when he is not actually carrying on any professional activity.”²⁴

This line of case law will be confirmed and continued in the Dellas case²⁵, subsequently in the Vorel case²⁶, and incidentally in the Fuß case (2)²⁷, where it held that the period during which a firefighter is required to be present at work constitutes working time. Moreover, starting with this case, the Court has

²² CJEU – Judgement of 9 September 2003, in the case C-151/02, *Landeshauptstadt Kiel c. Norbert Jaeger*, ECLI:EU:C:2003:437, par.44-71 of the reasoning and the operative part;

²³ Par.57, 63, 70 of the judgement, available at www.curia.eu;

²⁴ Par.65 of the judgement;

²⁵ CJEU – judgement of 1 December 2005, in the case C-14/04, *Abdelkader Dellas, Confédération générale du travail, Fédération nationale des syndicats des services de santé et des services sociaux CFDT, Fédération nationale de l'action sociale Force ouvrière c. Premier ministre, Ministre des Affaires sociales, du Travail et de la Solidarité*, ECLI:EU:C:2005:728, available at www.curia.eu;

²⁶ CJEC, Fifth Chamber, Ordinance of 11.01.2007, in the case C 437/05, *Jan Vorel c. Nemocnice Český Krumlov*, ECLI:EU:C:2007:23, available at www.curia.eu;

²⁷ CJUE, Second Chamber, Judgement of 25.11.2010, in the case C- 429/09, *Günter Fuß c. Stadt Halle* ECLI:EU:C:2010:717, available at www.curia.eu;

stated as a principle that any period of on-call duty or permanent care where the worker is required to be present at the workplace must be considered working time, whether the employee is working for the duration.

In regard to periods of inactivity within the workplace, a distinction must be made between two categories: on the one hand, there are inactive periods that are inherent to the activity and the way in which it is organised, be it short interruptions²⁸ or longer periods of time, as is the case with being on-call, included in the working time²⁹; on the other hand, there are rest periods, pauses in activity that are planned and intended to restore the capacity to work. These periods of rest may be short, such as a daily break, or longer, such as those for workers involved in activities that do not allow them to return home at the end of the normal working hours.

For the latter type of inactivity, the purpose of rest, either by legal rules or by contractual clauses and internal regulations, is expressly determined. For example, given its relatively short duration, a worker may even remain at the workplace during the daily break, but not be at the employer's disposal, since the break is expressly included in the rest time and, ergo, excluded from working time, the two concepts excluding each other³⁰. In such cases, if claims are made that the time spent in the workplace is working time, the worker must prove he/she has carried out the work or, at the very least, was at the disposal of the employer and ready to resume work, contrary to the purpose of the break.

During the periods of planned interruptions, the worker may still be at work but she/he is not at the employer's disposal or in the exercise of her/his duties, even if she/he may be required to resume work; this is because the interruptions are not incompatible with any potential and exceptional interventions required by the employer in the appropriate timeframe, such as for security reasons (where the intervention itself will be taken into account when determining the duration of actual work)³¹. For this reason, such a theoretical possibility was judged to be insufficient by the CJEU in determining the inclusion of this period in the definition of working time³².

²⁸ CJEU – Forth Chamber – Judgement of 26.07.2017 in the case C-175/16, Hannele Hälvä, Sari Naukkarinen, Pirjo Paajanen, Satu Piik c. SOS-Lapsikylä ry, ECLI:EU:C:2017:617, par.42, available at www.curia.eu;

²⁹ CJEU – Judgement of 9 September 2003, in the case C-151/02, *Landeshauptstadt Kiel c. Norbert Jaeger*, ECLI:EU:C:2003:437, cited ;

³⁰ CJEU Judgement of 3 October 2000, in the case C-303/98, SIMAP, cited, par.47;

³¹ Cour de cassation, Chambre sociale, audience publique du 28.05.2014, n° de pourvoi 13-10544, audience publique du 28.05.2014, n° de pourvoi 13-13996 available at www.legifrance.fr;

³² Regarding home on call duty, judgement in the case SIMAP, cited, par.50;

For a period of time to be considered working time, all features must be met³³, and so the CJEU has already established that it is not sufficient for the worker to be at the employer's disposal (for example, by performing on-call duty) but at his own home, residence or another place of his choice³⁴. Thus, it can be concluded that it is not enough for the worker to be at the workplace for the period during which she/he is in that place to be considered working time. The condition, as deemed by the court, is that for a certain period of time to be included in the category of working time, the worker must be at the employer's disposal while being at the workplace and not working³⁵.

There are similarities found in the sectorial directives, specifically in the regulation of working time in the field of transport activities where – due to the nature of the activities that prevent the worker from going home on a daily basis – certain periods of time, which have the purpose of restoring work capacity, are included in rest time and are consequently excluded from working time, even though the worker is still present at a place imposed by the employer or at the place of work.³⁶

The problem, however, was whether such periods could be included in working time when the worker's residence is the workplace. In the Grigore³⁷ case, the Court held that, according to the interpretation of Article 2 (1) of Directive 2003/88, classifying a period as “working time” “does not depend on the provision of a tied accommodation within the range of forest within that forester's purview in so far as that provision does not imply that he is required to be physically present at the place determined by the employer and available there to his employer so that he may take appropriate action if necessary.” Based on this judgment, it can be concluded that the existence of a dwelling space within the space that constitutes a place of work is not enough to prove

³³ European Commission, Communication [...] on the organisation of working time in the sectors and activities excluded from Directive 93/104/EC, COM (1998)662 final – Explanatory memorandum, available at <http://ec.europa.eu/social/BlobServlet?docId=2933&langId=en>, p.12 pct.6; on the same opinion see Iso Del Giudice, F., Izzo, F., Solombrino, M. – *Manuale di diritto del lavoro*, ed.XXXIV, Editura Simone, Napoli, 2016 , p.244 and Roşioru, Felicia – *Dreptul individual al muncii*, Ed. Universul Juridic, Bucureşti, 2017 p.412;

³⁴ CJEU, judgement in the case SIMAP, cited, par. 50 ;

³⁵ CJEU, judgement in the case SIMAP, cited, par.48;

³⁶ For example in accordance with Directive 2002/15/EC, is a rest period for mobile workers who drive a team vehicle, the period spent standing by the driver or in the crate while the vehicle is in motion; according to Directive 2014/112/EU, in the case of inland waterway transport, the notion of "rest" also includes the rest time on board the vehicle when it moves or is at rest;

³⁷ Order of the Court (Sixth Chamber) of 4 March 2011, in the case C-258/10, Nicușor Grigore v Regia Națională a Pădurilor Romsilva - Direcția Silvică București, , par.2 of the operative part, available at www.curia.eu

that the time spent by the worker in the dwelling is neither working time nor rest time. Furthermore, the Court stated that, for the purpose of delimiting working time from rest time, the criteria already set out in its case law must be applied in this case. Relevant to this point, Advocate General Eleanor Sharpston delivered on 26 July 2017 her Opinion in Case C-518/15, which is as follows: “[t]he fact that, in any given case, a worker may be required to spend stand-by time within a radius that is relatively close to his place of work does not in my view detract from the need to have proper regard to the quality of the time he may spend; [s]ave where a worker may be able to intervene remotely, it is of the nature of that type of duty that he may be under an obligation to remain close to his place of work; [i]t is the quality of the time that is spent rather than the precise degree of required proximity to the place of work that is of overriding importance in this context.”³⁸

This evaluation must bear in mind that the situation of the embarked staff is unique and that surely, in the case of a longer mission, the embarked staff remains on-board the ship, as it may be unreasonable or too costly for the staff to leave the ship/drilling platform to go home at the end of each day and then return to the ship/platform for another period of activity.

As a result, the daily rest period of 12 hours – during which the employee is at the place of work, i.e. the marine platform, yet is not available to the employer and is not required to take action if needed under a pre-established program – does not meet the criteria for a period of duty/service at the workplace and cannot be included in the working time; thus, it constitutes rest time.

At the same time, although offshore activity is treated distinctly, drilling marine platforms are considered ships, according to art. 23 of Government Emergency Ordinance no. 42/1997 on civil navigation. Therefore, the question can be raised on whether or not in this case the definition of working time provided by Directive 1999/63/ EC could be taken into account, which would mean that it should be considered as working time only the period “during which the employee is required to do work on account of the ship.”

4.3. The issue of the time needed for workers’ transportation to the marine drilling platform and back to shore

The problem arose when some employees argued that the time used for transportation from shore – from a sea port or an airport – to the marine platform and then back should be deemed overtime and remunerated as additional work.

³⁸ Opinion of Advocate General Sharpston, delivered on 26.07.2017 in the case C-518/15, ECLI:EU:C:2017:619, par.57, available at www.curia.eu;

The local court denied this claim, stating that “Article 1 (3) of Annex no. 7 to the Collective Labour Agreement stipulates that “the transport time for [...] offshore employees is not considered working time and is therefore not included in the normal working time. In view of the specific nature of transport from the place of embarkation to the marine platform, employees will benefit for each shift from a gross allowance equivalent to the corresponding salary rights for 12 working hours on marine platforms.”³⁹

In the appeal, the court found that the time spent by the worker (employed as doctor) traveling from home to work could not be considered working time because he was not offering medical care during that period, nor was he at the employer’s disposal as Directive 2003/88/EC stipulates; and the employee did not prove that during the transportation from his home to his workplace was he bound by law to respect the employer’s directions or required to perform his regular duties⁴⁰.

Notably, the mentioned litigation regarding the employee’s claims for supplementary salary was related to overwork, and not about the employer’s obligation to respect the maximum working time or the minimum rest time. In this case, the definitions of working time and overwork at art.111 and 120 of Romanian Labour Code are applicable, both implying actual and effective work. When it comes to determining the salary rights for overwork, it appears to be irrelevant whether some periods are included as working time if the employee has not worked during that period of time.

If the litigation had been about the employer’s obligation to respect the maximum working time and the minimum rest time, it should have been applied to the definition of working time in art.2 of the Directive 2003/88 and art.111 of Labour Code as it is interpreted by European Union regulations and CJUE case law; this directive has a limited objective, namely the protection of the health and safety of the workers, and not the remuneration for working time.

It should be kept in mind that Directive 2003/88 allows for deviations from Articles 3-5, 8 and 16 in the case of offshore activities according to Article 17 (3) (a), yet does not allow for derogations from the provisions of Article 2, which defines the working time.

Under the collective labour agreement, the parties in a relationship of employment cannot establish that certain periods of time are included or

³⁹ Buzău District Court, 1st Civil Section, civil sentence no. 337/13.04.2017, ECLI:RO:TBBZU:2017:001.000337 (the appeal was rejected by Ploiești Court of Appeal with the civil decision no.2389/07.11.2017, ECLI:RO:CAPLO:2017:018.002389, available at www.rolii.ro);

⁴⁰ Ploiești Court of Appeal with the civil decision no.2389/07.11.2017, ECLI:RO:CAPLO:2017:018.002389, available at www.rolii.ro

excluded from working time – contrary to what may result from the provisions of Article 2 of Directive 2003/88 – as they would provide a different definition of working time, and so, they would implicitly deviate from the provisions from which they are not supposed to deviate.

Therefore, the qualification of a period as working time or rest time cannot be considered under the collective labour agreement; however, an assessment of the factual situation must be completed according to the provisions of art. 111 of Labour Code, interpreted in compliance with art. 2 of Directive 2003/88, as this was, in its turn, interpreted by the CJEU.

In addition, it must be kept in mind that the referenced claims were regarding the time spent by the employee during transportation from a specific place (determined by the employer and by the nature of the transportation means) to the workplace, and not from home to the work place or the departure place.

Pertaining to this, it should be recalled that in CJEU's verdict in the case of Tyco⁴¹, the Court has held that “[p]oint (1) of Article 2 of Directive 2003/88/EC [...] must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, in which workers do not have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes ‘working time’, within the meaning of that provision.”

Although the Court has examined a specific set of circumstances to reach that conclusion, it has left out some key principles. For instance, the Court dictates that the workers' commute to the clients is necessary for them to perform their assigned tasks⁴², and so, ”workers in a situation such as that at issue [...] must be regarded as carrying out their activity or duties during the time spent travelling between home and customers”⁴³. With regard to the condition that the worker should be at the disposal of the employer during this period, it was ruled that, in order to meet that condition, the worker must be in a situation wherein he is legally obliged to submit to the employer's instructions and to work for him⁴⁴; the determining factor is that the worker is required to be physically present at the place chosen by the employer and remain at the employer's disposal so they are available at a moment's notice⁴⁵. Moreover, it

⁴¹ CJUE, Third Chamber, Judgement of 10.09.2015, in the case C- 266/14, Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) c. Tyco Integrated Security SL, Tyco Integrated Fire & Security Corporation Servicios SA, ECLI:EU:C:2015:578, available at www.curia.eu ;

⁴² Par.32 of the judgement;

⁴³ Par.34 of the judgement;

⁴⁴ Par.36 of the judgement;

⁴⁵ Par.35 of the judgement;

was acknowledged in the main proceedings that the employer establishes the list of clients and the order in which they are to be observed by the workers, as well as the timetable for customer meetings⁴⁶. During these journeys, the workers are subject to the instructions of the employer, meaning they cannot freely dispose of their time and cannot devote themselves to their own interests, indicating that they are, in fact, at the disposal of employers⁴⁷.

The decisive criterion for distinguishing working time from rest time in these situations – as expressed by the CJEU in the Tyco case – can be used in other cases. As discussed earlier, this criterion decrees that the worker has no or very little options on how to reach a specific location, determined by employer, in other words the workers are subject to a high degree of constraint, and that their employer must have a high degree of control over this activity, of course, excluding the time needed to be present at the fixed workplace.

It is interesting that this CJEU verdict was considered in a case on the same subject matter as the previous one. The Court of Appeal noted that it is unnecessary to verify whether the period needed to reach the marine platform and for the obligatory training on the rules on flight safety should be included in the working time, referring exclusively to the operative part of the CJEU judgement and finding that the applicant is not in the situation of the plaintiffs in that case; this was concluded because in that case, the workers “have a fixed, habitual job and cannot be assimilated to a technician who installs and maintains operating security devices in homes and industrial and commercial premises located in the territorial area in which they are assigned, in order to appeal to the CJEU's reasoning.” However, the Court of Appeal did not proceed to examine the prospect of working time including periods designated for flight preparation, flight safety training, or alcohol tests, since the object of the dispute was not the employer's compliance with regulations concerning the period of daily rest, but salary rights. Nonetheless, the court found that for the periods designated for these mandatory activities, the compensation received by the applicant covered more than the difference in hours needed to complete the shift, excluding those periods from calculation of the time that is spent during paid work⁴⁸.

Transporting the worker to the marine platform from an airport or a sea port is done with the employer's means of transportation since, obviously, the employee could not travel by his own means of transportation to that destination. The process of taking over the activity at the platform and the

⁴⁶ Par.38 of the judgement;

⁴⁷ Par.39 of the judgement;

⁴⁸ Bucharest Court of Appeal 7th Civil Section for labour conflicts and social security cases, civil decision no.1229 of 27 February 2017, available at www.rolii.ro;

travel back to shore is marked by the same characteristics, with the worker not having the option of remaining on-board, provided that the marine platform has a reduced technical accommodation and maintenance capacity for only the two teams who work the 12-hour shift.

It is true, however, that this inactive period cannot be considered additional work, as this involves doing actual work, according to art.122 of Labour Code; furthermore, it can be remunerated according to the provisions of the collective labour agreement, since it was, after all, stated in that case⁴⁹.

On several occasions, the CJEU has indicated not only that the issue of remuneration does not fall within the scope of the Working Time Directives⁵⁰, but also it has established that inactive periods of time –including additional working time – can be remunerated at a level lower than active periods that constitute working time, since no provision in the directives imposes a certain level of pay for periods considered working time⁵¹. As a result, much less could be sustained that the inactive periods that constitute working time could be remunerated at a level higher than normal working time, as it is set for additional work. This is the consistent stance of the French Court of Cassation, which has found – even though it acknowledged that, according to the case-law of the CJEU, it should be recognised as working time during any period in which the worker remains at the employer's disposal at the workplace – in several cases that inactive working time should have no influence on wage entitlements because these periods of time cannot be considered effective working time⁵².

