The Role of Labour Law in Job Creation Policies: an Italian Perspective*

1. Preliminary Remarks

The title chosen for this international conference – "From protection towards proaction: the role of labour law and industrial relations in job creation policies" – suggests the comparison between the regulatory and functional dimension of labour law.[1] Undoubtedly, a radical change in the goals of labour law is under way. From the traditional role of static protection of the individual employee, it is now moving towards a dynamic perspective of employment promotion. Any European analyst, having a civil law background, would focus mainly, if not exclusively, on normative measures, in order to assess this deep change affecting labour. Though fascinating and in a way supported by both the OECD Job Strategies[2] and the EU employment strategy,[3] this view seems to be misleading for at least two reasons.

---

* *The present contribution has been produced in collaboration with Marco Biagi and was previously published in M. Biagi (ed.), Job Creation and Labour Law – From Protection towards Pro-action, Kluwer Law International, 2000.*

[1] The term "labour law" is used herein in its widest sense, to include both its individual and its collective dimension, and to comprise industrial relations. In this sense the most appropriate wording would be "industrial relations law" as is understood in the cultural whole of the Italian journal bearing the same name *Diritto delle Relazioni Industriali* (see especially, no. 1/1991). For the analysis of social security law, not dealt with herein, see the article by Simonetta Renga which follows.

[2] As noted the OECD in 1992 drew up 10 guidelines (*Job strategies)* which represent recommendations for national governments in the fight unemployment. Among these, the deregulation of public employment services and the deregulation of a significant part of the norms on employment protection are highlighted. See recently, *Implementing the OECD Job*

Firstly, the utmost emphasis placed, today, on the regulation of the labour market rather than on the discipline of the individual employment relationship cannot be denied. However, one might challenge the proposition under which the role of labour law has been exclusively focusing on the support of under-protected and economically weak individuals. Despite not always being supported by values and/or homogeneous political, economic and social objectives, right from the very beginning the State's regulatory intervention as regards the process of industrialization has never assumed any unidirectional aspect. Beyond the contingent rationale (declared or real) of each piece of statutory law, the regulatory framework of employment policies, as a matter of fact, assumes importance right from the start; not only under the traditional perspective of worker protection, but also under those concurrent and certainly no less important contexts of the conservation of social peace and existing order, of the health of the young and of the integrity of descent, of the rationalisation of the productive system, of the regulation of the forms of competition among entrepreneurs, etc. The product of the juridification of employment relations is therefore, undeniably, a distributive right of protection and resources, but also, at the same time, a right of production i.e. a discipline of roles and of the ways of producing in an industrial society.[4] In this respect, the many-faceted roles carried out by labour law, until now, will surely be confirmed in the next century as well – though the strategies and rules connected to it may undoubtedly change.

Secondly, behind this view lies an element of possible misunderstanding (or even mistake) that seems to have deeply conditioned the scientific debate, at least in Europe, over the last twenty years. This misunderstanding assimilates *sic et simpliciter* the "policies of labour" with "policies for employment".

Yet they are two profoundly different concepts. The employment policies, on the one hand, are aimed at increasing the complex level of employment in a determined, socio-economic system. These policies are made up of measures

Strategy: assessing Performance and Policy, OECD, 1999; *Implementing the OECD Jobs Strategy: Lessons from Member Countries*, 1997; OECD, 1997.

[3] On the European Employment Strategy see *Transfer,* 1999, volume 5, no. 4, more recently, M. Biagi, 'The Impact of European Employment Strategy on the Role of Labour Law and Industrial Rlations', *IJCLLIR*, 2/2000.

[4] F. Carinci, R. De Luca Tamajo, P. Tosi, T. Treu, *Diritto del lavoro, 2, Il rapporto di lavoro subordinato,* Torino, UTET, 1998, p. 5. Among the first to point out this "dark side" of labour law – which today still struggles to attract the attention of the scholars despite the strong calls coming from the Community discipline centred on the regulation of competition more than worker protection – see G. Lyon-Caen, *I fondamenti storici e razionali del diritto del lavoro,* in *RGL.*, 1949, pp. 80-81.

operating in different areas other than in the labour market. For example: fiscal policy, industrial policy, public spending policy, or also: policies supporting job creation at the local level, policies aimed at guaranteeing an efficient use of EU structural funds, policies laid down to fight the evasion of tax and compulsory social contributions, policies for the emergence of undeclared labour, etc.

Labour policies, mainly active labour policies, are instead something quite different. The latter are made by measures set up to promote the opportunity of employment of a specific target of the population (long-term unemployed, unqualified unemployed, young people, women, disabled, immigrants, etc.). These measures operate at different levels of intervention, such as education, training, vocational guidance, etc. Consequently, they do not have a heavy impact – if not marginally and indirectly – on the overall unemployment level. At most, they can influence the duration and, above all, the distribution of unemployment between the different groups of individuals, contributing to not penalise further the so-called outsiders vs. the insiders.

