Employee Involvement in Italy*

1. Introduction

1.1. Definition

The term "employee involvement" has appeared only recently in the Italian debate since the promotion of the involvement of employees in company decision-making has become an essential part of the Community's mainstreaming strategy in its social policy agenda. This term is used as the equivalent of "workers' participation" and "employee participation", and both are used to refer to all forms of employee involvement in the management of an enterprise, as well as "employee involvement" in the capital of the enterprise and in profit sharing.
To speak of participation or of the influence of employees on management decision-making in the private sector in Italy takes on a different meaning according to which of the two concepts is being emphasised. If viewed in a participatory perspective in the sense commonly accepted at a comparative level (i.e. the cooperative involvement of workers in the running of a company), the Italian system presents a rather limited range of experience. If, on the other hand, the focus is on the level of influence that can be brought to bear on the exercise of what have traditionally been managerial powers, the range of cases becomes far more interesting.

* *This contribution was written in collaboration with Flavia Pasquini and was previously published in Weiss, M., and M. Sewerynsky eds. 2004. Handbook on Employee Involvement in Europe. Kluwer Law International.*

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1.2. Purpose

The purpose of this paper is to provide a national survey of the channels (i.e. instruments) and functions (and therefore of the activity carried out with these instruments) through which workers influence management other than in a perspective of conflict. It would be too simple to argue that industrial conflict is the means by which workers in many countries (Italy included) are able to limit management prerogatives. This report will focus on the ways in which influence is exerted in a participatory perspective, i.e. on the assumption that there is employee involvement in the decision-making process (even if, in fact, such involvement may be weak, sometimes so weak as to be appear to be entirely absent).

1.3. Historical Overview

1.3.1. The Structural Perspective

When speaking of forms of employee representation in private-sector undertakings in Italy, it is necessary to make a clear distinction, between not only a structural and a functional perspective, but in structural terms, between the period before and after the end of the 1960s. Until then, the system of representation could be defined as dual: on the one hand, *sezioni sindacali aziendali* (associative bodies, an integral part of the trade-union structure taking part in bargaining activity and conflict), and on the other hand, *commissioni interne* (elected bodies, representing all the employees, even if they were not union members, dealing with the employer on collaborative and participatory terms).
However, the *autunno caldo* or hot autumn (the profound upheaval of Italian trade unions and society coinciding with the 1968-69 bargaining round, involving university students as well as factory workers) had the effect of replacing this system that was becoming less and less effective and rooted among the workers, with a completely new one. It was based above all on representatives known as *delegati*, elected by groups of workers with common occupational interests or at least employed in the same productive unit in a company.
From the beginning of the 1970s, the *delegati* began to form a new system of representation within bodies known as *Consigli di fabbrica* or *Consigli di*

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delegati. Basically, this is a single-channel system that is still in operation today.
The originality of this system is undoubtedly based on its uncertain nature. From a technical point of view the *Consigli* are the same body as the *rappresentanze sindacali aziendali* (known as RSA, to be dealt with below), regulated by the *Statuto dei diritti dei lavoratori* (Act. No. 300/1970), in the sense that in most cases the trade unions affiliated to the most representative confederations (CGIL, with a mainly Communist/post-Communist membership, CISL, with an originally Catholic background, and UIL, with a mainly Socialist membership) waived their right to form representative bodies (RSA) separately, while conferring on the *Consigli* the powers granted by Act No. 300/ 1970.
The RSA are plant-level representative bodies that may be set up in productive units of industrial and commercial enterprises (head offices, establishments, branches, offices and independent workshops) employing over 15 workers. The same provisions apply to agricultural concerns employing over five workers and to industrial and commercial enterprises employing over 15 workers within the same municipality, and to agricultural concerns that employ more than five workers within the same geographical jurisdiction, even if the productive units do not reach this figure when considered individually.
Until 1995 Article 19 of the *Statuto dei lavoratori* regulated the establishment of trade union representation (that could be set up exclusively by the most representative trade unions), but the referendum of 11 June of that year repealed letter a) and part of letter b). As a result, this Article no longer lays down the concept of the most representative union at national level, and the right to set up representative bodies is granted to workers in the framework of the organisations signing the collective labour agreements applying in the productive units.
Since then Italian legislation has upheld the principle of comparative representativeness, with reference to the concept for example in the provisions governing part-time working (Legislative Decree No. 61/2000) and temporary work (Act No. 196/1997).
The *Consigli di fabbrica* to all intents and purposes left the associative phase behind them in the sense that they also started to represent employees who were not union members, yet considered the representative bodies (RSA) to be their agents in the workplace. In fact, these bodies were elected based on procedures that were sometimes laid down by the statutes of the *Consigli* themselves and in other cases were simply based on practice.