⁴⁹ For details see Anghel, Răzvan - Procedura soluționării conflictelor individuale de muncă – ghid pentru practicieni, Ed.C.H. BECK București, 2017 p.333; Anghel, Răzvan – Timpul de lucru și timpul de odihnă – Jurisprudența Curții de Justiție a Uniunii Europene, Universul Juridic 2017 p.123-124;

⁵⁰ E.g. CJUE Ordinance (Sixth Chamber) of 04.03.2011, in the case C-258/10, item 4 of the operative part and the case law cited in that judgement, available at www.curia.eu; see also the CJUE Judgement in the case *Dellas e.a. cied*, par.38 and CJUE Ordinance in the case *Vorel*, cited, par.32 and CJUE Judgement, Third Chamber of 10 September 2015, in the case C -266/14 par.48-49, available at www.curia.eu;

⁵¹ CJUE Ordinance (Fifth Chamber) of 11.01.2007, in the case C-437/05 and CJUE Judgement (Third Chamber) of 10.09.2015, in the case C- 266-14 par.47, available at www.curia.eu

⁵² Cour de cassation, Chambre social, audience publique du 31.10.2012, n° de pourvoi 11-12277, audience publique du 23.01.2013, n° de pourvoi 10-20413, audience publique du 07.12.2010, n° de pourvoi 09-42711/ 09-67632, audience publique du 13.06.2007, n° de pourvoi 06-42106, audience publique du 28.05.2014, n° de pourvoi 13-10544, audience publique du 30.11.2010, n° de pourvoi 09-66672, audience publique du 28.05.2014, n° de pourvoi 13-13996, available at www.legifrance.fr.

5. Conclusions

Just as other activities that prevent the employee from returning home at the end of their normal work hours, offshore activity involves periods of on-board rest that cannot be deemed working time, much less working overtime – especially in the case of employees on marine drilling platforms. At any rate, one must take into account the object of the litigation – namely, whether it is about the employer’s obligation to respect the maximum working time and minimum rest time or merely about salary rights – as the rules applied to delimitate working time from rest time differs depending on the case. The definition of working time, as described by Directive 2003/88, can include inactive periods only for the purpose of work safety and health regulation and not for the determination of salary rights, as in the latter’s case, the only relevant factor is the actual work done.

From Competitive Corporatism to Embedded Austerity: Neoliberalism and Structural Reform in Greece during the Eurozone Crisis

Geoff Kennedy¹

Abstract

Purpose. This paper examines the transformation collective bargaining institutions and the weakening of labour market protection in Greece under the auspices of austerity since the onset of the Eurozone Crisis.

Design/methodology/approach. The paper situates the reforms associated with the Troika backed Memoranda of Understanding (MOU) within the broader context of labour market reform in Greece and Europe. It examines the impact of these reforms on the Greek labour market and its system of industrial relations.

Findings. Neoliberal structural reforms have resulted in the disorganized decentralization of collective bargaining and the weakening of employment protection. Sectoral and occupational collective bargaining has all but collapsed and Greek trade unions significantly weakened. On top of this, new forms of Eurozone governance have been implemented to further entrench neoliberalism and embed austerity in national level institutions.

Research limitations/implications. The research contributes to debates on labour market flexibility and the neoliberal transformation of Southern European labour markets in the context of the Eurozone crisis.

Originality/value. Using the most recent data, the paper demonstrates how labour market and collective bargaining reforms have little to do with reducing public sector spending and more to do with disciplining Greek labour.

Paper type. Issues paper.

Keywords: *Labour market policy, Trade Unions, Collective Bargaining, Corporatism, Greece, Neoliberalism*

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1. Introduction

This paper examines the transformation and elimination of the institutions of collective bargaining and labour market protection in Greece under the auspices of austerity since the onset of the Eurozone Crisis. The crisis represents an opportunity for Greek and European capital to push through austerity measures that will shift the balance of power away from labour and enable Greek capital to institutionalize its agenda of competitiveness. After the failure of the labour market reforms of the late 1990s and early 2000s, Greek capital has been consistently pushing for more comprehensive neoliberal reforms vis-à-vis Greek workers in the context of the failures of “competitive corporatism”.

Section one discusses the socially embedded nature of neoliberalism from the perspective of critical political economy. It argues that neoliberalism is compatible with increasing levels of state intervention and re-regulation, particularly in the sphere of industrial relations. It also argues that neoliberalism corresponds with a degree of de-democratization, in which policy making is increasingly shielded from popular influence and the neoliberal agenda of competitiveness and austerity becomes embedded within institutions that are shielded from the democratic political process. Section two examines the emergence, at the European level, of a hegemonic discourse of labour market flexibility and forms of competitive corporatism as a means of institutionalizing wage restraint. Section three examines the failure of competitive corporatism in Greece during the late 1990s and early 2000s, when successive Greek governments attempted to introduce reforms to increase labour market flexibility. Section four examines the extent to which austerity measures have succeeded in radically transforming labour markets and collective bargaining institutions in Greece as a means of further subordinating labour to capital. The final section discusses the new institutions of economic governance – in particular, the proposal to create National Competitiveness Boards – that are designed to embed neoliberalism in ways that have implications for the existence of social partnerships as well as the ability of progressive governments and movements to move beyond neoliberalism.

2. Neoliberalism and Embeddedness

Much of the literature on the structural reform movements among the advanced capitalist economies is dominated by the convergence debate in comparative political economy that examines the nature of institutional change within the Liberal Market Economies (LMEs) of the Anglo-American world and the Coordinated Market Economies (CMEs) of continental Europe. Hall

and Soskice distinguish the differences between LMEs and CMEs on the basis of the extent to which economic actors were motivated by, and embedded within, competitive market relationships.² In this regard, the LMEs of the Anglo-American world are characterized by competitive market relationships while the CMEs of continental Europe are comprised of coordinated non-market relationships. As a result, a “Varieties of Capitalism” (VoC) approach has emerged that conceptualizes economic liberalization as a process of constraining the parameters of state intervention in the economy by abolishing institutions oriented towards non-market forms of coordination and strategic interaction. In this sense, liberalization is primarily understood as a form of de-regulation that presumes the removal of political, economic and legal obstacles to the competitive market forces characteristic of an LME. From this perspective, analyses of structural reform are conducted within the confines of understanding the qualitative nature of the change that such reforms initiate, with a focus on whether liberalization results in the removal of non-market methods of coordination characteristic of coordinated market economies (CMEs), and their subsequent transformation into market oriented LMEs.

However, liberalization – or *neoliberalism*, to use the term favored by critical political economists – entails not a simple process of *de*-regulation, but rather, a process of pro-market *re*-regulation.³ While Hall and Soskice acknowledge this, they neglect to conceptualize the class-based character of re-regulation and the coercive state capacity that it necessitates, choosing instead to view re-regulation as a benign process of creating new markets and establishing new market incentives for economic actors.⁴ In this sense, new regulations governing competitiveness are thought to apply equally to all economic actors in a liberalizing economy, thereby obscuring any power relations inherent in processes of neoliberalization. Indeed, in many cases, deregulation “eliminates constraints on capital’s discretion through the removal of legal or contractual restrictions at the workplace level, in the broader labor market, and in society” while imposing new restraints on the organizational capacity of labour.⁵ For

² Peter Hall and David Soskice [eds], *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001).

³ Susanne Soederberg, George Menz and Philip Cerny, “Different Roads to Globalization: Neoliberalism, the Competition State, and Politics in a More Open World,” In Susanne Soederberg, George Menz and Philip Cerny [eds.] *Internalizing Globalization: The Rise of Neoliberalism and the Decline of National Varieties of Capitalism* (London: Palgrave Macmillan, 2005).

⁴ Hall and Soskice, *Varieties*, pp. 58-59 n.

⁵ Lucio Baccaro and Chris Howell, “A common neoliberal trajectory the transformation of industrial relations in advanced capitalism,” *Politics & Society* 39, no. 4 (2011): 521-563, p. 527.

example, the neoliberal era has witnessed increasing state intervention in collective bargaining as well as increasing administrative capacity to police the rights of property.⁶ In this sense, liberalization represents not so much a removal of the state from the economic sphere, but rather, a re-orientation of the coercive nature of the state, away from earlier post-war attempts of the state to dictate the terms of a class compromise to capital, and more towards developing its capacity to discipline the working population at the behest of capital itself; what Gamble calls the “free economy and the strong state”.⁷ In this way, structural reforms both reflect and affect the balance of power between capital and labour, influence the degree of conflict between them, and impact the outcomes of those struggles.

Secondly, proponents of VoC characterize the politics of structural reform primarily in terms of coordination problems between capital and labour. It is often presumed that the failure of liberal reform is a result of an organizational inability on the part of capital and labour to align their interests in ways that create institutional complementarities; if the right institutional fix can be found, then reform coalitions can be established in order to further the process of liberalization. This obscures the antagonistic character of the politics of neoliberalism that is rooted in the structural reconfiguration of processes of capital accumulation and the shifting nature of class interests in contemporary capitalism, as well as the shift in the balance of class forces between capital and labour discussed above. The result is a privileging of “considerations pertaining to efficiency and coordination at the expense of considerations pertaining to conflicts of interest and the exercise of power.”⁸ The *struggle* between labour and capital is largely excised from the VoC literature.⁹

Furthermore, VoC’s characterization of liberalization obscures the intrinsically anti-democratic aspects of neoliberalization that are part of the process of structural reform. Critics of neoliberalism have argued that the successful implementation of the neoliberal reform project depends upon the strengthening of executive power in the face of popular opposition.¹⁰ At the very least, neoliberal policies have been increasingly insulated from the

⁶ Leo Panitch, and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms* (Toronto: University of Toronto Press, 2008).

⁷ Andrew Gamble, *The Free Market and the Strong State: The Politics of Thatcherism* (Durham: Duke University Press, 1988).

⁸ Jonas Pontusson, “Varieties and Commonalities of Capitalism,” in David Coates [ed.], *Varieties of Capitalism, Varieties of Approaches* (London: Palgrave Macmillan, 2005).

⁹ Chris Howell, “Varieties of Capitalism: And Then There Was One?” *Comparative Politics* 36, no. 1 (2003): 103-124.

¹⁰ Gamble, *The Free Market*; David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005).

democratic tendencies of contemporary politics. There is thus a tendency towards “de-democratization” under neoliberalism, in which the reform process itself entails the insulation of economic policy-making from influence by popular forces outside the sphere of neoliberal elites. In this sense, far from being a deviation from some liberal democratic norm, the “process of de-democratisation is at the heart of the socially embedded nature of neoliberalism and is central to its reproduction and durability.”¹¹

Under conditions of crisis, the strengthening of executive power at the expense of democratic forms of representation may be encouraged for the sake of furthering the neoliberal transformation of peripheral economies like Greece. And in light of the power relations involved in structural reforms, this may serve to intensify political conflict associated with neoliberalization and the intensification of competitiveness. At the same time, a new institutional architecture of governance is erected that is intended to further embed the process of neoliberalization. Indeed, as we will see below, the continued neoliberal transformation of the Greek economy is occurring in tandem with processes of de-democratization.

3. Labour Market Reform in the Eurozone

In the post-war period, protective labour market institutions were introduced in most Western European countries as a means of strengthening the position of workers vis-à-vis their employers. Centralized forms of collective bargaining, limits on collective redundancies, strong seniority provisions and legislation that extended the terms of collective agreements to non-unionized workers, all formed part of a movement responding to the surge in support for parties of the Left. Along with the development of de-commodifying welfare states, these institutions formed part of the larger European Social Model that shielded European workers from the negative aspects of capitalism associated with the liberal economies of the US and the UK.¹²

As the post-war class compromise began to break down in the 1970s, European economies began to experience rising levels of unemployment. In the 1990s, as the unemployment levels of the liberal market economies of the Anglo countries dropped below those of the continent for the first time in a generation, economists and policy makers began to identify the rigidities

¹¹ Damien Cahill, *The End of Laissez-Faire? On the Durability of Embedded Neoliberalism* (Cheltenham: Edward Elgar Publishing, 2014), p. 106.

¹² Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Cambridge: Cambridge University Press, 1990).

created by protective labour market institutions as the source of the problem.¹³ In 1994, the OECD pointed out that in the liberal market economies of the US and the UK, unemployment demonstrated “little tendency to rise over the long term”, and that “unemployment rate differentials by age, gender and skill have either narrowed or remained stable over the last decade.”¹⁴ This low unemployment, however, was accompanied by “an increase in earnings inequality and large falls in real wages for low-skilled workers.”¹⁵ The situation on the continent was quite different. In Europe, “employment growth has been generally sluggish and there are substantial numbers of “outsiders” who are excluded from gaining entry into jobs.” At the same time, European labour markets displayed levels of “wage compression” amongst employed workers, resulting in real wage gains “for all workers irrespective of skill but at the cost of a shrinking number of job opportunities for low-skilled workers and a rise in their unemployment rates, in both absolute and relative terms.”¹⁶ That the Nordic countries had, for the most part, been able to buck the trend of European unemployment despite retaining many of their traditional protective labour market institutions did not dissuade the OECD and neoliberal reformers from their liberalizing mission. By the late 1990s, even a traditionally weak liberal market economy like Ireland had attained a level of unemployment lower than Germany, prompting economists to lay the blame at the feet of “protective labour market institutions”. The problem of unemployment was most pronounced in the countries of Southern Europe. In this context, the OECD and the IMF promoted labour market reforms intended to enable greater adaptation to changing market conditions. Among the targets of reforms were: non-wage labour costs such as employer social security contributions, high minimum wages, inflexible wage formation and wage-bargaining systems, and legislated or negotiated forms of employment security.¹⁷ These protective labour market institutions, it was argued, needed to be reformed or abolished in order to eliminate the rigidities in the labour market that were to blame for high levels of unemployment and declining rates of labour market participation.

¹³ David R. Howell, Dean Baker, Andrew Glynn and John Schmitt, “Are Protective Labor Market Institutions at the Root of Unemployment? A Critical Review of the Evidence,” *Capitalism and Society* 2, no. 1 (2007): 1-71.

¹⁴ Organization of Economic Cooperation and Development, *Jobs Study* (OECD: Paris 1994), p. 55.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Organization of Economic Cooperation and Development, *The OECD Jobs Study: Implementing the Strategy* 1995 (OECD: Paris, 1995), pp. 18-21.

At the European level, the discourse of flexible labour markets was integrated into the Delors White Paper (DWP) on *Growth, Competitiveness, Employment* (1993). The DWP argued that “a large part of Europe’s structural unemployment” is the result of labour market rigidities created by “specific institutional, legal and contractual circumstances in each country.” Specifically, it singled out the “*educational system, labour laws, work contracts, contractual negotiation systems and the social security system[s]*” of each country.¹⁸ In particular, the DWP singled out the countries of Southern Europe, stating that their “laws on the conditions under which workers on unlimited contracts may be laid off need to be made more flexible, with greater assistance being given to the unemployed and with less recourse to precarious forms of employment.”¹⁹ The high threshold of social protection was considered an impediment to increasing competitiveness in the Southern European periphery. In its place, employment protection legislation was to be replaced by active labour market policies that emphasized “life-long learning” as a means of developing “human capital”. Such training would be more tailored to the market by ensuring “greater involvement of the private sector in education and/or vocational training systems and in drawing up education and training policies in order to take account of market needs and social conditions.”²⁰

Such measures, it was argued, would increase the fit between unemployed workers and the changing nature of the labour market by enhancing the human capital of the former in order to adapt more effectively to the latter. The underlying belief was that flexible labour markets would solve the bottlenecks that had come to plague the Bismarckian welfare states of the continent. Under the guise of “progressive competitiveness”, Social Democratic parties embraced the push towards labour market flexibility, considering it to be the most effective means of preserving the European Social Model.²¹ However, in their “emphasis on “reform” of benefit systems towards “active measures”, and their assumption of an immutable trade-off between job growth and labour flexibility or labour costs and the growth of jobs, both the DWP and

¹⁸ European Commission, *Growth, competitiveness, employment: the challenges and ways forward into the 21st century* (Brussels 1993), p. 15, emphasis in original. Available at: <http://publications.europa.eu/en/publication-detail/-/publication/4e6ccfb6-471e-4108-9c7d-90cb1c3096af/language-en>

¹⁹ European Commission, *Growth*, p. 17.