Only in light of this assimilation between "labour policies" and "employment policies " is it then possible to explain the reason why labour law has been entrusted with ever more ambitious tasks, including that of reducing unemployment and creating new job opportunities. These ambitious tasks, however, do not seem to be in any way accomplishable. The entire debate on the deregulation of the labour market can thus be interpreted in light of this terminological and conceptual misunderstanding. Once the policies of labour and the policies for employment are assimilated, it is automatic to attribute the high levels of unemployment in Continental Europe to the levels – just as high – of labour market regulation. In this perspective, it is just as automatic but also simplistic,[5] to recall the opposite case of the United States (and partially, the United Kingdom) where the low levels of unemployment are usually explained in a neo-liberal light.

It is not our task to demonstrate the limits of the traditional hypothesis interpreting labour law as a mere unilateral technique of protection of the

[5] The mystifying value of those proposals which indicate such an antidote to unemployment has been highlighted for some time. See R. Dahrendorf, *Il conflitto sociale nella modernità*, Bari, Laterza, 1989, pp. 176-177: it is certainly true that "in the US millions of new jobs have been created, and no-one adopts or even understands the notion of job scarcity", but this is easily explained by the "quality" of the jobs created, if we consider that "of the people who find work, many remain poor. Permanent poverty is the American equivalent to permanent unemployment in Europe". For further criticism see G. Ferraro, *Intervento,* in *Diritto al lavoro e politiche dell'occupazione,* Supplemento al n. 3/1999 della *Rivista Giuridica del Lavoro e della Previdenza Sociale,* spec. p. 55.

weaker party in an employment relationship.[6] The aim of this paper is, alternatively, that of challenging the thesis, which is widely recognised and implicitly accepted by the Italian National Action Plan for Employment of 1999,[7] attributing a strategic role in job creation policy to labour law.[8]

Once it is acknowledged that "there is little evidence that employment protection really has an effect on employment"[9] and that therefore, at present, there is no good reason to claim that reducing labour protection standards would contribute to the creation of more jobs,[10] in the following pages we will simply try to argue that labour law could create the preconditions necessary to ensure better employment performance.

---

[6] It is enough to say that one thing is the "representation" of labour law in a certain ideological, political and cultural context; another is the multiple functions which it, historically, has carried out since it first appeared as a special, autonomous, juridical discipline concerning the rules of civil law. See, M. Tiraboschi, *Lavoro temporaneo e somministrazione di manodopera*, Torino, Giappichelli, 1999, spec. ch. III. See also M. Tiraboschi, *Deregulation and Labor Law: In search of a Labor Law Concept for the 21st Century – Italy*, *IJCLLIR*, no. 2/1999.

[7] The trust in the positive effects on employment linked with the flexibilisation measures of the labour market clearly appears from the reading of the objectives of the National Action Plans for Employment 1999, www.europa.eu.int/comm/employment_social/empl&esf/naps99/naps_en.htm. See also Act no. 197/1997, "Norms on Employment Promotion", whose title is emblematic regarding the trust in the employment effects linked with the remodelling of the protection of labour law.

[8] This theme, developed in M. Tiraboschi, *Liberalizzazione e decentramento del collocamento: alcuni spunti di riflesssione offerti dal caso svedese*, in *Diritto delle Relazioni Industriali*, no. 2/1998, pp. 179-200 is now taken up by M. Napoli, *Intervento*, in *Diritto al lavoro e politiche dell'occupazione*, Supplemento al n. 3/1999 della *Rivista Giuridica del Lavoro e della Previdenza Sociale*, spec. p. 60.

[9] See in particular, OECD, *Employment Outlook*, July 1996, Paris, pp. 171-172, which questions what was claimed just two years earlier by the same OECD in *The OECD Jobs Study: Evidence and Explanations*, Parts I & II, Paris, 1994. For further discussion on the OECD findings refer C. Crouch, 'Labour market regulations, social policy and job creation', in Gual Jordi, *Job Creation: the role of labor market institutions*, Elgar, Cheltenham, 1998, pp. 130-164. On the links between labour law and unemployment rates see in general, M. Regini, G. Esping-Andersen, *The Effects of Labour Market De-regulation on Unemployment. A Critical Review of the Different research approaches and of the Empirical Evidence*, document for the DGXII Of the European Commission.

[10] G. Lyon-Caen, *Parole chiave per un dibattito: lavoro, diritto*, in *LD*, 1997, p. 336; A. Supiot, *Du bon usage des lois en maitière d'emploi*, in *DS*, 1997, 229-232.

