Bilateralism and Bilateral Bodies: The New Frontier of Industrial Relations in Italy*

1. Bilateralism as a Way to Enhance Workers' Participation in Italy

Bilateralism has been increasingly regarded as the new frontier for the rebirth – or at least the profound renewal – of industrial relations in Italy. Originally established only in the building sector, bilateral bodies were considered as instruments for the joint administration of financial resources collected by employers' associations and trade unions for the allocation of benefits in some critical circumstances (illness, occupational injuries, mutual assistance in the event of stoppage or reduction of working hours, and so on). In addition to the building sector, a system of bilateral bodies was set up starting from the early 1980s in other sectors as well where industrial relations were weak, and where there was a prevalence of micro enterprises, unstable employment, high turnover of employees, a widespread use of atypical and undeclared work, and limited trade union presence. This is the case of the artisan sector, commerce and tourism and – more recently – liberal professions.

Accordingly, bilateralism has developed in these sectors as a cooperative method of stabilizing both products and markets and as a form of protection of workers by means of the joint administration and governance of the entire labour market, becoming the paradigm of a new system of cooperative and collaborative industrial relations. This should come as no surprise. Indeed,

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these committees are well-established bodies in the industrial relations arena, characterized by a "dynamic" nature, yet are far less regulated – particularly in the Anglo-Saxon countries. In addition to collective bargaining, bilateral bodies are usually administered by committees consisting of representatives of both employers and trade unions. As joint bodies, they perform their duties on a cooperative and participative basis, for they *per definitionem* constitute the manifestation of the contractual intent of the parties setting up the bilateral bodies, as laid down in collective agreements. They can be seen as a traditional cooperative device within the Italian industrial relations system, particularly if considered in terms of regulations set forth in collective agreements.

Yet, their innovation lies in the bilateral and participatory approach, which makes a clean break with the past. In this connection, the Italian case is noteworthy. Unlike the other countries in continental Europe, the dialogue among social partners is less institutionalized – also because of a lack of trade union legislation – and this aspect is traditionally associated with high levels of industrial conflict at both individual and collective levels.

Accordingly, bilateralism is seen as an instrument to create more participatory labour – management relations in Italy, also taking into account recent developments concerning legislative issues and contractual arrangements. Nevertheless, bilateralism presents some distinguishing features that seem to be specific of the Italian legal and trade union systems – which, for instance, differ considerably from German co-management, particularly with regard to the employees' involvement in management decision-making. Although sharing similar views on decision-making, the distinctive trait of the Italian case lies in that joint bodies comply with regulations laid down in collective agreements, making provision for both the internal and external labour market to supplement statutory rules and protect and resolve all workers' claims.

For this reason, bilateralism can be viewed as a form of employees' participation to economic and social processes which goes beyond the management of decision-making and the effective oversight of the company, as it helps to devise a shared strategy to stabilise the labour market and provide protection to workers by means of the joint administration of the entire labour market. In this sense, bilateralism has been reported to be increasing in Italy – also thanks to the devising of ad-hoc legislation – as it has been considered the most influential and reliable device to bring about a change of the antagonistic attitude within the production processes. Through a renewed sense of trust and cooperation, it would also be possible to further

enhance the fruitful relationship between capital and labour with regard to economic growth, productivity and social justice.
From 2003 onwards, that is after the enforcement of the Biagi Law, the Italian legislator entrusted the bilateral bodies with more powers – following on from some successful outcomes in terms of governance and regulation – as contributing to the creation of a system of industrial relations which is more appropriate in keeping up with economic and societal changes. Due to major developments in the market economy (the growth of the service economy, globalization, and delocalisation), profound economic changes in demography and their impact on welfare states in terms of sustainability, it has been necessary to resort to alternative measures of social protection. Significantly, the central government has downplayed its role as an administrator of financial resources – providing its contribution only in an indirect way – by setting forth a set of framework provisions serving as reference legislation for those operating in the private sector. In this sense, the role of bilateral bodies is relevant, all the more so following the resounding impact of the crisis on the world economies, which called for private investments to sustain a welfare state that proved to be inadequate.