²⁰ European Commission, *Growth*, p. 118.

²¹ Greg Albo, “A World Market of Opportunities: Capitalist Obstacles and Left Economic Policy,” *Socialist Register* 37 (1997), 5-47.

WPSP echoed the neo-liberal positions expressed in OECD policy papers of the early 1990s.”²²

The commitment to flexibility was incorporated into the Amsterdam Treaty of 1997 despite the push by Sweden and the Netherlands for the inclusion of an employment chapter committing the EU to the policy objective of a “high level” of employment (but not *full* employment). The employment chapter called for increased coordination between member states regarding employment policies, the creation of National Action Plans for Employment and the development of “exchanges of information and best practices”. In order to allay fears of convergence, the language noted that this process of coordination “shall not include harmonisation of the laws and regulations of the Member States.”²³

Labour market reform also comprised an important element of the Lisbon Programme, which sought to make the EU “the most competitive and dynamic knowledge-based economy in the world”.²⁴ Towards this end, the 2003 report of the Employment Taskforce suggested that the discourse of Lisbon has “not been accompanied by the structural reforms needed for stable growth”.²⁵ At the European level, the report pressed governments to increase competitiveness by creating “business environments that support entrepreneurship, innovation and encourage investment in R&D and sufficient flexibility while ensuring genuine security on the labour market.”²⁶ This necessitated social mobilization around structural reform agendas, and required all relevant actors to make concessions and contributions to the reform process. In particular, workers would have to “agree to more diversified contractual and working arrangements, increased mobility, deferred exit from the labour market, wage moderation and differentiation.”²⁷ For Greece in

²² Ann Gray, *Unsocial Europe: Social Protection or Flexploitation?* (London: Pluto Press, 2004), p. 66. The WPSP refers to the White Paper on Social Policy. European Commission, *European Social Policy—A Way Forward for the Union* (Brussels, 1994). Available at: <http://publications.europa.eu/en/publication-detail/-/publication/16dfc2c0-7fc9-4079-9481-e5de54a3805a/language-en>

²³ European Commission, *Treaty of Amsterdam* (Brussels, 1997), p. 34. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A1997%3A340%3ATOC>

²⁴ European Commission, *Treaty of Lisbon* (Brussels 2007). Available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12007L%2FTXT>

²⁵ Wim Kok, *Enlarging the European Union: Achievements and Challenges*. Robert Schuman Centre for Advanced Studies (Florence: European Union Institute, 2003), p. 3. Available at: http://ec.europa.eu/enlargement/archives/pdf/kok/report_kok_en.pdf

²⁶ Employment Taskforce, *Jobs, Jobs, Jobs: Creating More Employment in Europe* (Brussels: European Commission, 2003), p. 18. Available at: <http://bookshop.europa.eu/en/jobs-jobs-jobs-creating-more-employment-in-europe-pbKE5703265/>

²⁷ Employment Taskforce, *Jobs, Jobs, Jobs*, p. 57.

particular, the report recommended a further reduction of its non-wage labour costs and the removal of barriers to part-time work. By 2005, the policy objective of labour market reform was upgraded from an implicit objective to a policy priority. However, the EU lacked the institutional mechanisms to enforce convergence around labour market flexibility. In the absence of such mechanisms, reform remained the prerogative of national governments. In the context of the lack of EU level institutional capacity to enforce compliance with these policy recommendations, the mobilization necessary to implement these reforms required incorporating labour movements into the reform process. Corporatist arrangements, particularly the new “competitive corporatism” in peripheral countries like Ireland, Portugal and Spain would play a crucial role in the mobilization around the reform of protective labour market institutions.²⁸ The new social pacts signified a substantive break from the corporatist arrangements of the post-war period. Whereas the latter were embedded within a context of Keynesian macro-economic policy, the former operated within a macro-economic policy paradigm that privileges non-inflationary policies over post-war commitments to full employment, and prioritizes neoliberal forms of competitiveness over social democratic policies of solidarity and egalitarianism. In particular, competitive corporatism comprises: the pegging of wage increases to productivity levels, often involving the abolition of wage indexation such as the *scala mobile* in Italy²⁹; the decentralization of collective bargaining regimes in the form of derogation from the sectoral level to the firm level, often resulting in the ability of firm level agreements to undermine national and sectoral standards³⁰; and the dissolution of solidaristic wage policies and the end of wage compression, resulting in increasing wage inequality in the labour market.³¹

²⁸ Martin Rhodes, “The Political Economy of Social Pacts: “Competitive Corporatism” and European Welfare Reform,” in Paul Pierson [ed.] *The New Politics of the Welfare State* (Oxford: Oxford University Press, 2001); Hans-Jürgen Bieling and Thorsten Schulten, “‘Competitive Restructuring’ and Industrial Relations within the European Union: Corporatist Involvement and Beyond,” in Alan W. Cafruny and Magnus Ryner [eds.], *A Ruined Fortress? Neoliberal Hegemony and Transformation in Europe*. (Lanham: Roman and Littlefield, 2003); Philippe Pochet, Maarten Keune and David Natali [eds.], *After the Euro and Enlargement: Social Pacts in the EU* (Brussels: European Trade Union Institute, 2010); Sabine Avdagic, Martin Rhodes and Jelle Visser [eds.], *Social Pacts in Europe: Emergence, Evolution and Institutionalization* (Oxford: Oxford University Press, 2011).

²⁹ Richard Locke and Lucio Baccaro, “The Resurgence of Italian Unions?” In Andrew Martin and George Ross [eds.] *The Brave New World of European Labor: European Trade Unions at the Millennium* (New York: Bergahn Books, 1999).

³⁰ Baccaro and Howell, “A Common Neoliberal Trajectory.”

³¹ Jonas Pontusson, *Prosperity versus Equality: Social Europe versus Liberal America* (Ithaca: Cornell University Press, 2005).

The emergence of competitive corporatism, in the context of rising unemployment and the increasingly hegemonic discourse of labour market flexibility signifies a substantive shift in the balance of power between capital and labour in favor of capital. As trade union density continued to decline throughout the late eighties and early nineties, labour movements across Europe bought into competitive corporatism to obtain admission to the policy-making process – even if all they were getting in return was some “vague hope of job growth induced by wage restraint.”³² Over the course of the 1990s, unions across Europe scrambled to adjust to the changing macro-economic context of post-Maastricht integration, high unemployment, diminishing union capacities and a renewed employer offensive seeking greater labour flexibility.³³ Industrial relations systems across the continent became increasingly decentralized to the point where they converged around a neoliberal model of competitiveness.³⁴ It is in this context that Greece enters into a period of attempted reforms.

4. Collective Bargaining and Labour Market Reform in Pre-Crisis Greece

In the mid-1990s, Greece exhibited levels of economic growth above the Eurozone average and labour costs that were among the lowest in the Eurozone. However, unemployment levels continued to rise, peaking at just below 12% in 1999 before declining again over the next decade, until the onset of the Eurozone crisis in 2009. And while labour productivity was on the rise, Greek workers still trailed far behind their German counterparts, who had been implementing a policy of wage repression and running annual trade surpluses – what Flassbeck and Lapavitsas refer to as a kind of mercantilism – since the early 2000s.³⁵ Rising unemployment in the late 90s was used by the modernizing tendencies within PASOK³⁶ as the primary rationale for liberalizing pensions and labour markets through the establishment of a social partnership between the state, capital and labour. In other Southern European

³² Jurgen-Bieling and Schulten, “Competitive Restructuring,” p. 244.

³³ Andrew Martin and George Ross [eds.] *The Brave New World of European Labor: European Trade Unions at the Millennium* (New York: Bergahn Books, 1999).

³⁴ Baccaro and Howell, “Neoliberal Trajectory.”

³⁵ Heiner Flassbeck and Costas Lapavitsas, *Against the Troika: Crisis and Austerity in the Eurozone* (London: Verso Books, 2015). Data on German and Greek labour productivity taken from the ILO’s Key Indicators of the Labor Market database: ILO KILM index: <http://www.ilo.org/global/statistics-and-databases/research-and-databases/kilm/lang--en/index.htm>

³⁶ The Pan-Hellenic Socialist Movement.

countries, social pacts were the means of getting organized labour to consent to the dismantling of the forms of employment protection that had come to characterize the Mediterranean model. In Greece, liberalization met with resistance from the trade unions, particularly after the communist affiliated trade union grouping, PAME³⁷, left the General Confederation of Greek Workers (GSEE) in 1999.

Labour market reforms were put on the agenda by the new PASOK government in 1996 in order to meet the Maastricht criteria for EMU. The Confidence Pact of 1997 established a tripartite social dialogue between the trade unions, employer associations and the state. On the agenda were labour market reforms aimed at reducing unemployment, improving social protection and increasing competitiveness. The most contentious proposals were the introduction of part-time labour in the public sector, the recalculation of working time and the introduction of Territorial Employment Pacts (TEPs) that could set wages below the standards established in the National Collective Agreement. Private sector unions rejected the proposal that TEPs could undermine national wage levels while public sector unions in the Civil Servants' Confederation (ADEDY) opposed the increase in part-time employment. Both federations proposed a 35-hour workweek with no reductions in pay and sought new restrictions on compulsory and voluntary overtime. The employer associations, in contrast, pursued more drastic moves towards part-time employment as well as reductions in employer contributions to national insurance. The Hellenic Federation of Enterprises (SEV) sought a lower threshold on collective redundancies, a reduction in severance payments and the weakening of the favourability principle³⁸ embedded in the TEPs. In the course of the negotiations, it became increasingly clear that "the employers regarded high unit costs and the inflexibilities of the Greek labour market as a brake on the competitiveness of Greek businesses", while the unions "argued that the cost of employment in Greece was among the lowest in the EU and that the competitiveness of the Greek economy would be better served through increased productivity, not the deregulation of Greek labour market".³⁹

The government struggled to reach a consensus between the social partners. In the end, the GSEE signed the Pact only after the PASOK-affiliated president of the confederation utilized his double vote. Among the employer groups, the

³⁷ PAME refers to the All Workers Militant Front.

³⁸ The favourability principle refers to Article 10 of Law 1876/1990 that stipulates that firm level agreements cannot establish wage levels and benefits below those agreed to at the national level.

³⁹ Kevin Featherstone and Dimitris Papdimitriou, *The Limits of Europeanization: Reform Capacity and Policy Conflict in Greece*. (London: Palgrave Macmillan 2008), p. 129.

GSEVEE⁴⁰ refused to sign. As a result, the Pact remained a vague agreement regarding some very general targets. The issue of working time was dropped from the final document, and part-time public sector employment was modified to refer to voluntary part-time work. The TEPs were prevented from weakening the favourability principle. In the end, the Pact failed – from the perspective of neoliberal modernizers – to substantively push forward the policy objectives of labour market flexibility.

In 1998, shortly after the narrow re-election of the PASKE affiliated president of the GSEE, new labour market reform proposals were unveiled by the Labour Minister. The proposals indicated a return to proposals that were rejected in the Confidence Pact: a two-hour extension of the workday (albeit with the consent of the unions, as opposed to the managerial prerogative proposed by SEV); a reintroduction of TEPs; unlimited part-time employment (against the 20% limit proposed by the GSEE); and the creation of private employment agencies. However, there was no reintroduction of the lower threshold for collective dismissals, despite heavy lobbying by SEV. This move towards greater labour market flexibility was to be compensated for by greater security in the form of limited increases in social protection. The unions, however, were incensed that the new draft law either violated the Confidence Pact or introduced new measures that were excluded from the pact. On the other hand, employers' associations – particularly SEV – felt that the reforms did not go far enough to satisfy their interests.

In 2000, new labour market reforms were tabled by PASOK seeking to abolish union consent regarding increases in working time, lower the threshold of collective dismissals, and reduce employer contributions to social insurance. The social dialogue took the form of shortened bilateral discussions with unions and employer associations. The GSEE rejected the talks on grounds of both the process and the content of the reforms and threatened sustained strike action. Government attempts to rescue the talks by moderating its agenda failed as the GSEE walked out and held a one-day general strike on 10 October 2000. The attempt at compromise also failed to placate SEV, which argued that the government's moderated proposals would drastically increase labour costs. The government ultimately pushed its labour market reforms through parliament, "with the initial proposals slightly amended in order to take into account the diverging views of the social partners."⁴¹ In response, the unions held another 24-hour general strike on 7 December 2000 – the day of

⁴⁰ The Hellenic Confederation of Professionals, Craftsmen and Merchants.

⁴¹ Christos Ioannou, "'Odysseus or Sisyphus' revisited: failed attempts to conclude social liberal pacts in Greece," in Philippe Pochet, Maarten Keune and David Natali [eds.] *After the Euro and Enlargement: Social Pacts in the EU* (European Trade Union Institute: Brussels 2010), p. 90.

the parliamentary debate. The outcome of the legislative process was mixed, due to revisions proposed by the Economic and Social Committee (OKE). Collective redundancies and part-time employment survived the changes proposed by OKE, but changes to overtime bonuses and working time regulation provisions did not.

While the OECD looked favourably on the 2000 reforms (referring to them as “steps in the right direction”), it argued that “[a]dditional, more ambitious, reforms would be needed...to achieve a significant improvement in labour market outcomes.”⁴² The organization promoted a further reduction in employers’ social security contributions, increases in “wage differentials” between workers (meaning greater inequality in the labour market) and a further weakening of employment protection for workers. In this context, the employers went on the offensive. During the first half of 2001, SEV complained about the slow pace of structural reforms and urged the government to take advantage of the economic uncertainty that followed in the wake of the events of September 11th. In the same month, Prime Minister Simitis held separate meetings with the GSEE and SEV (indicating a lack of tripartism) and, to the express pleasure of Greek business, was closer to the position adopted by the employers’ association. In his confrontational meeting with the unions, he rejected their calls for the strengthening of social protection policies (increasing the rates of unemployment benefits) and dismissed OECD data indicating rising inequality as erroneous. He made it clear to the GSEE that government policy would prioritize fiscal austerity as a means of bringing down the public debt in order to meet EMU economic convergence criteria; bolstering social protection in order to hit the targets of social convergence was relegated to second place in the government’s list of priorities. By the beginning of November, National Economy and Finance Minister Yiannos Papantoniou was replaced by Nikos Christodoulakis, who expressed his eagerness to accelerate structural reforms and promised to meet industrialists on a monthly basis. By this time, it became increasingly clear that the distance between SEV and the GSEE was not diminishing and that the government was increasingly siding with Greek capital.

At the end of the process, relations between the PASOK government and the social partners had been severely damaged, as demonstrated by the government’s failure to broker a reform of the pension system the following year and in their subsequent defeat by New Democracy in the elections of 2004. Upon forming government, New Democracy prioritized the interests of employers’ associations by increasing managerial prerogative over the

⁴² Organization of Economic Cooperation and Development, *Economic Surveys: Greece*, (OECD: Paris, 2001), p. 105.

calculation of working time, a move that alienated even the New Democracy faction within the leadership of the GSEE. The GSEE denounced the new labour market reforms as measures that abolish the eight-hour workday, favor the profits of employers over the incomes of workers by cutting overtime costs and create more poverty and unemployment.