2. Employability and Adaptability: Which is the Role for Labour Law in Employment Policies?

2.1. Is the one-way track development of Italian labour law the main reason of unemployment?

In a book which recently caused a fiery debate on labour law's role in employment policies, it was claimed that Italian labour law has historically developed in one direction only – that of protecting the worker in the employment relationship, but not in the labour market:

> while in some countries the phase of worker protection in the market preceded that of the worker's protection […] or, at least, the two phases have developed simultaneously […], in Italy instead that first phase has been completely left out […]. Our labour law lacks one of the two legs on which any modern system of employee protection should, as a rule, stand.[11]

From a comparative viewpoint, the above quoted statement might appear excessive as far as Italy is concerned. As is well known from the comparative study on the regulation of the labour market in European countries carried out by Lord Wedderburn of Charlton ten years ago, many systems, if not all, had progressively consolidated an articulated system of protection of the employee in the contract relationship as well in the phases of the termination of the contract, while neglecting however, almost entirely, the complex ups and downs which led to the contract being set up.[12] Furthermore, many important empirical studies on the quantitative and qualitative importance of the active policies of labour have pointed out how the quota of public spending that Italy sets aside for funding programmes concerning the labour market, public employment services and job creation are substantially in line, if not actually higher, with those of many other OECD countries.[13] Finally, recent literature has shown how the Italian labour market is actually much more flexible than is widely believed. This can be said looking at the fact that the turnover of jobs is

[11] P. Ichino, *Il lavoro e il mercato*, Milano, Mondatori, 1996, p. 20. For strong criticism of Ichino see G. Ghezzi, E. Pugliese, M. Salvati, *Tre commenti a* Il lavoro e il mercato *di Pietro Ichino*, in *DLRI*, 1997.

[12] Wedderbourn of Chalton, *La disciplina del mercato del lavoro nei Paesi europei*, in *Giornale di Diritto del lavoro e delle Relazioni Industriali*, p. 647.

[13] D. Ciravegna, *Politiche del lavoro e politiche dell'occupazione*, in D. Ciravegna, M. Favro-Paris, M. Matto, E. Ragazzi, *La valutazione delle politiche attive del lavoro: esperienze a confronto*, UTET, Torino, 1995, pp. 26-40.

in line with that of other European countries and the US. Whereas the turnover of workers, even if significantly lower than in North America, is in actual fact higher than in some European countries.[14]

Nonetheless, there can be no doubt that such a statement hits the mark in that it highlights, especially for foreign observers, the traditional attitude of suspicion on the part of the Italian legislator towards the labour market. Indeed, it does not seem so far-fetched to affirm that the limits imposed by the Italian labour law on the free dynamics of the private autonomy in establishing and terminating the employment relationship – with probably more accentuated forms compared with other countries[15] – have ended up denying the market itself.[16]

From a theoretical point of view, the analysis of the numerous questions raised by this latter consideration would surely lead well beyond the limits of this work. Despite being proposed by an angle which is effectively still barely explored – that of the market – this perspective will lead us to analyse one of the classical themes of Italian labour law: the theme of the techniques of protection of the so-called "weak party", i.e. the role of the 'norm-not-to-be-deviated' *(norma inderogabile)* in the regulation of employment relationships. In this way, it can probably be claimed that the refusal of the market does not represent anything other than one of the grounds of labour law as an autonomous, even if not self-sufficient, branch of Civil law.

For the purposes of this paper, it is surely more important to stress the consequences resulting from the Italian legislator's scepticism regarding the market. The one-track development of the Italian Labour Law is widely criticised for being one of the main factors contributing to nurturing the high levels of unemployment and the flourishing of the underground economy, which is not comparable to that of other industrialised countries. While the unemployment level lurks around 11.4 percent, it is estimated that the rate of irregular and undeclared workers is as high as 23 percent of the total workforce.[17]

---

[14] M. Filippi, L. Pacelli, C. Villosio, *Flussi di lavoratori e di posti di lavoro in Italia: una stima del modello delle vacancy chains su microdati,* in *Lavoro e Relazioni Industriali,* 1998, pp. 63-101.

[15] Refer S. Scarpetta, *Assessing the Role of Labour Market Policies and Institutional Settings on Unemployment,* in *OECD Economic Studies,* n. 26, 1996.

[16] P. Ichino, *cit.,* p. 4.

[17] "Black" work obviously escapes statistical findings. One study carried out by ISTAT on employment in Italy from 1980 to 1994 nevertheless estimated some 5 million irregular and non-declared workers out of a total of 22 million, of which: i) 2,295,000 not registered in the book of the company (equal to 45 percent); ii) 1,827,100 moon-lighters (equal to 36 percent);

Faced with this data, it is natural to wonder whether the Italian legislator should take a step backwards in the regulation of employment relationships, and entrust a central role in supporting employment to the "laws" of the market.

2.2. The Italian road to employment: social concertation as an antidote to the trend towards deregulation

In Italy the drastic neo-liberal solutions, fighting unemployment and the black economy through the removal of "burdens" and "rigidities" in labour law, have never taken hold. Also the recent attempt by the Radical Party to dismantle a relevant part of labour law rules through referenda has been without consequence. In fact, the referenda proposed on the labour market (liberalisation of job placement) and on flexible contractual arrangements (liberalisation of fixed-term contracts, part-time work and home-based work) have been declared inadmissible by the Constitutional Court.[18]

Nevertheless, it is true that the shape of Italian labour law has progressively and profoundly changed over the last few years due to the occupational pressure. This has only been possible thanks to a manifest "rooting of the method of social concertation".[19]

After a long period of relative stability – characterised by a progressive expansion of the legal statute of dependent work, as well as by a parallel process of escape from the confines of subordinated and regular work – employment legislation has undergone significant and sometimes radical changes. While the reform is undoubtedly fragmented and still to be completed, it can still be said with a high degree of certainty that the strategy

iii) 669,500 non-resident foreigners and mostly clandestine (equal to 13 percent); iv) 217,200 non-declared workers (equal to 6 percent). Refer ISTAT, *Rilevazione delle forze di lavoro – Media 1994,* Collana di informazione, 1995, n. 18. These estimates have now been substantially confirmed in a recent finding of CENSIS at www.censis.it.