2. Bilateral Bodies: Juridical Nature and Functioning

In the context of the Italian system of industrial relations, the expressions "bilateral bodies" or "joint bodies" are used to refer to entities that are set up and regulated by means of collective bargaining and that have three main features:

1) they consist of representatives from social partners who conclude collective agreements through which such bodies are governed;
2) they provide (employment) services and protection to both workers and employers, in accordance to what is laid down by collective agreements and by statutory laws. Funds to such activities are collected by means of contributions paid by employers and – to a minor extent – by workers;

3) upon the free choice of the parties that comprise them, bilateral bodies are autonomous legal entities.

From a legal and technical viewpoint, bilateral bodies are therefore entities consisting of the signatories to a collective agreement that take the form of

unincorporated/voluntary associations or associations with legal personality. By signing the accord, its associates, that is employers' associations and trade unions, express their willingness to constitute the joint body. In technical terms, it is the collective agreement that lays down the obligation to establish the joint body. It follows that all bilateral bodies are committees having a contractual nature – upon approval of its article of association – need to comply with a contractual obligation, the expression of private collective autonomy. The juridical nature of these entities becomes apparent if one considers that they are entrusted with special functions by law. In this case, the willingness to constitute the body is still regarded as resulting from private autonomy which is manifested through the collective agreement. The law only allows for some tasks and functions to be fulfilled by bilateral bodies, with the establishment of the body itself that is left to private and collective autonomy.
Unlike other voluntary associations, the main characteristic of bilateral bodies is their joint nature (*pariteticità* in Italian) at managerial level, a typical feature of collective bargaining, from which they originate. Besides appointing a president serving as a legal representative, these committees set up bodies consisting of both representatives from employers' associations and trade unions with decision-making, executive and executive powers, who remain in office for three years and can be re-elected. Decisions are made on a unanimous basis so as to avoid cleavage among union's representatives or issues arising from employers becoming the minority. Bilateral bodies are also independent in financial terms, for they can rely on their own resources collected through membership fees which are paid on a regular basis. They are also entitled to tax incentives and contribution relief. The services provided by these entities to workers (e.g. supplementary health services, supplementary retirement schemes, income supports, and the co-funding of public income support, pursuant to Art. 19 of Legislative Decree No. 185/2008 as subsequently converted into Law No. 2/2009) are forms of protection that in some cases are deemed to be contractual rights, provided that some conditions are met.

2.1. Funding Bilateral Bodies

The question as to whether one should be under the obligation to join bilateral bodies needs to be investigated considering the negative freedom of association. In this sense, Art. 39 of Italian Constitution provides that individuals – be it employers or workers – have the right to refuse to associate

with others in collective organizations, as in the case of bilateral bodies. It is important to point out that one of the main problems to deal with in this connection, is the difficulty arising from including clauses for the setting up of the committees among the binding clauses of the collective agreements (known as economic and regulatory clauses).

Further, Italian legislation does not provide for the *erga omnes* effect of collective agreements, that are treated as private agreements – pursuant to the section of the Civil Code that deals with contracts and obligations – and therefore cannot apply to a third party (non-signatory trade unions and companies). Thus, since the provisions laying down the establishment of this committee are included among the obligations set in the collective agreement, there is no requirement on the part of employers in terms of funding and membership. Such an obligation would induce them into joining the union – yet in an indirect manner – therefore violating the foregoing principle of negative freedom of association, according to which no obligation to join the bilateral body can be imposed on employers who are not enrolled in unions that have set them up. The same holds true for associates, as only signatories need to comply with provisions for the setting up of the bilateral bodies, as included in obligations set in the collective agreements.

However, what has recently emerged from the debate among legal scholars is that such an interpretation of relevant legislation is somehow objectionable, as the section containing obligations in collective agreements only refers to the set of provisions regulating the relationship between unions that are signatories to the accord, without any consequences for the workers. Arguing for the obligatory nature of the provisions concerning the bilateral bodies is like stating – so to say – that they fall outside the legal sphere of the workers. Reality is usually different, at least in cases whereas signatories to collective agreements that set up the bilateral body provide otherwise.