In the end, attempts at liberalization through some form of concertation – despite the existence of corporatist institutions like the OKE, and national tripartite pacts such as the Confidence Pact of 1997 and the bilateral talks of 2000 and 2001 – were regarded as a failure. Fragmented trade union confederations were unable to forge a consensus amongst the ideologically divided political groups within the labour movement. PAME, the communist affiliated trade union group, broke off from the GSEE in 1999, adopting a radical position of resistance to even the most modest of labour market reforms, effectively blocking the reform process through short-lived, but consistent, general strikes. At the same time, however, this was not just a problem of the GSEE being unable to bring the unions into line. The interests of capital and labour were increasingly diverging. SEV sought greater labour market flexibility, greater labour market inequality and lower social security contributions in order to increase Greek competitiveness in an increasingly neoliberal Europe. The absence of sufficient forms of social protection to compensate for labour market reforms meant that workers understandably fought to preserve Greece's protective labour market institutions and preserve their pensions. The main employer's association, SEV, was also unable to forge a consensus amongst employers due to the relatively low level of membership density amongst employers.⁴³ In the end, the reform process alienated the labour movement, failed to fully appease the employers' associations, and left the structural weaknesses of the Greek economy predominantly intact. At the onset of the Global Financial Crisis in 2007-2008, then, the Greek economy, despite demonstrating levels of growth above the EU average, was characterized by persistently high unemployment, rising labour costs, and a failed and increasingly antagonistic process of labour market reform that would set the stage for the conflict to come.

⁴³ Jelle Visser, ICTWSS Data base, version 5.0. (Amsterdam: Amsterdam Institute for Advanced Labour Studies AIAS. October, 2015). Open access database at: <http://archive.uva-aias.net/208>

5. The Eurozone Crisis, Collective Bargaining, Labour Market Reform and Austerity

The response to the Eurozone crisis by European elites was to reinforce the commitment to austerity by developing policies intended to strengthen economic governance in the Eurozone. The Treaty on Stability, Coordination and Governance (TSCG), signed in March 2012, signified a commitment by member states to “strengthen the economic pillar of the economic and monetary union” by demonstrating fiscal discipline and increasing the coordination of the economic policies of member states.⁴⁴ The treaty strengthens the Maastricht criteria by committing signatory governments to the elimination of the “structural deficit.” As a medium-term objective, the new treaty requires member states to have a budget either in balance or in surplus, defined in terms of a “lower limit of a structural deficit of 0,5% of the gross domestic product at market prices.”⁴⁵ Critics have argued that the TSCG further locks in constraints designed to keep governments on the path of austerity.⁴⁶ What is clear is that the treaty compels contracting states to “take the necessary actions and measures in all the areas which are essential to the proper functioning of the euro area in pursuit of the objectives of fostering competitiveness, promoting employment, contributing further to the sustainability of public finances and reinforcing financial stability.”⁴⁷ This requires a renewed commitment to economic coordination.

When it comes to peripheral countries like Greece, the strategy of European elites has been to exploit the crisis to transform debtor economies into more competitive market performers. Lacking the capacity to increase competitiveness through currency devaluation as a result of membership in the currency union, the Greek state has therefore embarked on a process of “internal devaluation” – the strategy of increasing export competitiveness by pushing down labour costs through austerity policies and wage repression. Structural reforms have radically transformed labour and product markets, resulting in the weakening of organized labour vis-à-vis Greek and European capital. As outlined above, Eurozone elites have been promoting an agenda of labour market flexibility since the early 1990s; and so too has the IMF. In 2000, the IMF, while praising the reform efforts in Greece, lamented the “poor performance of the [Greek] labor market”, and claimed that they “have not led

⁴⁴ European Commission, *Treaty on Stability, Coordination and Governance* (Brussels, 2012), Article 1. Available at: http://europa.eu/rapid/press-release_DOC-12-2_en.htm

⁴⁵ European Commission, *TSCG*, Article 3.1(b).

⁴⁶ Hugo Radice, “Enforcing Austerity in Europe: The Structural Deficit as a Policy Target,” *Journal of Contemporary European Studies* 22, no. 3 (2014): 318-328.

⁴⁷ European Commission, *TSCG*, Title IV, article 9.

to the hoped for turnaround, in particular for the segments most affected by very high unemployment rates (the young and women) and for the long-term unemployed.”⁴⁸ In light of this lacklustre performance, the IMF proposed, among other things, “a reduction in the relatively severe firing restrictions and sometimes overly bureaucratic hiring regulations – which hamper employment chances especially for new market entrants”.⁴⁹ In other words, according to the IMF, employment protection characteristic of rigid Greek labour markets impeded economic growth and job creation.

Early on in the reform process, the IMF argued that labour market reforms were crucial to “restoring competitiveness and boosting potential growth”. It also noted that the primary challenge the government faced in pursuing its program was to “overcome resistance from entrenched vested interests to opening-up of closed professions, deregulation, implementation of the services directive, and elimination of barriers to development of tourism and retail.”⁵⁰ By November 2010, the Fund repeated its call for Greece to make further progress on labour market and collective bargaining reforms in order to enhance “competitiveness, reinvigorate output, and increase employment”, noting that the reform movement had reached a “critical juncture” and that, in order for Greece to be transformed into a “dynamic and export-driven economy...skillful design and political resolve” would be required “to overcome entrenched interests.”⁵¹ Five years later, in its April 2015 *World Economic Outlook*, the IMF continued to promote the line that increasing the flexibility of labour markets would “strengthen external competitiveness” in the EU’s debtor economies, while strengthening investment and employment in the EU’s creditor economies.⁵²

A vital component in the liberalization of Greek labour markets, therefore, is a transformation of the institutions and practices of collective bargaining. In this regard, Greece is merely one of many European countries that have been subject to radical attacks on established institutions and practices of collective

⁴⁸ International Monetary Fund, *Greece – 2000 Article IV Consultation* (November 20, 2000). Available at: <http://www.imf.org/external/np/ms/2000/112000.htm>

⁴⁹ IMF, *Greece 2000*.

⁵⁰ International Monetary Fund, “Statement by the EC, ECB, and IMF on the First Review Mission to Greece,” Press Release No. 10/308 (2010). Available at: <http://www.imf.org/external/np/sec/pr/2010/pr10308.htm>

⁵¹ International Monetary Fund, “Statement by the EC, ECB, and IMF on the First Review Mission to Greece,” Press Release No. 10/454, (2010). Available at: <http://www.imf.org/external/np/sec/pr/2010/pr10454.htm>

⁵² International Monetary Fund, *World Economic Outlook: Uneven Growth, Short and Long Term Factors* (Washington D.C., 2015). Available at: <http://www.imf.org/external/pubs/ft/weo/2015/01/>

bargaining during the crisis.⁵³ However, Greece is perhaps the most contested case of neoliberal transformation. The Eurozone crisis has transformed Greek collective bargaining practices and institutions in a number of important ways. First, the hierarchy of multi-level wage setting based on the favourability clause in Law 1876/1990 – stipulating that regional and firm-level wage bargaining could not fall below the levels agreed to at the national and sectoral levels – has been progressively undermined to increase the fragmentation of wage setting practices, thereby facilitating the wage differentiation advocated by the OECD. Since the beginning of the crisis, a process of derogation, in which firm level agreements increasingly diverge from standards agreed at sectoral level, has occurred with increasing frequency. Secondly, the power to set the minimum wage has been taken from the social partners to become a matter of government legislation, rendering the social partnership increasingly meaningless. Thirdly, existing collective agreements have been subject to arbitrary legislative interference and even annulment – particularly as a means of enforcing public sector wage freezes. Fourthly, the extent of collective bargaining coverage has declined. Fifthly, the length of time in which an expired collective agreement remains in force has been reduced. And lastly, the rights of unions to collectively bargain at the firm level have been progressively weakened.

Collective Bargaining and Wage Setting

In relation to wage setting mechanisms, the process of undercutting the nationally established favourability clause through a process of derogation has occurred through a number of progressive stages. Since 1990, Greek industrial relations have been governed by multi-level collective wage bargaining in which industry agreements could not deviate from sectoral collective agreements and national standards if they resulted in a reduction in the terms established at the sectoral and national levels. On 17 December 2010, the PASOK government passed Law 3899/2010, which brought in special company collective agreements that weakened nationally established labour

⁵³ Eurofound, *Changes to Wage Setting Mechanisms in the Context of the Crisis and the EU's New Economic Governance Regime*, (Dublin, 2014). Available at: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/changes-to-wage-setting-mechanisms-in-the-context-of-the-crisis-and-the-eus-new-economic-governance>; Christophe Hermann, "Structural Adjustment and Neoliberal Convergence in Labour Markets and Welfare: The Impact of the Crisis and Austerity Measures on European Economic and Social Models," *Competition and Change* 18, no. 2 (2014): 111-130; Martin Keune, "The effects of the EU's assault on collective bargaining: less governance capacity and more inequality," *Transfer: European Review of Labour and Research*, 21, no. 4 (2015): 477-483.

standards under the rationale of enhancing competitiveness and reducing unemployment. Law 3899/2010 amended 1876/1990 by specifying that, under special company collective agreements “remuneration and working conditions may deviate from the relevant sector collective agreement up to the level of the general national collective agreement.”⁵⁴

With this amendment, article 10 of 1876/1990 (the favourability clause), as well as other articles referring to the scope of collective agreements, “do not apply” to special company collective agreements. At the time of its implementation, this suspension of the favourability clause was to be in place “until at least end-2015, [sic] in such a manner that firm-level agreements take precedence over sectoral and occupational agreements.”⁵⁵ The stated purpose of such derogation is to enable firm level collective agreements to “take into account the necessity of improving firms’ adaptability to market conditions, with a view to create or preserve jobs and improve the firm’s competitiveness.”⁵⁶ In 2011, the government sought to assess the performance of the new special firm-level collective agreements and ensure that they “contribute to align wage developments with productivity developments at firm level, thereby promoting competitiveness and creating and preserving jobs.”⁵⁷

The social partnership has also been undermined by the neoliberal politics of the crisis. Since the 1950s, General National Collective Agreements (EGSEEs) have traditionally been negotiated between the national level peak associations of labour (GSEE) and capital (SEV and ESEE). One of the key areas of this bargaining process is the minimum wage. In November 2012, however, the coalition government of New Democracy-PASOK-DIMAR passed law 4093/2012 that granted to government the power of determining the minimum wage. At the beginning of 2013, the government reduced the monthly minimum wage by 22% (32% for those under 25 years of age) and either abolished or froze all allowances – such as marriage, education,

⁵⁴ International Labor Organization, *Law 1876, of 7 March 1990, concerning free collective bargaining and other provisions* (International Labor Organization: Geneva, 1990). Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/20025/117820/E-757641532/GRC20025%20Eng.pdf>.

⁵⁵ Greece, *Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding*, (30 November 2011), p. 16. Available at: <https://www.imf.org/external/country/grc/index.htm?type=23>

⁵⁶ ILO, *Law 1876/1990*.

⁵⁷ Greece, *Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding* (28 February 2011), p. 51. Available at: <https://www.imf.org/external/country/grc/index.htm?type=23>

children's, etc. – that had previously been subject to collective bargaining.⁵⁸ As a result, the material significance of the EGSEE has greatly deteriorated. While still serving as the floor beneath which sectoral, occupational and enterprise level collective agreements cannot fall (with the exceptions noted above), the substance of the EGSEE has been significantly diluted due to legislative interference in the ability of the social partners to negotiate. In July 2013, a new EGSSE was agreed between most of the social partners (GSEE, GSEVEE, ESEE and SETE⁵⁹). SEV refused to sign the agreement, stating that the ESEE had no legal foundation due to the current legislative changes and therefore did not provide any benefits to employees. This represents the first time that a national agreement has not incorporated the minimum wage; and never before has a national agreement had such limited content. In March 2016, a new National Collective Agreement (EGSSE) was signed between the social partners – this time including SEV – but it remains a largely symbolic agreement that “merely includes announcements of intentions to act on pressing issues, without specific recommendations or a particular plan for social dialogue on any of the issues.”⁶⁰

Trade Union Rights of Representation

On 25 October 2011, the PASOK government passed Law 4024/2011, introducing further amendments that weaken the rights of unions to represent workers in collective bargaining. First, the special enterprise collective agreements were abolished due to their limited uptake. One of the possible reasons for the failure of the special enterprise collective agreements was the expensive, bureaucratic process of creating enterprise level trade unions – where none previously existed – for the purpose of negotiating these agreements.⁶¹ The new law makes it easier for employers in firms employing less than fifty workers, where no unions exist, to negotiate collective agreements with “associations of persons”, thereby enabling employers to circumvent unions altogether and undermine the principle of democratic,

⁵⁸ Eurofound, *Impact of the Crisis on Industrial Relations* (Dublin, 2013), p. 25. <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/impact-of-the-crisis-on-industrial-relations>

⁵⁹ SETE is the newly formed Association of Greek Tourism Enterprises.

⁶⁰ Elena Kousta, “Greece: The 2016 National General Collective Agreement Signed,” (European Monitoring Centre on Change, 2016). Available at: <https://www.eurofound.europa.eu/observatories/eurwork/articles/working-conditions-labour-market/greece-2016-national-general-collective-labour-agreement-signed>

⁶¹ Andreas Nikolopoulos and Eleni Patra, “Current Situation and Future Trends of the Industrial Relations System and Trade Unions in Greece,” *Management Review* 23, no. 4 (2012): 353-368.

collective representation. While legislation from the 1980s (Law 1264/1982) enabled employers to conclude agreements with associations of persons, certain conditions needed to apply: they could be concluded only in the absence of a labour union; they related to the resolution of a specific issue; and they could exist only for a limited period of time. Law 4024/2011 significantly weakens the criteria that must be met in order to conclude these non-union based collective agreements. Most important, the law eliminates previous limits to the lifespan of such associations of persons, turning them into “nebulous non-elected” entities that makes it easier for employers to drive down wages and benefits in an attempt to increase competitiveness.⁶² Indeed, small business has taken advantage of this new law in order to negotiate company level agreements with “less favourable provisions than those of the relevant sector agreement.”⁶³ One commentator has described Law 4024/2011 as “one more step toward the demolition of two of the most powerful pieces of legislation to be enacted in Greece since 1974: laws 1264/82 and 1876/90.”⁶⁴

Expansion and Extension of Collective Agreements

Article 11 of 1876/1990 contains provisions for the joint accession of workers and employers to pre-existing collective agreements that relates to their line of work. Sections 2 and 3 of the same article also include provisions for the extension of the scope of collective agreements, determined by the Minister of Labour in consultation with the High Council of Labour, to include workers and employers in an entire sector or occupation regardless of whether or not they are unionized. In a communiqué to the IMF in the fall of 2011, the Greek government indicated that “the possibility to extend sectoral agreements to those not represented in the negotiations will be suspended for a period until at least end-2014 [the duration of the Medium Term Financial Strategy].”⁶⁵ Secondly, the duration in which the terms of a collective agreement remain in force upon the expiration of the agreement has also been reduced. Under previous legislation, the terms of an expired agreement remained in force for six months; and even after the six-month period, the conditions of work

⁶² Zoe Lanara, *Trade Unions in Greece and the Crisis: A Key Actor Under Pressure* (Bonn: Friedrich Erbert Stiftung Foundation, 2012), p. 8. Available at: <http://library.fes.de/pdf-files/id/ipa/09012.pdf>

⁶³ Eurofound, *Changes to Wage Setting Mechanisms*, p. 11.

⁶⁴ Christina Kopsini, “Collective Labor Agreements on the Way Out.” *Ekathimerini*, (October 16, 2011). Available at: <http://www.ekathimerini.com/136589/article/ekathimerini/business/collective-labor-agreements-on-the-way-out>

⁶⁵ Greece, *Letter of Intent* (November 2011), p. 16.

outlined in the collective agreement continued to apply “until the termination or amendment of individual employment contracts.”⁶⁶ Law 4046/2012 reduces the extension period to three months, and the continuation of the conditions of work after the expiration of the three-month period does not include all work conditions, but only a portion of the salary. On 2 July, 2015, the Syriza government passed Law 4331/2015 which repealed the amendments of 4046/2012, effectively restoring the provisions of 1876/1990. However, the Euro Summit statement of 12 July 2015 – after the capitulation of Syriza following their resounding victory in the 5 July austerity referendum – demanded a return to the austerity legislation of 4046/2012 by 15 September 2015.