[18] See *Radicals promote series of referenda on trade union and labour issues,* in *Eironline,* September 1999, www.eiro.eurofound.ie.

[19] The recent *National Action Plan for Employment* expressed this sense. All observers, in fact, agree that an important feature of the Italian system is the strong relationship that exists between inter-confederal bargaining, tripartite bargaining and the definition of legislative instruments for preserving and creating employment. In fact the guide-lines on occupational policies are usually defined through bargaining between Government and social partners. See, in particular, *Collective bargaining on preserving and creating employment in Italy,* in *Eironline,* www.eiro.eurofound.ie.

pursued by the Government and the social parties is that of remedying the one way-track of Italian labour law mentioned *supra.*

Urged on by pressing accords reached with the social parties, the Government's activism towards improving employability/adaptability is in many ways striking and seems unstoppable.

The recent recommendation contained in the EU Guidelines for Member States' Employment Policies "to examine the possibility of incorporating in its law more adaptable types of contract, taking into account the fact that forms of employment are increasingly diverse"[20] has been pursued since the early Eighties, in the implementation stages of the tripartite agreement of 1983. Actually, it stems back to Act no. 863/1984 with the introduction of both the part-time and the work/training contracts.[21] Then Act no. 56/1987 led to a noteworthy toning-down of the principle of rigidity of the cases where it is possible to sign a contract for a definite duration. This Act endows collective bargaining with the power to define new types of fixed-term contracts, apart from those expressly provided for by the legislation currently in force.

The recognition of a wide range of atypical and *sui generis* contracts dates from as far back as the decade before – that is to say the 1973 reform process of employment. These contracts are located in that grey area between self-employment and dependent work, and have been classified by scholars as quasi-subordinated work, semi-self-employment *(lavoro parasubordinato).* This means that they are conceptually similar to subordinate work, but that they do not enjoy the same level of protection.[22] While we are still waiting for the legislator to intervene once and for all on this vast area, which concerns more or less 2 million workers, collective bargaining has already made significant headway in balancing company flexibility with the objective of social justice for this group of workers.[23]

The effort to modernise work patterns has recently been strongly supported by Act no. 196/1997. In this Act the legitimacy of temporary work through agencies is, at long last, recognised. Important devices have also been introduced by this act, aimed at providing incentives for part-time

[20] See: http://europa.eu.int/comm/dg05/empl&esf/empl2000/eg2000_en.pdf.

[21] *Job security agreements* make it possible to avoid or reduce dismissals in case of company restructuring. They entail a reduction in working hours for a certain number of workers. Act no. 863/1984 grants a contribution of 50 percent of pay loss due to the working reduction to companies that sign an agreement with trade unions to reduce working hours in order to avoid redundancies. Such a contribution can be granted for a maximum of 24 months.

[22] See: G. Santoro Passarelli, *Il lavoro parasubordinato*, Angeli, Milano, 1979.

[23] See: F. Bacchiega, *Lavoro parasubordinato e autonomia collettiva: il caso della Regione Emilia-Romagna*, in *Diritto delle Relazioni Industriali*, n. 3/2000.

employment, apprenticeships, work/training contracts, flexible working hours, multi-weekly working hours, etc. Undeniably, this Act has provided for a toning down of the sanctions connected with the violation of fixed-term work legislation. The sanction of automatic conversion remains in cases of continuation beyond 20 or 30 days from expiry of the term of the contract, according to whether the duration was for less or more than six months. In case of other types of violation (that is when the relationship is maintained within these terms) the employer is only required to give the worker an increase in pay for each day of continuation (of 20% until the tenth day and of 40% thereafter). The automatic conversion into an open-ended employment relationship remains in all other cases provided for in Act 230/1960.

Following in the footsteps of this law, contractual arrangements such as job sharing and flexible forms of part-time employment (so called *clausole elastiche)* have also been experimented.[24] Both legislation on temporary agency work and part-time work have been further amended and adapted to the needs of the new labour market, with Act no. 488 of 23 December 1999[25] and Legislative Decree no. 61 of 5 February 2000 respectively.[26]

Important measures have been adopted then to contribute to the modernisation of employment relationships in the Public Administration. Firstly, through the so-called privatisation of public sector employment and, later, through the increase of flexible contractual arrangements (part-time, temporary work, etc.) and tele-working.