In cases where contributions are not paid by the employers to the bilateral body, workers will not be entitled to benefits as specified in the contract. In this sense, the failure to become an associate – particularly the failure to comply with the payment of contributions to the body – will translate into fewer benefits and lower levels of protection for the workers, placing them at an economic disadvantage. It is therefore apparent that workers are affected – yet in an indirect manner – from such non-payment. On the basis of these considerations, it might be argued that the provision of services offered by bilateral bodies, both at national and local level, should be regarded as contractual rights whereas expressly laid down by the collective agreement, a

type of "deferred earnings" that workers should also be granted if operating under employers who have not joined the body.

The issuing of Circular No. 43/2010 by the Italian Ministry of Labour makes provision for the obligation in terms of membership and contributions to join the bilateral bodies. The document specifies that membership is not mandatory. However, workers working for employers who did not sign the collective agreement setting up the body, should be entitled to the same rights of those working for the signatories. In the former case, employers should fulfil their obligation by adhering to these committees, or by paying an amount of money in accordance to what is laid down in the collective agreement or providing them with equivalent benefits. This only happens if the applicable collective agreement states that a certain benefit provided by the bilateral body represents contractual rights, on the assumption that such benefit is regarded as a "fringe benefit" or "additional remuneration". As a result, Circular No. 43/2010 points out that workers performing for employers who did not join the body are entitled to contractual rights that take the form of additional remuneration.

Therefore – and in accordance to what is set by collective bargaining – these rights can be fulfilled by paying a sum of money or granting a service that amounts to that provided by the bilateral bodies. In complying with the rights that are guaranteed by the Italian Constitution, this mechanism provides an alternative system of funding as contributions are paid directly to the bilateral bodies, preventing cases of a "race to the bottom" that might reduce the levels of protection granted to workers. There is no doubt about the constitutional legitimacy of this financing system, as it is up to the employers to choose whether to join the bilateral body or not, by paying the amount due. However, even though they may opt out of the committee, they are still under the obligation to pay the corresponding sum to workers, because of the *erga omnes* effect of collective agreements, in the sense that they extend to all employers in the industries covered. Arguably, the freedom of choice on the part of employers should be distinguished from their free will, particularly when this undermines or clashes with the rights of workers to receive services provided by bilateral bodies or equivalent benefits. This is the case insofar as such benefits are considered as a form of remuneration entitled to workers – either directly or indirectly – in proportion to the quantity and quality of their work and in all cases sufficient to ensure them and their families a free existence as laid down by Art. 36 of the Italian Constitution. It is worth pointing out that Art. 36 also allowed the Italian judiciary to determine the remuneration criteria for non-unionized workers or those operating for

employers who were not a member of the bodies that signed the collective agreement.
Accordingly, such a mechanism seems to reconcile opposite interests. On the one hand, employers would have the right to refuse to join the body. On the other hand, employees would be granted an extra sum of money, the amount of which corresponds to contributions not paid to the body. This functioning seems consistent with collective bargaining practices in this sector, that are intended to promote new arrangements to enhance the productive system and safeguard workers' rights.

3. Bilateral Bodies and Their Main Functions

Bilateral bodies played an active role in renewing the labour market. In this sense, the Biagi law purposely included them among the sources of labour law, classified as a "privileged channel" for the regulation of the labour market (Art. 2, § 1, sec. H of Legislative Decree No. 276/2003). Bilateral bodies have been set up in different industries not just as a mere service provider, but rather as a means for assisting labour market stability and protecting workers by way of the joint administration and governance of the entire labour market.
Accordingly, bilateralism is regarded as an established instrument to enhance cooperative dialogue among social partners and the full implementation of mechanisms of protection for workers, such as the provision of benefits as laid down in the collective agreement. On the basis of such a successful experience in terms of governance and joint administration, the legislator entrusted bilateral bodies with a new and wider set of powers. The special – yet not exhaustive – nature of the functions these committees are empowered to perform pursuant to Art. 2, sec. h of Legislative Decree No. 276/2003, allows for the experience of bilateralism to handle issues other than those universally regarded as relevant and long- lasting. Indeed, bilateral bodies carry out a number of important functions. In general, they are set up to

– promote more stable and quality jobs;
– provide placement services;
– devise programmes for training, particularly by means of on-the-job learning;
– disseminate good practices against various discriminatory practices, favouring the integration of disadvantaged groups into the labour market;
– set up and administer mutual assistance funds for income support;

– certificate employment contracts and their compliance with norms and contributions schemes;
– develop actions and initiatives relating to occupational health and safety;
– undertake other activities assigned to them by collective agreements.