Labour Market Flexibility

On 11 May 2010, Law 3846/2010 was passed, legalizing new flexible labour arrangements, such as part-time work and the use of temporary employment agencies. Much of this falls outside the jurisdiction of collective bargaining and exacerbates precariousness, and is intended to reduce unemployment under the neoliberal belief that unemployment is the result of rigid labour markets. Law 3899/2010, passed in December 2010, contains provisions that increase the power of management over workers, thereby increasing the problems of precariousness in the Greek labour market. For example, the law extends probationary periods from 2 to 12 months, lengthening the time period in which workers can be arbitrarily dismissed without compensation; it increases the length of temporary contract work from 18 to 36 months, thereby reducing the incentives for employers to hire workers on a permanent basis; and the bill lengthens the period of time in which the employer possesses unilateral power over labour time flexibility from six to nine months.

Law 3863/2010, passed on 15 July 2010, lowers the threshold on collective dismissals, making it easier for employers to lay off workers. Previous legislation allowed employers to dismiss up to 4 workers per month in firms employing between 20 and 200 workers (and up to 2% of the workforce for larger firms). The new law raises the threshold to 6 for firms employing between 20 and 150 employees, and 5% of the workforce for firms employing more than 150 workers. Greece’s ranking in the OECD index of employment protection legislation for individual and collective dismissals has registered a decline from 2.80 (out of 5) in 2010 to 2.11 by 2013, placing it just ahead of

⁶⁶ Costas Papadimitriou, “The Greek Labor Law Face to the Crisis: A Dangerous Passage Towards a New Juridical Nature,” *European Labor Law Network*, Working Paper 3, (Frankfurt, 2013).

Ireland in the rankings.⁶⁷ It also shortens the duration of the layoff notification period and reduces the severance pay for laid off workers. The special company collective agreements legalized by 3899/2010 in December 2010 also increased the power of employers over workers in terms of their control over the working time – an issue that, as discussed above, was a contentious issue during the reform negotiations of the late 1990s early 2000s.

The State of Collective Bargaining and Working Conditions in Greece

All of these reforms have drastically affected collective bargaining in Greece. The number of national, sectoral and occupation collective agreements has significantly declined since the onset of the crisis. In 2008, 161 such agreements were in place, covering almost all of Greek private sector workers; by 2014, only 11 such agreements were in place, representing between 7 to 10% of the private sector workforce. The collective agreements that do remain in force, “foresee significant reductions to salaries, to say nothing of any bonuses or special salaries that used to be the norm in the past.”⁶⁸ At the same time, the number of firm level collective agreements has significantly increased since 2012. According to Eurofound, 976 business level Collective Employment Agreements were signed in 2012, compared to 170 in 2011 and 227 in 2010, representing a 430% increase in firm level agreements between 2010 and 2012. The number of firm level agreements has tapered off since this 2012 peak, dropping to 318 in 2016.⁶⁹

As a result of these reforms, Greece has experienced the greatest decline in collective bargaining coverage of any OECD country. OECD data indicates that collective bargaining coverage in Greece has declined to just over 40% of the workforce in 2013, down from just over 80% in 2008 prior to the imposition of austerity measures.⁷⁰ At the same time, workplace inspections by the Labour Inspectorate have indicated an “enormous upsurge” in undeclared work, suggesting that the weakening of collective bargaining institutions and

⁶⁷ OECD, *Strictness of Employment Protection – Individual and Collective Dismissals (Regular Contracts)*. Doi: 10.1787/lfs-epl-data-en (accessed 13 September 2016).

⁶⁸ Roula Salourou, “Collective Labor Contracts Becoming a Thing of the Past.” *Ekathimerini*, November 2 (2014). Available at: <http://www.ekathimerini.com/164342/article/ekathimerini/business/collective-labor-contracts-becoming-thing-of-the-past>.

⁶⁹ Eurofound, *Greece: Working Life Country Profile*. (Dublin, 2015). Available at: <https://www.eurofound.europa.eu/country/greece#collective-bargaining>

⁷⁰ Organization of Economic Cooperation and Development, *Economic Policy Reforms: Interim Report* (OECD: Paris, 2016).

protective labour market policies may be contributing to the increase of precariousness and informality in the Greek economy.⁷¹

The decline of sectoral and occupational collective agreements, the disempowerment of trade unions as the representatives of workers, the abolition of the favourability clause, the amendment of the extension of collective agreements to non-unionized workers and the limiting of the duration of expired collective agreements has put significant downward pressure on the levels of remuneration and the working conditions of workers. Collective agreements signed since 2012 “were mainly signed following the termination by the employers of the previous collective agreements and contained provisions that were more disadvantageous for workers as regards wages and employment conditions (especially in relation to working time).”⁷²

As a result of these changes in collective bargaining and the increase in labour market flexibility, Greek workers have experienced a significant decline in living standards. Average annual wages have declined to 1997 levels, real minimum wages have declined to 1976 levels and instances of low paying employment have risen from 11.7% of the workforce in 2012 to 17.8% in 2014.⁷³ Real average monthly wages have been in decline since 2009, registering an 8.1% decline in 2011, an 8.7% decline in 2012 and a 6% decline in 2013.⁷⁴ And finally, income inequality has increased from 0.34 in 2012 to 0.43 in 2013 (the last year data is available).⁷⁵ And finally, labour market insecurity – measured as a percentage in terms of the risk of unemployment,

⁷¹ Elena Kousta, “Greece: Upsurge in Undeclared Work in 2015,” European Observatory of Working Life, 2016. Available at: <http://www.eurofound.europa.eu/observatories/eurwork/articles/working-conditions/greece-upsurge-in-undeclared-work-in-2015>

⁷² Eurofound, *Industrial Relations and Working Conditions Developments in Europe, 2012* (Dublin, 2013), p. 74. Available at: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/industrial-relations-and-working-conditions-developments-in-europe-2012>

⁷³ OECD, *Employment and Labour Market Statistics*, Doi: 10.1787/data-00571-en. OECD (2016), *Wage levels* (indicator). Doi: 10.1787/0a1c27bc-en (Accessed on 15 September 2016).

⁷⁴ International Labor Organization, *Mean real monthly earnings of employees, annual growth (2006-2013)*, ILOSTAT. Available at: http://www.ilo.org/ilostat/faces/help_home/data_by_subject/subject-details/indicator-details-by-subject?subject=EAR&indicator=EAR_MREE_NOC_GR&datasetCode=GWR&collectionCode=GWR&_afLoop=109645313436389#!%40%40%3Findicator%3DEAR_MREE_NOC_GR%26subject%3DEAR%26_afLoop%3D109645313436389%26datasetCode%3DGWR%26collectionCode%3DGWR%26_adf.ctrl-state%3Dql2xir1j_21

⁷⁵ OECD, *Income inequality* (indicator). Doi: 10.1787/459aa7f1-en (Accessed on 15 September 2016).

the duration of unemployment and the mitigation of earnings loss through government transfers – reached 32.03 in 2013, up from 7.06 in 2007.⁷⁶

7. De-democratization, Embedded Austerity and National Competitiveness Boards

In the context of the ongoing assault on collective bargaining and protective labour market institutions, Greek workers have been involved in continuous strike action since the onset of the crisis.⁷⁷ Popular discontent with austerity propelled the far-left anti-austerity party – Syriza – into power in January 2015 on a platform of rolling back austerity measures. In May 2015, Minister of Labour Panagiotis Skourletis put together a series of proposals that would abolish the legislative mechanisms for determining the minimum wage, effectively giving back to the social partners the power to establish the minimum wage through national level bargaining; return the minimum wage to the level agreed in the 2010-2012 national collective agreement; re-instate the collective agreement extension mechanisms as well as the pre-existing provisions for prolonging the duration of existing collective agreements in the event of their non-renewal through bargaining; and return to the pre-crisis status quo regarding mediation.

However, Eurozone crisis management has brought with it a degree of de-democratization as a means of embedding austerity. The most significant component of neoliberal de-democratization is the disempowerment of the Greek parliament by the Troika through its Memoranda of Understanding. Attempts by the newly elected government to reverse collective bargaining and labour market reforms have been vociferously resisted by the Troika. After the “No” vote in the July 2015 referendum on the bailout agreement, the Troika called Syriza’s bluff, cut off liquidity to Greek banks and imposed even more stringent conditions on Greece. Labour market and collective bargaining reforms, however, were precluded by the language of the third bailout agreement signed by Syriza after the referendum. The July Memorandum of Understanding stipulates that the Greek government must “consult and agree with the European Commission, the European Central Bank and the International Monetary Fund on all actions relevant for the achievement of the objectives of the Memorandum of Understanding before these are finalized

⁷⁶ OECD, *Labour Market Statistics – Job Quality*. Doi: 10.1787/e357cdbf-en. Available at: www.oecd.org

⁷⁷ Eurofound indicates 439 strikes in 2012, 443 in 2013, numbers taken from the research institute of the Greek trade union confederation (INE GSEE). Available at: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/greece/greece-working-life-country-profile>

and legally adopted.”⁷⁸ A required “prior action” for the next disbursement of funds included the reversal of article 72 in Law 4331/2015 that re-instated the after effects of collective agreements that had been frozen under Law 4046/2012, implemented by the quasi-technocratic caretaker government. As a consequence of this astonishing abdication of parliamentary sovereignty, commentators have variously characterized Greece as a “debt colony with the bit of home rule” or an EU “protectorate” similar to Bosnia-Herzegovina and Kosovo.⁷⁹

At the same time, the EU began developing new mechanisms of economic governance to further embed neoliberalism in each member state and preclude threats to austerity from left-wing governments like Syriza. The EU has initiated a renewed integration process that seeks to achieve a “genuine” economic union by creating new institutions designed to institutionalize competitiveness and enhance the resilience of national economies. National Competitiveness Boards (NCBs) will be established in all Eurozone member states to act as “independent entities” mandated to surveil policies related to national economic competitiveness. Such bodies will be comprised of “unbiased” technocrats providing “high quality” advice on economic policy. In this regard, the recommendation adopted by the EU proposes that “the scope of intervention of competitiveness boards should span a comprehensive notion of competitiveness.”⁸⁰ In the initial report, the five presidents suggest that the NCBs be mandated to “assess whether wages are evolving in line with productivity” and to potentially “enhance competitiveness more generally.”⁸¹ In the broader context of neoliberalism, and the longer term trends in collective bargaining in Europe, ensuring that wages “evolve” in line with productivity means ensuring that wage gains lag behind productivity gains.

⁷⁸ European Commission, “Memorandum of Understanding Between the European Commission Acting on Behalf of the European Stability Mechanism and the Hellenic Republic and the Bank of Greece,” (Brussels, 2015), p. 4. Available at: http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/pdf/01_mou_2_0150811_en.pdf

⁷⁹ Paul Mason, “Greece: A debt colony with a bit of ‘home rule,’” Channel 4 News, 23 February 2015. Available at: <http://blogs.channel4.com/paul-mason-blog/greece-debt-colony-bit-home-rule/3419>. Accessed on 13 September 2016; Jan Zielonka, “Greece has become the EU’s third protectorate,” *Open Democracy* (14 August 2015): <https://www.opendemocracy.net/can-europe-make-it/jan-zielonka/greece-has-become-eu%E2%80%99s-third-protectorate>. Accessed on 13 September 2016.

⁸⁰ European Commission, *Recommendation for a Council Recommendation on the establishment of National Competitiveness Boards within the Euro Area* (21 October. Brussels, 2015), p. 3. Available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52015DC0601>

⁸¹ European Commission, *National Competitiveness Boards*, 8.

There are a number of potential contradictions in the stated goals of the Competitiveness Boards. According to the proposals, they are not intended to result in the harmonization of wage setting mechanisms or collective bargaining institutions. The adopted recommendation states that the NCBs “should not affect the right of workers and employers, or their respective organisations, to negotiate and conclude collective agreements at the appropriate levels or to take collective action in accordance with Union law and national laws and practices.”⁸² Each member state will have the space to retain their distinctive institutions and arrangements. The first thing to point out is that, in the more severely affected economies of the Eurozone – Greece in particular – free collective bargaining has either been effectively suspended or has been significantly curtailed and restrained under the auspices of austerity politics. At the same time, however, the NCBs are intended to ensure a harmonization of outcomes – that is, to ensure that wage increases lag behind productivity increases. This effectively embeds the neoliberal logic of competitiveness that was supposed to be institutionalized by the transformation of social partnerships along the lines of competitive corporatism. Secondly, NCBs are intended to be democratically accountable; and it is proposed that they should include the social partners in the surveillance process to preserve the tradition of social dialogue. Yet, at the same time, they are intended to be independent bodies that are “independent from the ministries or public authorities that deal with competitiveness-related issues.”⁸³ There is, therefore, significant potential that the NCBs possess a mandate to enforce the EU level commitment to competitiveness in ways that preclude alternatives that break from the neoliberal framework.

The political dimension of the NCBs is to augment what the EU refers to as national ownership of the structural reforms believed to be necessary for enhancing European competitiveness. In other words, to shift responsibility for austerity from the institutions of the EU to the various national governments forced to implement structural reforms. Since the onset of the crisis, the Eurozone – and to a certain extent the European Union – has been suffering a decline in legitimacy. In terms of popular support for the European project, 2015 was a very bad year, with overall levels of support experiencing a dramatic decline after a brief upsurge in 2014.⁸⁴ Over the course of the year

⁸² European Commission, *National Competitiveness Boards*, 3.

⁸³ *Ibid.*

⁸⁴ Data for this paragraph is taken from the most recent Eurobarometer survey. European Commission, “Public Opinion in the European Union, First Results,” *Standard Eurobarometer 85* (Spring 2016, Brussels), pp. 25-18. Accessed 13 September 2016 <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2130>

Greek public opinion turned against the European Union, with 51% of respondents expressing negative views of Europe. Eighty-three percent of Greeks polled believe that their voice does not count in Brussels – the highest of any European country. In the context of declining support for the institutions of the European Union, the need for European elites to compel national governments to take ownership of the austerity agenda is imperative for the future of European neoliberalism.

8. Conclusion

Greek and European capital are using the Eurozone crisis as an opportunity to push through austerity measures that are shifting the balance of power away from labour to enable Greek capital to institutionalize its agenda of competitiveness in an increasingly neoliberal European Union. The decentralization of collective bargaining and the weakening of employment protection have been instrumental in this regard. This neoliberal transformation of the Greek economy has been accompanied by the substantive de-democratization of Greek political and economic life. Sectoral and occupational collective bargaining has all but collapsed and trade unions are under attack by a Troika-backed employer offensive. On top of this, new forms of Eurozone governance have been implemented to further entrench neoliberalism and embed austerity in national level institutions. In particular, National Competitiveness Boards have been created to embed austerity and to ensure national ownership of the process of neoliberal reform in a political conjuncture characterized by the rise of a radical anti-austerity Left.

Supporting Occupational Transitions in “The New Geography of Work”: Limits and Possible Developments of the Italian Labour Market Reform

Lilli Casano ¹

Abstract

Purpose. The aim of the paper is analysing the current Italian active labour market policies system, both on the side of the governance model, and of that of the strategies and interventions promoted in order to sustain transitions in the labour market.

Design/ methodology/ approach. The paper presents a theoretical analysis of the juridical and institutional framework of active labour market policies in the light of the transitional labour market theory.

Findings. The recent Italian labour market reforms, by focusing (partially and late) on the paradigm of *flexicurity*, seem to neglect central questions. If one should appreciate the attempt to reform and rationalize the employment services network and to create a foundation for the development of active labour market policies, the concrete institutional solutions arranged are to be questioned.

Research limitations/implications. The paper presents some theoretical considerations in order to suggest new research paths. Research findings show the need for empirical studies focused on analysing models and systems already established in different territories, resulting from a combination of factors like: institutional traditions; the legislative framework; decentralised collective bargaining, agreements, covenants, pacts and informal networks for the matching between labour and demand supply in specific sectors or contexts.