The activism of the Italian legislator seems similarly unrelenting towards the tools created to improve training and vocational guidance policies and further initiatives in favour of job-placement. Leaving aside the difficulty of making the ambitious reform of the professional training system definitively operative, as outlined in article 17 of Act no. 196/1997 and in the Social Pact of 23 December 1998,[27] there is a great variety of tools aimed at facilitating the transition from school/university to the labour market: ranging from professional insertion plans to new apprenticeships, from work grants to new

[24] See: M. Biagi, M. Tiraboschi, Experimentation and Social Dialogue in the transformation of Italian employment law from the legalisation of temporary work to a statute of the new forms of employment? In R. Blanpain, M. Biagi, Editors, Non-standard work and industrial relations, *BCLR*, 85, 1999, pp. 11-20.

[25] Refer article. 64 of Act no. 488 of 23 December 1999, *Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato* (Legge finanziaria 2000).

[26] See: Biagi, Il "Nuovo" Lavoro a tempo parziale, *Il Sole 24 Ore*, Milano, 2000.

[27] *Towards a reform of the vocational training system,* in *Eironline,* 1999, www.eiro.eurofound.ie. See also C. Dell'Aringa, *Il Patto di Natale e il problema dell'occupazione,* in *DML*, 1999, pp. 25-48.

trainee-ships and career guidance, from scholarship for on-the-job training to incentives to training courses in enterprises, etc.[28]

The intervention undertaken on public employment services has also been far-reaching. Since 1991 the rigorous principle of the so-called numeric request of placement has been dropped. At the same time, thanks to legislative decree no. 679/1997, public monopoly in matching supply and demand of labour has been abolished. The same Act allows private placement agencies to be established under certain conditions. The legalisation of the private placement and temporary work agencies was, once again, preceded by an extensive and complicated phase of "social legitimation". Moreover, it was accompanied by a significant attempt to re-launch public intervention in the labour market. Essentially, the entrance of private operators in the phase of matching labour supply with demand, on the one hand, remains under tight public control: private intermediation and labour-only subcontracting are actually subject to an administrative authorisation on the part of the Ministry of Labour – a rigorous evaluation of requisites of substance and form is needed.[29] Whereas, on the other hand, the reform of the labour market has hinged on an attempted re-qualification of the public actors through the decentralisation of powers to regions and local institutions; the reorganisation of state and local competency; the simplification of administrative procedures of matching the supply and demand of labour; and the computerisation of public system structures of the labour market through the setting up of a Labour Information System (SIL), thereby ensuring the rapid and punctual circulation of information on job vacancies and employee availability throughout the territory.

A typical feature of this reform is the accentuated Federalistic philosophy which, in the short term, leads to the prospect of locally based employment policies, varied according to the characteristics of the different labour markets. In this context, it is not surprising that forms of local concertation in favour of employment have been able to develop, thereby serving to slot some particular groups of workers into the labour market. This development has taken place alongside traditional experiences of 'territorial employment agreements' and 'area contracts' also in the strong and prosperous areas of the country. An example of this is in Milan where a particularly innovative agreement has recently been signed which, although circumscribed for certain groups of workers (unemployed non-EU nationals, long-term unemployed, etc.),

[28] For a detailed analysis see *1999 National Action Plan for Employment.*

[29] See Biagi, Tiraboschi, Experimentation..., *op. cit.*, pp. 92-107 and Tiraboschi, Deregulation and labor law in Italy in the Japan institute of labour, 1999, Tokyo, pp. 113-138.

anticipates forms of federalism and autonomy in the regulation of the labour market.[30]

The intervention aimed at modernising the labour market does not end here. Through legislative decree 21 April 2000, no. 181 the EU Guidelines for Member States' Employment Policies have been implemented on matters relating to the matching of labour supply and demand. In the framework of the regional programming of the match between supply and demand of labour, the competent services are called on to offer: a) guidance for young people within 6 months from the time they become unemployed; b) a proposal in support of an initiative of professional insertion or training, and/or re-qualification within 6 months of the unemployment period for women seeking employment or for the unemployed with social allowance; c) a proposal in support of an initiative of professional insertion or training and/or re-qualification within 12 months from the start of the unemployment period for first-time job seekers and long-term unemployed people.

2.3. A first assessment of 20 years of employment-friendly labour policies

In light of the short overview referred to in the paragraph above, it is certainly not easy to evaluate labour law's contribution in the fight against unemployment. On the one hand, in fact, the process of modernisation of the Italian labour market has not yet reached completion and some important reforms – for instance those of the public employment services and the professional training system – are only the first steps. On the other, more times than not, we are dealing with fragmentary interventions adopted on the wave of the occupational emergence which lack a comprehensive reform strategy of Italian labour law.