With regard to the last point, the attempt has been to free and provide bilateral bodies with more leeway to maneuver with regard to the joint regulation of the labour market.
In Italy, it is collective bargaining that makes provision for the setting up of joint bodies, although in some cases this is done by making reference to a special legislative framework. The reason for this distinction lies in the difference between the services provided by these bodies and the functions they carry out. Some of them are established via collective bargaining on an exclusive basis, while others are recognised by law, although being the result of private bargaining autonomy. If bilateral bodies were not expressly assigned, the foregoing functions by relevant authorities, services that are "authorised" and "recognised" by law could not be provided in any case – or they would not produce specific effects within the Italian legal system. Conversely, the services specified in the collective agreements originate directly and autonomously from collective bargaining and, as such, are of a different type and are provided in a number of ways, depending on the functioning of the bilateral bodies and some contractual arrangements.

3.1. Occupational Health and Safety

The role played by bilateral bodies in terms of occupational health and safety is relevant, as they are legally assigned special functions and need provide some special services.
Legislative Decree No. 276/2003 and, more recently, the consolidating legislation on health and safety at work (Implementing Decree No. 81 of 9 April 2008, subsequently amended by Legislative Decree No. 106 of 3 August 2009), view the joint bodies as a channel to promote, steer, and support both employers and employees which should lean on a participatory model to develop strategies concerning health and safety.
In practical terms, such legislative support is evident if one considers two funding schemes. Art. 52, sec. C provides for a special fund set up by the National Institution for Insurance against Accidents at Work (INAIL) that supports activities carried out by joint bodies. Further, Art. 51, § 3-bis allows

for the usage of ad-hoc funds (*fondi interprofessionali*), or funds for temporary agency workers in order to finance health and safety training programmes.
Of relevance is also the fact that – pursuant to Legislative Decree No. 106/2009 – employers can be awarded with a certificate showing that effective OHS management practices and organizational models have been adopted. The fulfilment of these tasks on the part of bilateral bodies also ensures their involvement in terms of health and safety governance, on the assumption that such a participatory model contributes to building a safety culture in the company, increasing the minimum levels of protection in the working environment.

3.2. Training

On the subject of training, the Italian legislator has provided a significant number of provisions to allow bilateral bodies to carry out activities with regard to vocational training. Art 118 of Law 388/2000 sets forth the establishment of some special funds for life-long learning (called interprofessional joint funds for life-long training – *fondi paritetici interprofessionali per la formazione continua*), that are to be laid down in interconfederal agreements among the largest employers' associations and trade unions at a national level. The money allocated amounts to 30% of contributions paid by each worker to employers who join the fund – and corresponds to the mandatory insurance against unemployment. In cases when the employers join the fund on a voluntary basis, it is the National Institution for Insurance against Accidents at Work that is under the obligation to pay such amounts of money. The strengthening of the role of the bilateral bodies as training provider also within the company results from the view shared by the parties that training is a common good and can help to promote employability and competitiveness.

3.3. Matching Supply and Demand in the Labour Market

The provision of placement services is among the most relevant functions assigned to bilateral bodies by law. Such an activity can be carried out upon authorization released by the Ministry of Labour pursuant to Art. 6, § 3 of Legislative Decree No. 66/2003.

The idea to authorize trade unions to serve as placement providers – also indirectly via bilateral bodies – arises from the assumption that they can protect workers not only by negotiating the best working conditions, but also by administering some services that help the unemployed and first-time job-seekers to access or re-enter the labour market.