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Originality/ value. The paper tries to shed light on dimensions which have been neglected till now, both on the side of the role and participation of different stakeholders, and on that of the measures and interventions to be prioritised in order to meet the new great transformation of work on-going.

Paper type. Research paper.

Keywords: *Occupational transitions, New geography of work, Labour Market Reform, ALMP, Italy.*

1. Italian Labour Market Reform in the light of “Transitional Labour Market Theory”

Following the recent labour market reform (*Jobs Act*), several contributions have investigated the new regulatory asset from different points of view, but there is an assumption which has gained general consensus: the final shift towards a protection system inspired by the North-European *flexicurity* model. However, the central question concerning whether these recent changes meet the transformations occurring in the world of work and society is still open. Technological development has determined consequences varying among territories and occupational sectors, on the one side, by reducing low qualified manual jobs, and, on the other, supporting the rise of new professions in new fields. New organisational models are spreading, and the occupational scenarios are evolving, following the growing overlap between primary, secondary and tertiary sectors. Occupational careers are more and more fragmented and characterised by frequent “transitions” between different statuses and positions. The globalisation and digitalisation of work seem to blur the importance of the spatial dimension, but on the contrary, the local dimension is more and more crucial when it comes to considering the existence of material and immaterial infrastructures and cooperative networks between strategic stakeholders and their impact on economic and occupational growth and innovation.

These transformations have important consequences in terms of career articulation and in terms of employability and the competencies required of people in order to face job-related risks. While the Italian debate is still stuck on the concept of *flexicurity*, the international literature at the end of the last century proposed an innovative view on labour market transformation and how to deal with its consequences: «transitional labour market theory» (Caruso, Cuttone 2016), which suggests a new conception of the labour market as an open social system, and of work as a category which fits within different occupational statuses (Schmid, 2015).

The “transitional labour market” (TLM) concept reflects an evolution of active labour market policies through a strong emphasis on “active securities”, which means investing in people versus passive charity and protecting people’s investments versus protecting jobs. Secondly, TLM is characterised by a “life-course orientation” by giving importance to the “right of a career”, which contrasts with the neoliberal concept of *workfare* that defines work as an obligation in order to obtain transfers due to need. This leads to a third central point, which is that modern active labour market policies should empower individuals to change from one work situation to another according to changes in the economy, as well as according to their preferences or work capacities over the life course, which can be defined in terms of having “the right to transitions”. The institutional arrangement proposed to realise these objectives is to create “learning communities” at a local or regional level, in which all relevant actors (i.e. schools, training institutions, employers and social partners) are involved. This involvement should be organized in the form of covenants that make actors committed and responsible.

The transitional labour market theory seems to have strong connections with the social investment paradigm. It is exactly by taking inspiration from Schmid’s work on transitional labour markets, that Anton Hamerijck developed a taxonomy of social investment complementary functions (and related policies) such as: easing the “flow” of contemporary labour-market and life-course transitions; raising the quality of the “stock” of human capital and capabilities; and maintaining strong minimum-income universal safety nets like social protection and economic stabilization “buffers”. In Hamerijck’s vision, as in the transitional labour market theory, the previous mentioned functions are strongly interconnected and are seen as complementary to traditional welfare protections against “old risks” (Hamerijck, 2015).

These theoretical perspectives seem to be useful in order to give an answer to two main questions arising from the transformations we mentioned before: which are the “critical” situations in a life course in which transitional arrangements must be provided in order to protect people from old and new risks? At which institutional level (or “spatial dimension”) should policy interventions be planned in order to manage transitions into the labour market?

On the one side, nowadays “critical transitions” are not limited to linear mobility paths (i.e. from school to work, from job to job, from job to retirement), but are the result of the combination of biographical and external factors (at a *micro*, *meso* and *macro* level), which determines non-linear transitions and overlapping between market and non-market activities. In this view, there is not only the need to extend old protections to different employment and professional statuses, but also to create new protections more in line with the

new configuration of professional careers. The French *Compte Personnel d'Activité* (Maggi-Germain, 2016) can be used as an example of new protection arrangements fit for facing the risks connected with frequent occupational transitions. On the other side (the appropriate “spatial dimension” for active labour market policy planning), as economic geography research shows (Moretti, 2013), work is no longer concentrated inside big factories isolated from the external market, but it is diffused in networks overcoming the contraposition between internal and external markets (Doeringer, Piore, 1970). The growing interconnection and interdependency between work and learning processes suggests looking at new categories, such as “learning regions” (Florida, 1995; Lazzeroni, 2010) intended as spatial dimensions where the production of knowledge is concentrated, and it is possible to identify stable relations among relevant actors (i.e. businesses, institutions, civil society).

All that considered, the added value of the transitional labour market perspective is to propose concrete solutions based on the principle of personalisation defined at a local level and emerging from bottom-up processes involving networks of all relevant actors (Gazier, Tuchsirer, 2015).

The recent Italian labour market reforms, by focusing (partially and late) on the paradigm of *flexicurity*, which has already shown its limits, seem to neglect these questions and seem to be far from the theoretical perspectives presented above, namely: if one should appreciate the attempt to reform and rationalize the employment services network – and to create, for the first time in our country, a foundation for the development of active labour market policies – the concrete institutional solutions arranged are to be questioned due to a few reasons. First, the whole system of active labour market policies has been re-centralised by creating a national agency (i.e. ANPAL) with relevant functions in terms of programming, monitoring and defining policies, but in the absence of a real reform of the constitutional competency framework, which still sees the competencies in the field of active labour market policies shared between central level and the Regions. Secondly, greater attention has been put on reinforcing the conditionality of unemployment subsidies and on “work first” measures. On the contrary, the core of a modern active labour market policy, which is represented by investing in people’s competencies and capacities, has been left behind, as we will explain better later. Due to a strategy which is more aimed at simplifying and rationalising the employment services system than at investing in the future, it seems that the opportunity to face current transformations is being missed, and it seems that those who are more vulnerable will be asked to pay the price of a “zero cost” reform.

The article analyses, in the light of the theoretical framework presented above, the current Italian active labour market policies system, both on the side of the governance model, and of that of the strategies and interventions promoted in

order to sustain transitions in the labour market. A special focus is put on the role of training policies. Some final considerations are then presented in the attempt to shed light on the dimensions which have been neglected till now, both on the side of the role and participation of different stakeholders, and on that of the measures and interventions to be prioritised in order to meet the new great transformation of work on-going.

2. A New Governance

Looking at the governance model, the Italian system after the *Jobs Act* can be defined as a neo-centralistic one (Caruso, Cuttone, 2016). It is, on a formal level, inspired by the “vertical subsidiarity” principle that concerns the respective jurisdictions of the central government and the Regions, since the local level is no longer involved in active labour market policies as it was before the reform of local administrations, which has gone in parallel to the labour market reform, and has determined the end of the local level competencies in the field of active labour market policies by leading them back to the central level and the Regions (Valente, 2016). Labour market services’ and active labour market policies’ planning and control functions have been re-centralised and assigned to the level which is responsible for setting strategic directions and minimum essential requirements and standards, while the Regions are entitled to define specific policies at a territorial level. Second, a national agency for active labour market policies has been created (ANPAL), which is responsible of coordinating activation measures, advising the labour Ministry, monitoring and defining interventions and determining precise operational aspects of the active labour market policies (Alaimo, 2016; Garofalo, 2016; Spattini, 2016).

The horizontal subsidiarity principle is also observed if one looks at the creation of a “national network of labour market policies”, including all the main actors of the labour market: the National Agency for Active Labour Market Policies (ANPAL); public and private employment services; bilateral training funds; Chambers of Commerce, Trade, Industry and Agriculture; the National Social Insurance Agency (INPS); the National Institute for Insurance against Accidents at Work (INAIL); and the National Institute for Public Policies Analysis (INAPP). Moreover, this seemed to happen without addressing with concrete measures the important issue of promoting networks of relevant stakeholders at a local level, as it was foreseen by the Fornero Reform of the labour market (2012), which created “*territorial* networks for lifelong learning” aimed at integrating educational, training and labour policies at a local level, a measure which has never been realised in facts. With this respect, the transitional labour market theory emphasizes the importance of

negotiating strategies and interventions at a local level by means of territorial pacts and covenants involving local actors by giving them trust and responsibility (Schmid, 2015). In this light, decentralisation and strategic consultation are key words in order to build the conditions of the so called «interactive employability». With this expression Caruso (2007) identify a concept of employability which «emphasize the role of the public actor and of social partners and of the relative regulation and protection network», in spite of delegating the employability responsibility to the individual. Inter-institutional cooperation and covenants, in this view, act as enabling factors of the individual capabilities (Sen, 1992; 2000; Nussbaum, 2002).

These elements have traditionally received attention in the Italian labour market regulation model, especially from the second half of 1990s, when a general consensus was established around ideas such as the diversification of the labour market on a local basis and the involvement of social partners, local institutions and civil society, by the means of covenants in order to link employment policies and economic development. These perspectives seem to be neglected in the new model, and this can most likely be attributed to the controversial results of the traditional “decentralised” model. Conversely, the shift of functions from the local level to the Regions and the State has been realised without adequate evaluation of available resources and without modernising the whole employment services system. This means that the same attempt to give more efficiency to the system is again under question (Valente, 2016). The creation of a national agency for active labour market policies is also controversial as some authors think the national agency will have a role that is mainly focused on the coordination of the services networks (Spattini, 2016), while others are worried what the nature of and crucial functions given to the agency will be and see the risk of an overload due to its “functional hypertrophy” (Alaimo, 2016). One should also remember that, following the results of a public consultation on December 4th, 2016, the competencies in the field of labour market policy remained formally shared between the central level and the Regions, meaning that the central level cannot overcome the function of setting a general frame and minimum standards for policies.

On a formal level, we have both the vertical and horizontal subsidiarity principles observed, but the question is which are the institutional arrangements foreseen to make this “multi-level governance” model work. The reform foresees a specific tool, which is represented by covenants between the State and each Region in order to negotiate objectives, define the respective roles, and adapt policies following the specificity of each Region. On a second level, covenants can also be concluded between Regions and the local level to assure a better adaptation to the local contexts. But, till now, these covenants have been characterised by a very general and formalistic approach, which

doesn't seem to fit with the need to promote targeted solution in the different labour markets.

Looking at the actors involved in the policies implementation, the model is traditionally based on the integration between private and public providers (Olivelli, Tiraboschi, 2005), meaning the reform aims at promoting the cooperation between the private and public in this sector. Anyway, both on the institutional side and in the scientific debate, attention has been paid mainly to the relationship between “traditional” private and public intermediaries (in terms of contraposition or cooperation). Nowadays, due to the transformations on-going, a greater attention should be addressed to another segment of the Italian employment services sector, i.e. that of “special authorisation systems” (Art. 6 of the Legislative Decree n. 276/2003) that include a diversified set of actors (from schools and Universities, to labour consultants, to websites) who are authorised to intermediate labour demand and supply by having access to simplified procedures. It is exactly by this way that a new, big, fragmented set of social actors are allowed to participate in the system and can concur in structuring specific transitional labour markets (between school and work, in specific sectors, and also in the web, where the platforms are becoming more important and able to steal emerging sectors of the labour market from the traditional intermediaries).

In the current labour market organisation, the role of social partners remains marginal. However, their contributions on all institutional levels are more and more important, both on the side of policy planning, and on that of the implementation of new negotiated solutions for managing occupational transitions at a local level. Without conveying any judgement concerning the bodies that are expressions of social partners, their functions and effectiveness in the field of active labour market policies (Varesi, 2011), it is necessary to point out that this marginalisation of social partners, and the silence of the reform concerning their involvement, is a counter-trend with respect to the interesting developments of decentralised bargaining, but also with respect to the Italian vocational training system, which has been traditionally identified as a hybrid model (public-led, but with a relevant role for social partners, especially in the field of continuing vocational training) (Casano, 2013; 2016).

In conclusion, concerning the governance model, the risk is to lose – due to the re-centralisation of the system – those positive conditions that are necessary for inter-institutional cooperation, and, at a local level, for public-private collaboration strategies which have marked the success of some territorial models.

The new organisational model should be supported by a technological infrastructure based on a unitary information system aimed at assuring coordination and adequate informative on the labour markets. Unfortunately,

that seems to be the less-clear part of the reform intervention. The unitary informative system (Art. 13, Legislative Decree n. 150/2015) should result from the coordination of current informative systems of the interested public administrations, but should also present some new components. It will collect administrative information (such as fruition of unemployment benefits, hiring mandatory notification), and new sets of data concerning, for example, training experiences experimented by people in their career, which are supposed to be collected by the means of two new tools: the *vocational training informative system*, and the *individual electronic dossier for workers* (Author). The latter of which will collect all information concerning training experiences and will be automatically connected to the *vocational training informative system* participated by all training providers.

After two years, it is still not clear how and when this system will be implemented. In any case, this solution seems to be far from what is needed in order to build a real *labour market intelligence system*. The reduction of informative gaps is a crucial aspect for governing labour market transitions, but is something different from a digital infrastructure correlating informative flows. What is needed, is to build *learning communities* at a local level, adopting the principle of *learning by monitoring* (Sabel, 1993) which states that all relevant actors in a specific context (i.e. schools, universities, companies, social partners, institutions) cooperate in the production of the most important collective good, which nowadays is *information*. This requires tools and strategies that are not adequately supported at the moment, and must go in parallel with all technological solutions aimed at integrating information at a national level, in order to properly advise central institutions.

Looking at the national informative infrastructure, several measures yet to be introduced by previous reforms are still outstanding and seem to be a precondition for a *unitary* informative system. Examples include: an efficient database on professions (related training, demand/supply, career perspectives) which should be connected with monitoring bodies involving social partners in order to efficiently map skills needs at a local/sectorial level; and the National repository of educational and training diplomas and professional qualifications, which has been introduced by the Legislative Decree n. 13/2013 (Art. 8), but is still incomplete.

3. Towards a *Workfare* Model

The second element characterising the reform of employment services and active labour market policies, is the shift towards a *workfare* logic by the means of reinforced conditionality schemes associated with unemployment benefits (Articles 21 and 22 of Legislative Decree n. 150/2015) (Olivieri, 2016). These changes have been interpreted as the embracement of an idea of social inclusion more as a matter of duty than as an individual right, thus leading to a lower freedom of choice for people involved (Fili, 2016).

The final aim of this reform is to increase occupational rates more than to sustain occupational transitions. That is why the application of strong protection measures is reserved to the unemployed ones, in order to prioritize the “traditional” transition from unemployment to work, without taking care of preventing measures or systemic interventions able to create the conditions for secure transitions in different situations and contexts. Another aspect that has been criticised is the generality of the dispositions concerning concrete measures and services of active labour market policies to be provided by employment services. The vague list of services enumerated in Article 18 of the Decree (i.e. orientation, training, internships, entrepreneurial support, etc.) is also disconnected by other crucial measures and interventions introduced in the past years (i.e. “Fornero Reform” and its implementing decrees), representing the new frontier of active labour market policies – such as competences individuation, validation and certification – which are neglected in the context of the reform.

It has been argued that the measure that one could label as the “emblem” of the reform, that is the “job re-integration voucher” introduced by Article 23 of the Legislative Decree n. 150/2015 (Caruso, Cuttone, 2016), is characterised by a different logic. In this case, the critical aspects underlined above (*workfare* logic, low personalisation, generic measures), leave room for a “soft” conditionality approach (Caruso, Cuttone, 2016) more inspired by the principles of responsibility and freedom of choice. The presence of a tutor, the organisation of a personalised programme for a job search, the reimbursement of expenses granted to the service provider only following a positive outcome (employment), and the modulation of the voucher with respect to individual employability chances, seem to give this measure all the features of the best international practices. Unfortunately, the results of the first experimentation of the “job re-integration voucher” are not comforting. For instance, during the pilot phase in spring 2017 – due to “strategic” mistakes in the implementation process – only 3% of recipients of the measure decided to join the programme on a voluntary basis (Ichino, 2017). Another issue concerns how to grant adequate financial and professional resources once the measure is implemented at full speed, remembering a crucially relevant fact: all of the reform is supposed to be implemented at zero costs.