Nonetheless, it is quite true that the activism of the Italian legislator on the labour market and on the flexibilisation of contractual arrangements has still not brought about any of the results originally promised. As the all-inclusive unemployment situation over the last years shows, the impact of the Italian legislator's intervention has almost been non-existent. That is to say that the unemployment rate, for the most part, really has remained constant for about 15 years with only slight percentage variations (see Table 1). Unemployment is not on the decrease. Whereas undeclared, irregular, atypical/temporary and

[30] For a succinct description of this experience see M. Tiraboschi, "Milano lavoro", an agreement for employment in Milan in *IJCLLIR*, no. 2, 2000.

quasi-subordinate work are all on the way up: precarious employment contracts now exceed 50% of new hirings, while the area of coordinated continuous collaboration (the so-called quasi-subordinated work) affect some 2 million workers.[31]

Table 1. The Employment Situation 1980 – 1999 (data in thousands) – Source: Censis, in *Conquiste del Lavoro,* 7 April 2000, p. 7

Year	Employed	In search of work	Unemployment rate
1980	20,487	1,684	7.6
1981	20,544	1,895	8.4
1982	20,493	2,052	9.1
1983	20,557	2,264	9.9
1984	20,647	2,304	10.0
1985	20,742	2,381	10.3
1986	20,856	2,611	11.1
1987	20,836	2,832	12.0
1988	21,103	2,885	12.0
1989	21,004	2,865	12.0
1990	21,396	2,751	11.4
1991	21,592	2,653	10.9
1992	21,459	2,799	11.5
1993	20,427	2,360	10.4
1994	20,154	2,508	11.1
1995	20,026	2,638	11.6
1996	20,125	2,653	11.6
1997	20,207	2,688	11.7
1998	20,435	2,745	11.8
1999	20,692	2,669	11.4

A concrete example can be found by looking at the effects produced on the unemployment rate following the legalisation of temporary work agencies.

[31] Source CNEL on INPS 1999 data www.cnel.it.

The valiant defence on the part of the Italian unionists and some political forces in favour of the public monopoly of placement and the prohibition of labour subcontracting has, in fact, been successful thanks to an important illusionary impact, in employment terms, of the legalisation of temporary work. Not by chance has the discipline of the case in point represented one of the qualifying points[32] of Act no.196/1997, emblematically entitled, "Regulation in favour of job promotion". Yet it is not surprising that more than 3 years on from the introduction of the discipline, the contribution made has not achieved any relevant results in the fight against unemployment. The empirical findings have not done other than confirm what was pointed out by historical and comparative research: the recourse to temporary work is, in fact, relevant in the markets characterised by low unemployment rates – above all where a qualified work force is missing or difficult to find – whereas it appears to be marginal in areas characterised by high unemployment rates and black work.

Having said that though, we do not mean to imply that the activism of the legislator has been or will be, in the near future, inconsequential. If it seems impossible to attribute the current unemployment rates to the protection of dependent work, it is evident enough how the traditional disfavour of the Italian legislator towards the labour market has ended up affecting the composition of the work force and the availability of a regular job.

The characteristics of Italian unemployment – so different from those of other European countries,[33] seem to confirm this theory. Besides the regional differences between North and South,[34] Italian unemployment is characterised by a significant preponderance of young and female unemployed,[35] due to the shortage of previous work experience of those seeking employment and the particularly lengthy unemployment period. Whereas, in other European countries, the problem is linked to people being unemployed during phases of economic recession, who are under no pressure to find a job due to the presence of passive policies of employment (unemployment benefits etc.).

---

[32] Also in "dimensional" terms, if we consider that the discipline of temporary employment through agencies occupies some 11 articles of Act no. 196/1997.

[33] Such a profile is clearly identified by E. Reyneri, *Occupati e disoccupati in Italia*, Bologna, Il Mulino,1997.

[34] In Southern Italy unemployment is equal to 22.8 percent compared to 7.4 percent in the Centre-North. Refer *1999 National Action Plan for Employment.*

[35] In Southern Italy in particular, young unemployment is equal to 56.5 percent while female unemployment is equal to 31.8 percent. Refer *1999 National Action Plan for Employment.* For an accurate analysis see Samek, Pari Opportunità del mercato del lavoro: modelli di intervento e risultati in *DRI*, no. 2, 2000.

Subsequently, a further characteristic of the Italian labour market is the very low rate of participation: the amount of work carried out in our country is extremely low compared to other EU countries. This is also due to the fact that a significant part of the workforce operates in the undeclared economy,[36] All these factors therefore confirm a marked division, in the workforce itself, between the insiders – those privileged enough to find themselves inside the hyper-protected area of regular work – and the outsiders: the unemployed or those working in precarious or irregular jobs who will be forever excluded from that citadel.[37]

Despite the fact that reliable, empirical statistics are still not available, it is possible just the same to ascertain an impact from the more recent reforms adopted by the Italian legislator: in particular, an impact on the distribution of the unemployed between the various categories of workers, as well as on the number of employed workers in relation to the population. Turning to the example of the supply of temporary work, it has been proven that the legalisation of this contractual arrangement actually contributes to increasing the degree of participation of women and young people in the labour market.[38]

3. Aids for Employment: Towards a Reform

In addition to the reorganisation of the labour market and the incentives of a normative nature aimed at the flexibilisation/modernisation of the dependent employment contract, the Italian legislator has, over the course of time, developed a wide range of financial incentives in line with other European countries to support employment. Seemingly, their use has affected the distribution of existing job vacancies between the different groups of workers (young people, women, disabled people, immigrants, etc.), rather than actually creating additional jobs with respect to those spontaneously produced by the economic system itself.