3.4. The Certification of Labour Contracts

Undoubtedly, one of the major developments that has recently taken place in labour legislation – particularly with regard to the employment relationship – is the appointment of bilateral bodies as a subject for certification of a labour contract. Not only can bilateral bodies certify contractual schemes regarded as atypical and flexible, but also all the other contractual arrangements, in order to determine the rights and obligations deriving from them, as well as the ensuing forms of protection. This aspect will also help to clarify issues in terms of transactions as laid down by Art. 2113 of the Civil Code, and promote soundness with regard to contributions as a means for transparency in the labour market and employment services.
In legal terms, the involvement of bilateral bodies in the certification of labour contracts is relevant in promoting bilateralism as an instrument to ensure that employers fulfill some duties (e.g. payment of social security contributions, the identification of the employment relationship – whether autonomous work or salaried employment – particularly for tax, social security, and even administrative purposes). The peculiarity of this function lies in that certification also involves an inspection and validation process of employers that join the bilateral bodies that adds to that carried out by public institutions – e.g. the National Social Welfare Institution (INPS) and the National Institution for Insurance against Accidents at Work.

3.5. Income Support

Bilateral bodies also provide a decisive contribution in terms of income support measures, by administering the mutual assistance of funds that support workers operating in those industries that do not envisage wage guarantee funds. With a view to safeguard workers' rights, the function of bilateralism in this area is twofold: experimenting with practices of co- management, yet still referring to forms of welfare (public aid) provided by the government. It is

therefore pivotal to devise some innovative welfare schemes that match public measures and non-state sources. To this end, social safety net measures could be supplemented with well-established funds run by bilateral bodies.
In an awareness of this state of affairs, the legislator has laid down a number of provisions – Art. 2 of Legislative Decree No. 276/2003, subsequently amended and repealed by Art. 5 of Law No. 196 of 24 June 1997 and more recently, which, in turn, has been amended by the set of provisions labeled as *Collegato Lavoro* – in order to govern and regulate the setting up of funds for income support and the provision of training on the part of relevant authorities. The enactment of the *Collegato Lavoro*, has attributed a decisive role to the bilateral bodies – particularly by envisaging unemployment allowances to maintain continuity of income in cases of prolonged unemployment. In this sense Art. 19 of Law Decree No. 185 of 29 November 2008 – which was subsequently converted into Law No. 2 of 28 January 2009 and which refers to a scheme laid down by Art. 13, § 8 of Law Decree No. 35 of 14 March 2005, subsequently converted into Law No. 80 of 14 May 2005 – makes provision for income supports to be paid by bilateral bodies in the event of stoppage in those sectors that are not covered by wage guarantee funds, *de facto* increasing the levels of protection. In a similar vein, the direct involvement of bilateral and joint bodies in the provision of lifelong learning constitutes an attempt to experiment with and further develop supplementary welfare schemes, the result of the relationship between active and passive labour market policies, in order to guarantee that workers are offered adequate protection.
In the context of this paper, it seems worth pointing out that the increasing attention given to income support measures on the part of actors involved in collective bargaining led to the establishment of bilateral bodies operating at a national level on matters concerning the healthcare system and the system of supplementary pension. The latter is of relevance, as regulated by some special provisions (Legislative Decree No. 124 of 21 April 1993; Legislative Decree No. 243 of 23 August 2004; Implementing Decree No. 252 of 5 December 2005).

4. Concluding Remarks

The fact that in the future bilateral bodies might perform all activities and functions assigned to them statutorily or by applicable collective agreements upholds the intention of the legislator to rely on joint bodies and bilateralism to modernize trade unions – who are more and more involved in practices at

company and local level – and to the establishment of a new and alternative social model.

In this perspective, there are reasons to question the view that regards the set of provisions promoting bilateralism as a "Trojan horse" to be used only to transform the role of trade unions, without considering the function of bilateral bodies as a tool to reflect the interests of those concerned, seeing them simply as service providers. For this viewpoint, one of the major concerns is that bilateralism might take the place of trade unions in dealing with some issues, especially by giving priority to dialogue over the traditional conflictual methods and downplaying the role of collective bargaining. As a result, trade unions would no longer be the interpreters of social conflict and the representatives of common interests, but they would just provide employment services and deprived of their autonomy.