It is worth considering some interesting experiences of cooperation between the State and Regions in the management of industrial crises by means of the “collective job re-integration voucher” (Valente, 2017), because they represent a new approach to this tool which is more «relational, inter-organizational and negotiated» (Caruso, Cuttone, 2016). In these experiences, it seems to have been overcome the risk of considering the “job re-integration voucher” as an individual endowment, which risks being ineffective if demanded to the individual activation capacity, in the absence of appropriate institutional support (Tiraboschi, 2016).

Nevertheless, as we will explain better in the following section, the whole system is not interested in significant improvements on the side of mapping and anticipating skills needs or on that of articulating preventive strategies to avoid workers’ de-qualification and skills deprivation, both of which are crucial for promoting the sustainable development of companies, territories and better employment opportunities.

4. Is there Still Room for a Lifelong Learning Approach?

In the current system of active labour market policies, competencies development and recognition seem to play a minor role. All references to training policies are generic and not adequately connected with the perspectives of lifelong learning or social investment. This is true if one looks at examples like: the “right to lifelong learning”, that was formally recognised in 2012, but is still far from being supported by concrete measures; the absence of a coordinated and modern system for skills forecasting at a local and national level; the system for validating and certificating formal, non-formal and informal learning that is still not operative; and the unsuccessful implementation of the “territorial networks for lifelong learning” introduced by the Fornero Reform. Lifelong learning should be at the heart of a modern welfare system in order to help people in facing old and new risks in frequent occupational transitions. A recent report from The European Political Strategy Centre (EPSC, 2017) presenting the ten trends transforming education and training, clearly defines the following priorities in the field of training policies:

- 1) Because people change jobs – and even professions – much more often than a generation ago, investing in lifelong learning, including through more learning on the job, is the best promise to maximise future employability.
- 2) Digital is the new literacy. The lack of basic digital skills may lock individuals not only out of work, but also out of society. This implies the need for greater understanding of what digital (and media) literacy means, and prioritizing the access of the more vulnerable workers to these opportunities.

3) The growing individualisation of careers paths makes it necessary to provide personalised interventions, meaning re-centring the delivery of training on personal projects (and progress). Up till now, high costs were considered an insurmountable obstacle to this, but new digital technologies in the field of education and training provide for new solutions and are a catalyst for personalising learning.

One-size-fits-all is unlikely to work in this new environment, which is why targeted solutions must be built by looking at those crucial transitions that are more exposed to risks and by planning interventions at a local and sectorial level.

Against this backdrop, the recent reform addresses the continuing vocational training system only on the side of governance, here again, trying to re-centralize the whole system. Planning and control functions are assigned to the Ministry of Labour, together with the prerogative of determining the general frame for training policies and the basic standards for the accreditation of training providers, in order to access to public funds. Legislative Decree n. 150/2015 also introduces important changes in the regulation of bilateral training funds for continuing vocational training. These bilateral funds were created more than 15 years ago in order to improve the quality and efficiency of the unsatisfying public training system. The principle inspiring their creation was that of vertical and horizontal subsidiarity based also on the trust towards bilateral governance as a better solution for managing training investments and interventions, due to the privileged position of social partners in assessing and satisfying companies and workers' training needs. The original model was based on a sectorial logic – and a territorial articulation was also foreseen – which hasn't been realised in fact, except for a few positive experiences. A huge debate has been running in the past decade concerning the validity and the results of the bilateral system. The bilateral funds became the central infrastructure of the continuing vocational training system, in terms of resources collected and managed and in terms of companies and workers involved, but they have not been able, till now, to overcome historical problems such as: low participation rates; unequal access to training based on age, gender, region, or company size; and a lack of innovative training methodologies and contents with a great part of programs focused on mandatory safety-related training – each for a duration not exceeding 16 hours – developed in a traditional classroom environment. These results have fostered a sentiment of mistrust, which brought the central government to make several attempts to reduce bilateral funds' financial means and autonomy, and by putting into discussion the nature of private and autonomous organisations under the control of social partners.

Following the recent labour market reform, the bilateral training funds are now more exposed to central coordination and control, for example: they are formally included in the national network for active labour market policies and they will receive strategic orientation from the Ministry of Labour concerning training policies; they will be under the surveillance of the national agency for employment policies (ANPAL); they are expected to contribute to the national informative system on continuing vocational training; and they are involved in the implementation of conditionality schemes associated to wage subsidy programs promoted in order to sustain employment retention during crisis, in view to combine wage subsidy with participation in training.

Nevertheless, no specific interventions have been planned to enforce the main function of these structures and, more in general, of a continuing vocational training system that is meant to train, on a continuous basis, people (especially the more exposed to unemployment risk), in order to help them in facing unexpected and recurrent transitions in the labour market (Author). This means moving from the logic of arranging “restoring” interventions in times of crisis, to that of articulating preventive strategies, and investing in people’s capability to face transitions by assuring the “right to a career”. It is not only a matter of promoting training interventions as an active labour market policy, the challenge is that of building tailored “*bridging mechanisms*” (Schmid, 2015) able to promote continuous personal development in a life course perspective.

5. Conclusion

In the “new geography of work” (Moretti, 2013), the configurations of the spatial dimension – which is relevant for analysing and regulating work – are to be determined by looking at real processes, which are different from one territory to another, because the on-going transformations are creating new winners and losers in the race to competitiveness, which is more and more dependent on the availability of material and immaterial infrastructures. In this view, the historical debate around centralisation and de-centralisation should be replaced by an accurate analysis (an interdisciplinary analysis, by definition) aimed at individuating the more appropriate dimension for understanding labour market dynamics and arranging successful interventions for the promotion of employability.

For what specifically concerns active labour market policies, this could be done by analysing models and systems already established in different territories, resulting from a combination of factors like: institutional traditions; the legislative framework (both at a national and at a regional level); and decentralised collective bargaining, agreements, covenants, pacts and informal networks for the matching between labour and demand supply in specific

sectors or contexts. This would develop sort of “map” of the labour market’s organisational and regulatory systems, which would be useful to individuate the more appropriate strategies and tools to promote occupation, inclusion and development.

In the Italian case, the reform foresees a specific tool for the coordination between different institutional levels and actors, which is represented by covenants between the State and each Region, in order to negotiate objectives, to define the respective roles, and to adapt active labour market policies, following the specificity of each Region. A second level of covenants can also be concluded between Regions and the local level to assure a better adaptation to the local contexts. But, till now, these covenants have been characterised by a very general and formalistic approach.

Another crucial issue is exploiting the potentiality of growing information flows, not only by building a digital infrastructure to collect information from administrative sources at a national level, but also by promoting stakeholders’ cooperation at a local and sectorial level in producing and sharing information about labour market demand and supply, new skills required, and careers and transitions features (and related risks and opportunities) at a meso/micro level (Cortese, 2012). Here, there seems to be a pivotal role for sociological research. An essential condition for the functioning of active labour market policies, still outstanding, is to develop a sound system for mapping and anticipating skill needs (Allegretta, 2013). In our country, this issue seems to be relegated to innovative managerial strategies (in big companies), or to a formal requirement to be observed, in order to access public funding for training, but it is still not conceived as a policy advice tool (Allegretta, 2016) or as a strategic information source for planning and evaluating training and labour policies. Yet, recent research on the results and effectiveness of active labour market policies clearly demonstrates that these interventions cannot be successful without being coordinated with training and occupational needs at the local level (Teselli, 2016).

Transparency (i.e. identification, recognition and transferability) of competencies developed in every learning context is another strategic enabling factor for sustaining occupational transitions. In our country – following the Law n° 92/2012, establishing for the first time in Italy, a right to lifelong learning and competencies certification – an attempt has been made by means of the Legislative Decree n° 13/2013, but the system for validating and certifying competencies is far from being fully actionable. It is worth mentioning that while the public system is stuck in a complex and late implementation, and has been built upon professional standards which risks getting old before being used, different certification systems are spreading in the private sector concerning the growing and differentiated world of

professionals, in parallel with *online* international reputational and certification systems which are gaining more and more importance.

In conclusion, in a country where the national expenditure for active labour market policies is among the lowest in Europe, and where the lack of dedicated staff in the public employment services risks to paralyse the simplest of functions in some Regions, the most critical point of the recent reform remains the absence of dedicated resources to develop new and innovative strategies and interventions.

Recent research by Gazier and Tuschzirer (2015) suggests the importance of promoting learning communities, as well as the importance of investing resources in training the *nodes* – i.e. professionals (inside companies, public and private employment services, schools, and all relevant actors in labour market governance) – involved in the occupational transition management, in order to create new “career advisors” equipped with at least three set of skills: knowledge of the local labour markets, advanced competencies in coaching differentiated targets, and advanced knowledge of the institutional framework including individual rights and existing supporting measures.

Time and lack of resources are the main obstacles in this endeavour, both of which can only be overcome thanks to cooperative strategies at a local level. In this view, the Author suggests finding and promoting what she calls “enabling third parties” (*tiers capacitants*) able to build the conditions for the production of shared goods (training, information) by approaching two different worlds: the world of the *haute couture* (big companies and private employment services holding the organisational and financial means to invest) and that of *pret-à-porter* (small companies, but also the public employment services, which are forced to adopt low costs and standardised solutions).

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Lithuanian Labour Reform: In Search of Balance

Aušra Bagdonaitė¹

Purpose. The analysis aims to evaluate the new balance of the interests of employers and employees as established in the recently adopted Lithuanian Labour Code².

Design/ methodology/ approach. The analysis considers the main reforms of Lithuanian labour law. The very essence of reforms is presented in the context of the labour market situation and former regulations.

Findings. Notwithstanding the results of implementation remaining unclear, the new Labour Code manages to reach a balanced relationship between the employer and the employee.

Research limitations/implications. It is focused on the essential changes regarding introduction of flexibility measures, new rights of employees and measures taken to encourage collective labour relations.

Originality/ value. The analysis contributes to the ongoing debate on labour law reforms in Eastern European countries.

Paper type. Issues paper.

Keywords: *Lithuania, Labour Law, Reform, Flexibility, Collective Law.*

1. The context of Lithuanian Labour Reform

Labour law reforms in post-socialist Eastern European countries were related to three main changes. The first two were fundamental, i.e. the transition from a planned to a market economy in the 1990's and the implementation of European Union labour law, before becoming a member state in 2004. The recent reforms aim to comply with the socio-economic changes in the world of work³. Lithuania is not exempt from these trends.

After the re-establishment of the state of Lithuania in 1990, amendments were made to the socialist Code of Labour Laws of 1972, and separate institutions

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² TAR (Register of Legal Acts), 2016, n. 23709 (with amendments and supplements of 6 June 2017).

³ GYULAVÁRI, T. *Labour Law Reforms in the Eastern European Member States*. In: Davulis, T. (ed.) – *Labour Law Reforms in Eastern and Western Europe*, Peter Lang, Bruxelles, 2017, p. 21.

were regulated by various laws (e.g. the Law on Employment Contracts, the Law on Collective Agreements). For the first time during the history of independent Lithuania, labour law was codified in 2002. This Code codified Lithuanian labour law and implemented the European Union labour law. However, after several years, discussion regarding the modernisation of Lithuanian labour law began⁴.

The necessity to recodify Lithuanian labour law was based on several reasons: (i) increased legal uncertainty as case law started to regulate employment relations differently when it was established in the Labour Code; (ii) the majority of labour law norms did not work in practice; (iii) the Labour Code required to a lot of documentation which raised administrative burden on employers; (iv) the existence of illegal and undeclared work; (v) inadequacy of social guarantees stipulated in the Labour Code which reduced Lithuania's competitiveness with respect to other states; (vi) the Labour Code did not improve the bargaining power of employees and their representatives and this determined the low level of collective bargaining in Lithuania⁵.

The new Labour Code was a part of the structural reform regarding the creation of a new social model⁶ and its consideration process took almost three years. The first draft of the Labour Code was presented to Lithuania's Tripartite Council⁷ at the beginning of 2015. Originally, all of its provisions were considered by social partners at Lithuania's Tripartite Council for almost half a year. Later, its consideration was continued in the committees of the Lithuanian Parliament. The Parliament adopted the first version of the Labour Code on 29 June 2016. After this, the Lithuanian President imposed her veto on the law and proposed amendments to the benefit of the employee. The Parliament decided to override the President's veto, and the Code was again adopted on 17 September 2016 – without any amendments – and should come into force on 1 January 2017. However, in autumn, the new Parliament came into power and it was decided that the entry into force of the Labour Code

⁴ Check T. DAVULIS, *The Fifth Anniversary of the New Lithuanian Labour Code: Time to Change?* In: R. Blanpain [ed.] – *The Modernization of Labour Law and Industrial Relations in a Comparative Perspective*, Kluwer Law International, Alphen aan den Rijn, 2009, 360-364. T. Davulis, *Lietuvos darbo teisės modernizavimo perspektyvos*, in *Jurisprudencija*, n. 8(110), 2008, 27-33.

⁵ T. DAVULIS, *Darbo teisės rekodifikavimas Lietuvoje 2016-2017*, in *Teisė*, vol. 104, 9-10.

⁶ The preparation of the draft of the Labour Code was one of the results of the project “Labour Relations and the Establishment of Legal Administrative Model for the State Social Insurance”, 2014-2015. The project was initiated by the Lithuanian government and it was implemented by scholars and researchers of Vilnius University, Mykolas Romeris University and the Lithuanian Social Research Centre.

⁷ Lithuania's Tripartite Council is main national social dialogue institution. It is formed from the equal number of members: organisations of trade unions functioning on the national level, employers' organisations and representatives of the government.

shall be postponed for half a year. The new Parliament declared that social partners have to agree on amendments to the new Labour Code in order to balance the interests of employees and employers. Social partners at the Lithuanian Tripartite Council managed to agree on amendments to the Code until the end of the postponement period and it, together with the adopted amendments, came into force on 1 July 2017.

1. Individual labour law: new flexibility measures

Before the recent recodification (i.e. during the financial crisis), the Lithuanian government made attempts three times (in 2009, 2010 and in 2012) to liberalise labour law. The main measures were aimed at decreasing the costs of the termination of employment, flexibilising the regulation of working time as well as expanding the possibilities to conclude fixed-term contracts. However, these reforms were not successful and are described as not having made much impact on labour relations since “it all ended in editorial and superficial changes of the legislative norms”⁸.

The lack of flexibility of Lithuanian labour law was emphasized at the European Union level. The Council recommended to amend the labour legislation to make it more flexible and to allow better use of fixed-term contracts⁹ with regard to flexible contract agreements, dismissal provisions and flexible working time arrangements¹⁰.

These recommendations were implemented along with the recent reforms, and succeeded in increasing flexibility, as introduced by: (i) allowing more flexible regulation of fixed-term employment contracts and introducing new types of employment contracts; (ii) establishing peculiarities for small companies; (iii) decreasing the costs of the termination of employment relations and introducing new grounds to terminate employment contracts; (iv) introducing more flexible working time; (v) allowing deviations in employment contracts.

⁸ D. PETRYLAITĖ, V. PETRYLAITĖ, *Social Rights*, in: E. Kūris (ed.) – *Crisis, the Rule of Law and Human Rights in Lithuania*, SC Titnagas, Šiauliai, 2015, 200-201.

⁹ Council Recommendation of 12 July 2011 on the national reform programme 2011 of Lithuania and delivering a Council opinion on the updated convergence programme of Lithuania, 2011-2014, 2011/C 210/01, 16 7 2011.

¹⁰ Council Recommendation of on the National Reform Programme 2012 of Lithuania and delivering a Council opinion on the Convergence Programme of Lithuania, 2012-2015, 2012/C 219/16, 6 6 2012. Council Recommendation of 9 July 2013 on the National Reform Programme 2013 of Lithuania and delivering a Council opinion on the Convergence Programme of Lithuania, 2012-2016, 2013/C 217/13, 30 7 2013. Council Recommendation of 8 July 2014 on the National Reform Programme 2014 of Lithuania and delivering a Council opinion on the Convergence Programme of Lithuania, 2014, 2014/C 247/13, 29 7 2014.