Not only. It has been rightly pointed out that, in the drive towards a policy supporting employment, a misguided short-cut would be to widen the

[36] C. Dell'Aringa, *Il Patto di Natale e il problema dell'occupazione*, in *DML*, 1999, spec. pp. 36-37, who reveals how the number of employed compared to the (potentially active) population of working age is about 50 percent and this is the lowest among all the industrialised countries.

[37] P. Ichino, *op. cit.*, p. 4.

[38] A. Del Boca, A. Zaniboni, *Il lavoro interinale è uno strumento efficace contro la disoccupazione?*, *cit.*

incentives indefinitely: "in such a case, the incentive is no longer capable of altering the system of entrepreneurial convenience: the incentive for all is tantamount to an incentive for no-one".[39] In effect, it is specifically the Italian system of incentives which represents one of the most evident examples of how the economic incentives of employment are, more times than not, merely occult assistance for the entrepreneurial system, offering no significant correspondence with the increase in employment levels.

3.1. State aid for employment and compatibility with the Community regime of competition

The case of incentives favouring work/training contracts is emblematic in this regard. Introduced by Act no. 863/1984, work/training contracts allow companies to take on young people up to the age of 32 under a fixed-term contract for a maximum duration of 24 months. This contractual arrangement, the subject of multiple interventions of reform on the part of the legislator, is supported through reductions in wage levels set by industry-wide agreements and fiscal and social contributions incentives. The Constitutional Court intervened in 1987 to define the aim of this contractual arrangement emphasising its role as a tool for employment more than one for training young people.

The European Commission has recently intervened on the matter of the compatibility of this incentive mechanism for employment with the Community regulation on competition matters. With the decision of 11 May 1999,[40] the Commission confirmed the presence of social benefits in the work/training contracts which are determined and adjusted according to both the geographical area in which it is used, and the type of company involved,[41] whereby a constant jurisprudence denies the legitimacy of incentive measures

[39] M.G. Garofalo, *Tecnica degli incentivi e promozione dell'occupazione*, in *Rivista Giuridica del Lavoro e della Previdenza Sociale*, supplemento al n. 3/1999, p. 74.

[40] In *GUCE* of 15 February 2000, no. 42 series L.

[41] A first quota of social contribution reductions, equal to 25 percent, operates in a generalised way for all enterprises and in all areas of the country. This kind of measure is in line with the Community discipline on State aids. The case of those operating in the South and with unemployment higher than the national average, as identified by the Ministry of Labour decree, benefit from a 100 percent reduction. Whereas, employers not operating in the South benefit from a reduction of 50 percent, while commercial and tourist enterprises with less than 15 employees receive a reduction of 40 percent.

which are not generalised.[42] Inasmuch as such benefits (recognised by the Italian legislator to such a contractual arrangement) have been found to be incompatible with the discipline on State aids to companies, the Commission, on behalf of the beneficiaries, ordered the Italian Government to recover the corresponding assistance without creating additional employment. In accordance with the discipline on employment aids,[43] the application of social benefits has, in fact, been held admissible on the condition that they are directed: a) to the net creation of relatively stable employment for unemployed workers or those who have lost a previous job; b) to the hiring of young people under the age of 25 or 29 if they have a University degree; c) to create additional jobs in the case of benefits granted following the transformation of work/training contracts of an indefinite duration.[44]

The Commission's decision, apart from confirming how frequently State aids for employment do not represent a measure supporting employment levels but rather an occult support for companies, indicates how in this matter, too, the room for manoeuvring left to the national legislator is somewhat limited. The EC Treaty, in giving rise to a regime understood to ensure that the competition in the common market is not distorted by the behaviour of companies and public actors, has effectively eroded significant powers of the Member States in pursuing policies aimed at supporting the productive and employment systems. In this perspective, further limits which have affected, in no small way, the Italian Government's employment policies are also those relating to monetary policy and market regulation.

The principle of transparency of social costs hampers, for instance, the public support for unproductive companies with the sole aim of maintaining employment levels, which has been the dominant model of Italian employment policies, above all in the South of the country. Of equal hindrance (or at least greatly limiting) is the adoption of policies concerning the emersion of undeclared work, such as the so-called contracts of emersion of black work in that they bring with them advantages for the company and territory putting undeclared workers on a par with new hirings.[45] The Community regime of State aids, therefore, subordinates employment policies to a restricted choice

[42]For an overview of this EU case law see Meicklejohn, Roderick, European economy, Reports and studies 1999, 3; Evans, European community law of state aid, 1997; D'la, Rose M., Euroepan community law on state aid, 1998.

[43] See previous note.

[44] Comment G. Sandulli, *La decisione UE sui Cfl: applicazione ed esiti futuri*, in *Guida al Lavoro*, no. 11/2000, pp. 66-69.