In reality, bilateralism should be considered as another activity carried out in the context of unions, as it functions on the basis of what is laid down by the rules of the collective agreements, as referred to by the legislator. Clearly, there are different functions. In some cases, they administer mutual assistance funds, dealing with resources financed by social partners on an exclusive basis. In other cases, they carried out general functions assigned by law, without managing financial resources. In some other cases bilateral bodies are legally responsible for the management of public resources. In the case of the latter, it is reasonable on the part of the government to carry out a monitoring function on the basis of agreed upon criteria.

In Italy, the involvement of trade unions in financial and management issues – both in a direct and indirect manner – is established (the authorized centres of fiscal assistance – CaF – and organizations affiliated with leading trade unions that offer a wide range of services dealing with special issues – *patronati* – are some suitable examples in this connection).

The development of bilateralism – which should take place gradually but steadily – also through a range of provisions that promotes the setting up of bilateral bodies, is consistent with a new and practical system of industrial relations based on cooperation, and with ongoing societal and economic changes which result in the need to set new priorities in terms of labour market policies. The decline of the manufacturing sector that favoured the growth of the service sector and small enterprises, the dissemination of productive processes at a local level, ongoing changes in technology, the widespread use of atypical work and, more recently, the *debacle* of the economic system highlighted the weaknesses of the domestic production system, which might lead to a global crisis and increase unemployment levels. For this reason, there

is a need to devise a new welfare system that takes account of the shortcomings of financial resources available and promotes the participation of individuals and groups concerned (the notion of horizontal subsidiarity).
The aim of bilateralism is to put forward a range of solutions and measures that provides protection in terms of remuneration and social security, the costs of which could not be borne by a system characterized by shortcomings and wastes.
Evidently, the fact that bilateral bodies reduce the level of conflict and enhance social cohesion represents a surplus value.
Indeed, these committees are bodies operating in the context of industrial relations on a participatory and cooperative basis.
Although performing their duties autonomously, they comply with rules and procedures laid down by the founding parties in the collective agreement. For this reason, Ten years ago the accompanying report of the Biagi Law referred to bilateral bodies as privileged channels for enhancing social justice and competitiveness that might contribute to providing a more cooperative approach to industrial relations, thus promoting more stable and quality jobs.

5. Essential Literature Review

As a typical and, to some extent, unique institution of the Italian industrial relations system, bilateral bodies have been mainly the subject of investigation carried out by Italian scholars. English-language literature on bilateralism is therefore limited to few contributions written by Italian academics, including an introduction to bilateral bodies in the artisan sector by S. Ciuffini, G. De Lucia, "The System of Bilateral Bodies in the Artisan Sector: The Italian Experience in the Context of European Social Dialogue", *The International Journal of Comparative Labour Law and Industrial Relations*, 2004 and a focus on bilateralism as a form of employee involvement in Italy by M. Tiraboschi, F. Pasquini, W. Bromwich, 'Employee Involvement in Italy', in M. Weiss, M. Sewerynski (eds.), *Handbook on Employee Involvement in Europe*, Kluwer Law International, 2004 and M. Tiraboschi, 'Employee involvement in Italy', in Various Authors, *Employee Involvement in a Globalising World. Liber Amicorum Manfred Weiss*, Berliner Wissenschafts-Verlag, 2005.
Regarded as the new frontier for the rebirth (or at least the profound renewal) of labour relations in Italy, bilateral bodies are organisations set up jointly by employers' associations and trade unions on the basis of a collective