1.1. Atypical employment contracts

Atypical employment contracts have never played an important role in Lithuania, and fixed-term contracts were rarely concluded (less than 5 per cent of total employment contracts¹¹). The new Labour Code establishes more flexible regulation on fixed-term employment contracts. The requirement for work to be of a temporal nature has been rejected. The conclusion of fixed-term contracts is now limited by the total duration of successive fixed-term employment contracts: up to two years for one employment function or up to five years for different employment functions. There is an additional regulation that fixed-term employment contracts may not exceed 20 percent of the total number of employment contracts concluded by the same employer. Also, an employee's situation is balanced by providing severance pay in the amount of one monthly average wage if the term of the contract expires after more than two years of employment.

The employer is now under the obligation to offer temporary workers job vacancies intended for employees on open-ended employment contracts. Should this be the case, the former have to perform similar tasks and meet the same qualification requirements. Furthermore, unemployment insurance contributions which are paid by employers for workers on fixed-term employment contracts is twice that for open-ended employment contracts¹².

The new Labour Code introduces new employment contracts such as: a portfolio work contract, a job-sharing contract and an employee-sharing contract. A portfolio work contract is a type of fixed-term employment contract in which its conclusion is related to the duration of a particular project, which may be two years or five years. The legal consequences of this contract are almost the same as the fixed-term contract, but this contract is designed to provide independent professionals with the possibility to work under an employment contract.

Job sharing and employee sharing contracts are aimed at improving flexibility in employment relations and may be beneficial to both employers and employees. These contracts may ensure full employment to employees if companies are in difficult economic conditions or are not able to provide a full-time working place. In the case of job-sharing, employees may balance their work and family life by working on part-time basis, a scenario which was not easily available for employees in Lithuania before.

¹¹ Eurostat, 2016.

¹² The Law on the Approval of the Indicators of the Budget of the State Social Insurance Fund, TAR (Register of Legal Acts), 2017, n. 20569.

The idea to introduce new types of employment contracts is also based on the assumption that it “may increase the chances that participants in the labour market will opt out for a legal, suitable and transparent solution when shaping their relationship”¹³.

1.2. Peculiarities for small companies

The new Labour Code foresees peculiarities for companies whose average number of employees is less than ten. In Lithuania, 81.1 percent of companies have 0-9 employees and employ more than 23 percent of the work force¹⁴. They are exempt from particular obligations which may create unnecessary burdens on small companies. For example, such companies are not obliged to the following: to change working time, in the case of part-time work, at the employee’s request; to compensate for educational leave from the employer’s fund; to provide particular information to the employee’s trustee. These provisions weaken some rights of employees, but benefits from the growth of small businesses are expected to outreach the possible negative implications.

1.3. Termination of employment contracts

The new regulations also allow for easier termination of employment contracts, and the general notice period has been shortened from two months to one month. Significant changes were also introduced to the amount of severance pay. Severance pay is reduced from one-monthly average wage to half-average wage when the employment relationship continues less than one year. If it lasts longer, an employee is entitled to receive two-monthly average wages. Before, it depended on seniority and it could have reached the amount of six-monthly average wages, which was not a small financial burden on an employer. However, trade unions were against this cut, so during the consideration of this regulation, social partners agreed on the establishment of the funding of long-term work payments. According to the law which regulates the fund, contributions to this fund are paid by employers, and an employee shall receive a long-term work payment when he works more than 5 years. These contributions compliment the severance paid by employers.

According to the former regulation, it was “expensive” to terminate an employment contract at the initiative of the employer without any fault on the

¹³ DAVULIS, T. *Main features of Lithuanian Labour Law Reform*. In: Davulis, T. (ed.) – *Labour Law Reforms in Eastern and Western Europe*, Peter Lang, Bruxelles, 2017, p. 66.

¹⁴ Statistics Lithuania, at the beginning of 2017.

part of the employee. One of the arguments in favour of reduction in dismissal costs was related to the actual situation. Majority of employees terminated their employment contracts at the initiative of the employers during the financial crisis¹⁵. It was clear that such statistics showed that employers violated labour regulation and forced their employees to terminate their contracts, thus losing guarantees provided by law. The rationale to decrease dismissal costs was based on the idea that it is more possible that employers will be more eager to pay smaller severance pays than to violate laws. However, results of this will be seen in the future. All in all, this reform is not radical in regard to employees, although it reduces the costs on the employers' side.

Moreover, the new Labour Code introduces a new ground to terminate an employment contract, i.e. at the employer's will by giving notice of three working days in advance and paying a severance pay in the amount of at least six-monthly average wages. Lithuania has ratified the Revised European Social Charter; therefore, under this regulation it is forbidden to terminate employment regarding participation in the proceedings against the employer charged with a violation of law, as well as for application to administrative bodies based on gender, sexual orientation, race, nationality, language, origin, citizenship and social status, belief, marital and family status, intention to have children, convictions or views, membership in political parties and public organisations, age and other discriminative grounds. Also, it is forbidden to use this ground to terminate employment contracts in the institutions funded by public funds¹⁶.

This provision establishes high amounts of severance pay, therefore, it is expected that it will not be used often. It is likely that the termination of employment contracts on this ground could be used only with employees who occupy high-level and well-paid positions.

1.4 Working time

The Labour Code establishes some flexibility in overtime regulation by allowing more working hours. Previously, maximum overtime work during the period of 7 consecutive calendar days could not be more than 8 hours. According to the new regulation, if an employee consents, he may work up to 12 hours overtime during a week.

¹⁵ T. DAVULIS, *Darbo teisės rekodifikavimas Lietuvoje 2016-2017*, in *Teisė*, vol. 104, 9.

¹⁶ Article for with the exception of state or municipality institutions financed from the state or municipal budgets, state social insurance fund budgets, or the resources of other funds established by the State, state and municipality enterprises, public institutions owned by the State or municipality, or the Bank of Lithuania.

Greater flexibility has been introduced to employees regarding the working time regime. An employee may agree with an employer to work on a flexible work schedule, whereby an employee must be at the employment place during the core hours of the working day (shift) and may work the rest of the working day (shift) before or after those core hours, or to work on a different individual working time regime. This possibility to work under flexible work time regimes may result in the improvement of employees' work-life balance.

1.5. Deviations from statutory regulation in an employment contract

The new Labour Code allows for the departure from statutory regulation by an employment contract if certain conditions are fulfilled: (i) an employee receives the amount of two average monthly gross wages; (ii) a balance between the interests of the employer and the employee is achieved; (iii) restrictions are followed, i.e. it is restricted to depart from the following: maximum working time and the minimum rest period; the conclusion and expiration of an employment contract; the minimum wage; health and safety at work: equal treatment; and non-discrimination.

This regulation allows the implementation of private autonomy and freedom of contract in labour law. It provides the possibility for parties of the employment contract to determine its content and to adapt quickly to changes in the labour market¹⁷. For example, an employee and an employer may agree that for a certain period he will not receive additional pay for overtime in exchange to fully-paid educational leave.

With the aim of avoiding abuse, this norm is applied to higher-paid employees. However, only application of this provision in practise will show if it is enough bargaining power, even for employees in higher-paid positions. The term 'balance' in this context is the criteria which will be assessed by courts on a case-by-case basis. It will take time for case law on this matter to be established.

2. New rights for employees

2.1. Work-family balance measures

The new Labour Code provides more possibilities to reconcile work and family life. The Code establishes that an employer must take measures to help an

¹⁷ T. BAGDANSKIS, *The freedom of contract in Lithuanian Labour Law*, in: T. Davulis (ed.) – *Labour Law Reforms in Eastern and Western Europe*, Peter Lang, Bruxelles, 2017, p. 352.

employee fulfil his family commitments, except in the cases where it is impossible to achieve due to specific features of the work function, the employer's activities or to excessive expenses on the employer's part. This provision is guaranteed by the established obligation of an employer to consider and reasonably respond to the employee's requests related to the implementation of family commitments, as well as to consider the employee's conduct and his actions at work in order to effectively and fully implement the principle of work-life balance.

However, the employer cannot be sanctioned if he does not follow the above-mentioned provision as it remains more of a soft law measure than a real obligation. Thus, it is not easy to foresee how this measure will be applied in practice.

The Code establishes the right to request teleworking as a form of work organisation for specific groups of employees. Unless the employer proves that it would cause excessive costs due to production necessity or peculiarities of the organization of work, he must accept the employee's request to opt for teleworking for at least one-fifth of the whole rate of working time. This provision only applies to cases in which it is requested by a pregnant employee, an employee who has recently given birth, a breast-feeding employee, an employee raising a child under three years of age, and/or an employee who is alone in raising a child under fourteen years of age or a disabled child under eighteen years of age.

2.2. Life-long learning

The Labour Code supports lifelong learning and sets forth a general principle of respect for an employee's pursuit of professional development. Accordingly, the employer is obliged to take measures to improve employees' qualifications, professionalism and the abilities to adjust to the changing business, professional or working conditions. Also, the employer must provide conditions for employees' training, in-service training, and professional development. This principle is not based on certain rights, but acts more as a guideline for employers. In the case of a possible infringement, the content will be specified by case law.

Moreover, employees are granted educational leave to participate in non-formal adult education programmes. The employee is entitled to half of his wages for the educational leave per year of employment, lasting up to twenty working days if such leave is related to the upgrading of his qualifications and his employment relationship has continued more than five years.

Although this right to have partly paid leave is only granted to employees who have long-term employment relations, it encourages them to engage in non-

formal education programmes and upgrade their skills, especially considering that relevant skills may help employees remain active in the labour market.

3. The encouragement of collective labour law

Collective labour relations are quite weak in Lithuania. Trade union density is very low, covering just 7.6 percent of the work force¹⁸. Also, membership in employers' organisations is low as well (only 12.6 percent belong to employers' organisations)¹⁹. Collective bargaining coverage is less than 10 percent²⁰ and mostly takes place at the company level. Sectoral collective agreements first appeared in 2012. Now, there are more but their normative provisions do not regulate the most important working conditions, e.g. wages. The creation of works councils in Lithuania was possible from 2004 (since the Law on works councils came into force). This law established the universal principal of employees' representation meaning works councils could be composed in companies where trade unions are not active. In such cases, works councils even had the right to conclude collective agreements and announce strikes at the company level. The rationale of such a principal was that employees would be represented either by a trade union or by a works council. In practice, only 4 percent of employees were represented by works councils. Thus, this model of employees' representation was not effective, and majority of employees remained unrepresented.

The new Labour Code makes attempts to encourage collective labour relations in several ways: (i) providing better information and consultation rights; (ii) establishing employees' participation in the management of a legal person; (iii) strengthening collective bargaining; (iv) allowing deviations in collective agreements.

3.1. Information and consultation rights

The new regulation introduces a dual system of representation where works councils are responsible for information and consultation rights, while trade unions are responsible for collective bargaining. Besides, the novelty is the mandatory composition of works councils. A works council shall be established where the employer's average number of employees is twenty or more. In Lithuania, 9.2 percent of companies employ twenty or more

¹⁸ Statistics Lithuania, 2016.

¹⁹ Statistics Lithuania, 2016.

²⁰ Ilostat, 2013.

employees, but they cover more than 65 percent of the work force²¹. However, if one-third of a company's employees are members of a trade union, that trade union acquires works councils' powers. This provision was inscribed in the new Labour Code when it was amended in July 2017. It was the social partners' compromise because trade unions wanted to save their influence on companies where they dominate. Notwithstanding the idea that this employees' representation model is based on a division of representative functions between works councils and trade unions, trade unions now see works councils as their competitors.

Also, the content of employees' information and consultation is more elaborated. Besides compulsory employee information and consultation, employers who employ, on average, twenty or more employees, shall, once a calendar year, hold regular information and consultation meetings (e.g. on the current and future activities of the enterprise and the status of employment relationships) as well as information and consultation meetings before the approval of local regulatory acts (e.g. work regulations which determine the common order in the undertaking; the procedure of introducing new technological processes; introducing measures which may prejudice the privacy of employees).

3.2. Employees' participation in the management of a legal person

The novelty is in the introduction of participation of the employees' representatives in the management of a legal person which may be implemented in two ways. Firstly, employees' representatives have the right to appoint part of the members of the management or supervisory body of a legal person. This right can be implemented only in state and municipal enterprises. Secondly, employees' representatives can have the right to attend meetings of collegial management and supervisory bodies of the employer as observers or in an advisory capacity when the issues related to employees' working conditions are being considered. They can have this right if it is stipulated in the collective agreements as well as in agreements between the employer and the employees' representatives. This provision does not create a direct right to employees' representatives. It simply submits an idea of what may be regulated in collective agreements or agreements between the employer and the employees' representatives. Besides the limited scope of the above-mentioned provisions, it can be a good start in the development of employees' co-determination rights.

²¹ Statistics Lithuania, at the beginning of 2017.

3.3. Strengthening collective bargaining rights

In order to promote the regulation of employment relations by collective agreements, the new Labour Code establishes the precise regulation of a collective bargaining procedure. Also, the application of a collective agreement is strictly tied to the membership of organisations which concluded it as a collective agreement is applied only for the members of trade unions and employers' organisations which concluded it. Before, collective agreements concluded at the company level were applied to all employees. However, there are exceptions. For example, if a trade union and an employer agree with a confirmation of employees (i.e. at a staff meeting), a collective agreement can be applied to all employees in a company. This concept justifies that a trade union does not have to bargain in order to stipulate more favourable conditions (or less favourable conditions in comparison with statutory regulation, when established by the Code) for all employees regardless of their interest or desire to be collectively represented. Also, looking at the positive results obtained by regulating working conditions in collective agreements, the latter can be a good incentive for a large number of workers to become trade union members.

Moreover, the Code sets forth new regulation in relation to collective bargaining in public enterprises. It is set forth that the government (or its authorised institution), after receiving the proposal to begin collective bargaining on a sectorial or inter-sectorial level, must invite the employers' organisations of the respective sector of economic activity operating in the private sector. Said organisations may participate together in collective bargaining. The bargaining should be finished no later than when the Ministry of Finance starts to prepare the project of the State budget as well as the project of financial indicators of municipal budgets. This regulation allows achievement of wage bargaining as the main object of collective bargaining in public sector.

3.4. Deviations from statutory regulation in a collective agreement

Similarly, to a possible deviation in employment contracts, the Code allows a departure from statutory regulation by a collective agreement concluded at national, sectoral or territorial level. Also, in the case of employment contracts, the same restrictions are applied (see above 1.5.). Furthermore, there is a requirement to achieve a balance between interests of employers and employees in such collective agreements.

This regulative measure can be seen as encouraging collective bargaining at higher than the company level. Also, it allows one to use collective agreements

more as an instrument of adaptability. On the one hand, employers' organisations are provided with more incentives to conclude collective agreements by trying to achieve more flexible regulation for them. On the other hand, trade unions can also achieve better working conditions for employees. As mentioned above, collective agreements only apply to trade union members. Therefore, it is expected that trade unions will try to strike a balance between the interests of their components, otherwise a risk might arise to lose members.

4. Conclusion

Generally, the reform has been in line with the implementation of the European Union principles of flexicurity. The changes in labour law intend to provide more flexibility by ensuring the security of employees as the current regulation tries to balance the interests of employers and employees. While employers may benefit from more flexible regulation of employment relations, employees are provided with the package of new rights which are designed to balance their interests.

Flexibility measures introduced to individual labour law increase the competitiveness of the Lithuanian labour market in the region and allow for faster adaption to the changing world of work. It is hard to foresee the long-term social implications of reducing employees' security by new flexibility measures. However, these changes are not extreme and, at the same time, allow some flexibility on the side of employees as well. Further, balance is expected to be reached by collective law measures. The obligation to have mandatory works councils will ensure information and consultation rights for employees in bigger companies. Also, new legislative incentives might foster breakthrough in collective bargaining; however, it remains doubtful seeing that collective labour relations mostly depend on the strong role of social partners.

Adapt International Network



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