[45] .See The national action plans for employment, CIT.

of incentives tools, which must not lead to a differential advantage in favour of certain categories of companies.[46]

3.2. Towards the reform of the system of incentives for employment

What has led the Italian legislator to initiate a process of reform of the system of employment incentives is the knowledge that the incentive technique can perform a useful conjunctural role for the solution of specific problems linked to the duration and distribution of employment but, at the same time, cannot represent a valid solution for the problems of structural order.
Act no. 144 of 17 May 1999 delegates the Government to redefine the system of employment incentives, including those relating to entrepreneurship and self-employment, with special regard to the need to improve the effectiveness in the South, in comparison with the Community constraints. It is useful here to point out how the contents of the delegation are particularly extensive, so much so, in fact, that the line between self-employment and dependent employment is becoming finer and finer – at least where employment policies are concerned. The incentives for self-employment, professional guidance, small artisan companies and young entrepreneurship are effectively placed on the same level as those aimed at insertion into the dependent labour market. This option is placed in a broader (though slower) process of Italian labour law reform, progressively stretched to go beyond the boundaries between self-employment and dependent employment.[47]
Once again the role of concertation is confirmed in the adoption of employment policies: the reform of the incentives system must happen, with respect to social dialogue and the social parties. The objective of the delegation is two-fold: to eliminate, on the one hand, the duplication and the super-positioning in the norms in force and, on the other, to diversify the interventions of the characteristics of the target groups (young people, first-time job seekers, long-term unemployed, etc.) in such a way that the measures maintain their incentive value. Besides respecting the Community constraints, the experiences and results of the measures already operative must be taken into consideration, so as to avoid waste of public resources where it is clear that the incentive function of the measure is void or irrelevant.

[46] M. D'Antona, *Il diritto al lavoro nella costituzione e nell'ordinamento comunitario,* in *Rivista Giuridica del Lavoro e della Previdenza Sociale,* suppl. al n. 3/1999, p. 19.
[47] See M. Biagi, M. Tiraboschi, Experimentation…, *op. cit*., pp, 91-107.

With special regard to contracts of a training nature, the definition of an institutional system of control is expected on the effectiveness of the theoretical and practical training and, on the true relationship between training activity and working activity. Of special importance, from this point of view, are the provisions aimed at favouring forms of apprenticeship in companies and subentry of traineeships in the company. The aim of this is to spread an entrepreneurial culture as widely as possible. With respect to part-time work, the system of the incentives has been approved by legislative Decree no. 61/2000. Among the forms of incentives mention should be made of the so-called "old-young relay" (*staffetta giovani-anziani*) by issuing norms which facilitate the use of part-time contracts for young people and for those in the third age, in the hope that this will contribute to the promotion of young employment.[48]

At the time of writing the only incentives which have been adopted are those for part-time, entrepreneurship and self-employment. In connection with the incentives for the South, the reform process is somewhat slow and problematic. The proposals of the Italian Government – directed to finance fiscal reliefs for new hirings in the South, relief for financed investments with social capital or with useful reinvestments, and relief for the support of special contracts facilitating the emergence from undeclared work – are, at the present time, the subject of negotiation with the European Commission over doubts of incompatibility with the Community system of State aids.

4. Concluding Remarks

In the paragraphs above we have attempted to offer a concise evaluation on the activism of the Italian legislator in the pursuit of policies supporting employment, drawing particular attention to labour law legislation. In the same way, we have underlined how the outcome of the legislator's intervention on labour law so far is, all in all, marginal in the fight against unemployment and additional job creation. If the incentives of a normative nature, aimed at the flexibilisation/modernisation of employment relationships, have shown themselves to be irrelevant, the same might also be said of the financial incentives which, most of the time, are simply occult forms of

[48] On this see D. Garofalo, *La riforma degli incentivi all'occupazione*, in *Diritto e Pratica del Lavoro*, 1999, pp. 2877-2884. For an overall picture of the reform of incentives for employment see Forlani, Incentivi per l'occupazione e ammortizzatori sociali: appunti per una riforma, in *DML Online*, 3/1999.

support for companies. Without wanting to sound too pessimistic though, it can therefore be claimed that the more things change the more they stay the same – as far as the incidence of labour policies on the dynamic of employment is concerned. An overall analysis of the reforms carried out over the past 20 years on the regulation of employment relationships and labour market organisation, seems to clearly indicate how precise links between labour policies and employment level increases do not exist.

To conclude this brief *excursus*, the indirect and negative effects connected to the veiled activism of the legislator in regulating employment relationships and the labour market should be mentioned. In fact, in Italy more than in other countries, the flood of normative production has given rise to a legal framework which can only be described as chaotic and irrational. In addition to the waste of public resources, the complexity of the system causes a situation of widespread illegality and the evasion from the inviolable discipline of law. The intensity of bypassing employment law is impressive – both through the use of contracts of pseudo self-employment, and through forms of pure and simple evasion of the legal norms.

It is useful to remember the results contained in the 1995 MOLITOR report which identified one of the main constraints on competition and the creation of new employment as being normative hyper-production. Unquestionably, it can now be argued whether the normative hypertrophy is one of the causes of unemployment in Western economies and in Italy, in particular. Then again, it is true that the paternalistic pretext of juridifying all aspects of society carry with it heavy side-effects: first among which is the high level of ineffectiveness of labour regulations deriving from it. In Italy one of the main problems of the labour market is the high rate of undeclared work which, nourishing a vicious cycle, weighs heavily on the availability of resources for productive investments in new jobs.