agreement. In order to distinguish them from other forms of joint institutions, L. Bellardi, "Le istituzioni bilaterali tra legge e contrattazione collettiva: note di sintesi e prospettive", L. Bellardi, G. De Santis (eds.), *La bilateralità tra tradizione e rinnovamento*, Franco Angeli, 2011, recently proposed a more detailed definition according to which the expression "bilateral or joint bodies" is used to refer to entities that are set up and regulated by means of collective bargaining and that have three main features: 1) they consist of representatives from social partners concluding collective agreements through which such bodies are governed; 2) they provide (employment) services and protection to both workers and employers, in accordance to what is laid down by collective agreements and by statutory law. Funds to such activities are collected by means of contributions paid by employers and – to a minor extent – by workers 3) upon the free choice of the parties that comprise them, bilateral bodies are autonomous legal entities. Bilateral bodies were originally widespread only in the building sector as a strategy for the joint administration of financial resources collected by employers' associations and trade unions for the allocation of benefits to employees in certain critical circumstances (illness, accidents at work, mutual assistance in case of stoppage or reduction in working hours, etc.). Starting from the earlier contribution, a first historical analysis of the origins of bilateralism in the Italian building sector is carried out by L. Bellardi, *Istituzioni bilaterali e contrattazione collettiva: il settore edile (1945/1988)*, 1990.

From the early 1980s, in addition to the building sector, a system of bilateral bodies was set up also in other industries characterised by weak industrial relations and a limited presence of trade unions such as the craft sector, commerce and tourism, not only for the joint administration of financial resources but also as a new paradigm of a cooperative system of industrial relations. A cross-sectoral description of bilateralism in Italy is provided by M. Cimaglia, A. Aurilio, "I sistemi bilaterali di settore", L. Bellardi, G. De Santis (eds.), *La bilateralità tra tradizione e rinnovamento*, Franco Angeli, 2011.

Taking into account the classical demarcation between static and dynamic collective bargaining systems proposed by O. Kahn-Freund, "Intergroup Conflicts and their Settlement", *The British journal of sociology*, 1954, there is large consensus among academics to frame bilateral bodies under the dynamic model. Bilateralism therefore represents a refusal of the traditional conflictual method of labour dispute resolution based on static collective bargaining, which is not well suited to the peculiarities and characteristics of certain sectors (prevalence of small and micro enterprises, fragmentation of the workforce, high turnover of employees, rapid and continuous changes in the

labour market, etc.). In other words, according to M. Tiraboschi, "The reform of the Italian labor market over the past ten years: a process of liberalization?", *Comparative Labor Law & Policy Journal*, 2008 bilateralism does not eliminate conflict, nor does it alter the function of the trade union with a shift toward a liberal approach to labour market regulation, but may be useful for implementing the terms and conditions negotiated during collective bargaining. In this connection, M. Biagi, "Cultura e istituti partecipativi delle relazioni industriali in Europa", L. Montuschi, M. Tiraboschi, T. Treu (eds.), *Marco Biagi un giurista progettuale*, Giuffrè, 2003 regarded bilateralism in Italy and Europe as a cooperative and participative model of industrial relations aimed at protecting workers in small and micro enterprises through the joint administration and governance of the entire labour market. The bilateral approach is therefore associated with an industrial relations model of a collaborative and cooperative type, promoting territorial development and regular employment of good quality.

As far as the legal nature of bilateral bodies is concerned, a comprehensive analysis is provided by L. Bellardi, "Contrattazione collettiva ed enti bilaterali: alcune osservazioni",*Lavoro informazione*, n. 1/1997, G. D'Aloia, "Sindacato e enti bilaterali. Spunti da una ricerca", *Quaderni di Rassegna sindacale*, n. 4/2005, D. Garofalo, 'Il bilateralismo tra autonomia individuale e collettiva', in Aa.Vv., *Autonomia individuale e autonomia collettiva alla luce delle più recenti riforme*, Giuffrè, 2005 and M. Napoli, "Diritto del lavoro e riformismo sociale", *Lavoro e diritto*, 2008. Unanimously academics recognize that bilateral bodies have a contractual origin, even in cases where their establishment is foreseen by the law.

Linked to their legal nature, the funding system of bilateral bodies has been widely debated among scholars during the last decade in relation to the nature of collective agreements in Italy, which are not provided with *erga omnes* power. The thesis under which the financial contribution to bilateral bodies is not compulsory for those companies unaffiliated to the employer's association that signed the collective agreement was mainly supported by F. Stolfa, "Enti bilaterali artigiani e benefici contributive", *Diritto e pratica del lavoro*, 1997. On the other hand, P. Ichino, "Estensione dell'obbligo di adesione ai fondi di sostegno al reddito", *Diritto e pratica del lavoro*, 1994, p. 3424; A. Bellavista, "Benefici contributivi ed enti bilaterali artigiani", *Rivista italiana di diritto del lavoro*, 1998, p. 476; M. Miscione, "Le prestazioni degli enti bilaterali quale onere per sgravi e fiscalizzazioni", *Diritto e pratica del lavoro*, 1997, p. 3347, M. Lai, "Appunti sulla bilateralità", *Diritto delle Relazioni Industriali*, 2006 and more recently M. Tiraboschi, "La contribuzione alla bilateralità: il

modello del settore artigiano", *Guida al lavoro*, n. 37/2010 defended the opposite thesis, which is now reinforced by the administrative act No. 43/2010 issued by the Italian Ministry of labour according to which the contribution to bilateral bodies is binding for all the companies irrespective of their affiliation to the signatory employers' associations. This interpretation is basically grounded in the fact that if the companies could opt-out to pay contribution to its relevant sectoral bilateral body, their employees would therefore be discriminated against those workers that benefit of the services provided by it.
The reform of the labour market regulation enacted in 2003 (known as the Biagi reform) strengthened the role played so far by the bilateral bodies, assigning them new and extended functions. In this perspective bilateralism is proposed by the legislator as a privileged channel for the regulation of the labour market not only in the building, craft, commerce and tourism sectors, but also as the paradigm of a new system of labour and employment relations in order to create more participatory relations in all sectors. In positive terms, extensive analysis on the effects of the Biagi reform on bilateralism is provided by a number of Authors in M. Tiraboschi (eds.), *La riforma Biagi del mercato del lavoro, Prime interpretazioni e proposte di lettura del d.lgs. 10 settembre 2003, n. 276. Il diritto transitorio e i tempi della riforma*, Giuffrè, 2004. On the other hand, criticism on the strengthening of bilateral bodies was expressed by G. Martinengo, "Enti bilaterali: appunti per una discussione", *Lavoro e diritto*, 2003, L. Mariucci, "Interrogativi sugli Enti Bilaterali", *Lavoro e diritto*, 2003; Id., "Commento sub art. 2 lett. h)", E. Gragnoli, A. Perulli (eds.), *La riforma del mercato del lavoro e i nuovi modelli contrattuali*, Cedam, 2004, S. Leonardi, *Bilateralità e servizi: quale ruolo per il sindacato?*, Ediesse, 2005, which rejected the emphasis of the reform on bilateralism as a sort of Trojan horse that risks destroying the role of trade unions by transforming them into a para-public institution. Against this idea, a large part of academics, including F. Carinci, "Il *casus belli* degli enti bilaterali", *Lavoro e diritto*, 2003; R. Del Punta, "Gli enti bilaterali e modelli di regolazione sindacale", *Lavoro e diritto*, 2003; P.A. Varesi, "Azione sindacale e tutela del mercato del lavoro: il bilateralismo alla prova", *Diritto delle Relazioni Industriali*, 2004; G. Proia, "Enti bilaterali e riforma del mercato del lavoro", *Argomenti di diritto del lavoro*, 2004; A. Vallebona, "Gli Enti bilaterali: un seme di speranza da salvaguardare", *Diritto delle Relazioni Industriali*, 2006; M. Lai, "Appunti sulla bilateralità", *Diritto delle Relazioni Industriali*, 2006; M. Napoli, "Riflessioni sul ruolo degli enti bilaterali nel decreto legislativo 10 settembre 2003, n. 276", *Jus*, 2005; A. Reginelli, "Gli enti bilaterali nella riforma del mercato del lavoro: un primo bilancio", *DRI*,

2006 and E. Ghera, "La certificazione dei contratti di lavoro", Id., *Il nuovo diritto del lavoro*, Giappichelli, 2006, argue that the new functions recognized to bilateralism do not affect the role and the identity of the trade unions insofar as bilateral bodies continue to be the expression of the collective autonomy of the workers' organizations.