In the 1980s the unitary relationship between the three trade-union confederations, CGIL, CISL, and UIL, was considerably weakened. One of the consequences was the break-up of some *Consigli di fabbrica* when a trade union decided to set up a separate and autonomous representative body (RSA). This situation gave rise to intense debate about the urgent need to introduce clearer and more definite rules on employee representation in the workplace. However, this debate did not call into question either the unitary nature of the system of representation or its general function, i.e. the fact that it was expected to give voice to the employees' expectations in the undertaking on all matters, both in a collaborative and in a conflictive perspective, according to the circumstances.

1.3.2. The Functional Perspective

Concerning the functional perspective, to be dealt with below, there is no doubt that, concerning collective bargaining, in the Italian case participation is more highly developed at macro than at micro level, and in this connection mention should be made of the attempts at "social concertation" (tripartite negotiation) at the end of the 1970s and the beginning of the 1980s. In particular, the 1983 agreement on labour costs was explicitly tripartite, in the sense that it was made with the active participation of the Government not only as a political mediator but also as a signatory to the agreement, based on a three-way exchange between the Government, the employers' associations and the trade unions.
The 1983 agreement was followed by others, each of them with their own particular characteristics. The first of these was in February 1984, the St Valentine's Agreement, that CGIL, the most important trade-union federation in terms of membership, refused to sign, unlike CISL, UIL and a series of smaller associations. Due to this refusal, the Government decided to turn an essential part of the agreement into a decree law.
The interconfederal agreement of 8 May 1986 on labour costs and industrial relations adopted a different approach in that the social partners gave *ex post facto* approval to a system that had previously been governed by legislative provisions.
The subsequent phase of industrial relations in Italy was characterised by a moderate degree of conflict, but also by a serious economic recession, that resulted in a return to a tripartite bargaining model aimed above all at financial restructuring.

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In the wake of the tripartite agreements of 6 July 1990 and 10 December 1991, the Protocol of 31 July 1992 was signed by 26 representatives of the social partners, laying down certain obligations and a series of policy statements by the Government, mainly concerning the adoption of measures aimed at combating inflation, improving competitiveness on the international markets and reducing the public deficit. The dual nature of this agreement gave rise to problems of interpretation, since it was by no means easy to distinguish the policy statements from the commitments negotiated, and therefore to establish to what extent the obligations were binding on the social partners.
Faced with the public finance crisis and the risk that European Economic and Monetary Union might leave Italy behind, the unions, employers and the government negotiated a major tripartite agreement on 23 July 1993 known as the Social Pact.
This agreement introduced tripartite bargaining in order to achieve wage restraint as a final, formal step in the process by which industrial relations in Italy could be brought into line with the new European climate of economic and social convergence. The incomes policy agreement was based on the same guiding principles that characterised the gradual approach to European integration: inflation in line with the average in the soundest Community economies, and a reduction in the public debt and deficit. Therefore, it may be said that the 1993 agreement laid down a new constitution for Italian industrial relations.
The main objective of the 1993 agreement was to contain inflation and labour costs. Furthermore, it contained a series of institutional innovations affecting company-level interest representation structures on the one hand and the system of collective bargaining on the other.
The cross-sectoral protocol of July 1993 gave enterprise bargaining a complementary role to industry-wide bargaining, and set out the information needed for such bargaining as well as information, consultation and supervisory procedures.
At the end of the first four-year cycle of collective bargaining, an assessment of the 1993 agreement was carried out by the parties involved, i.e. the trade unions, employers' associations and Government. This process was concluded at the end of 1998. In the view of the trade-union confederations, CGIL, CISL and UIL, the tripartite agreement was fairly effective, as it contributed to the containment both of the inflation rate and the public deficit, making it possible to meet the convergence criteria of Maastricht, while the purchasing power of wages was defended. Furthermore, the 1993 agreement permitted a substantial renewal of the structures of interest representation at company level (RSU). A

negative outcome, however, was the relatively low level of decentralised bargaining.
Nevertheless, the trade unions' policy on the matter of bargaining levels was to extend and consolidate the model laid down by the agreement of 1993, extending the use of second-level bargaining (company and territorial).
The trade unions were interested in using the assessment and updating the central tripartite agreement of July 1993 to press ahead with an enforcement of participation rights.
The tripartite agreement of July 1993 has so far been the most advanced case of institutionalisation of industrial relations, especially with regard to the system of trade-union representation and collective bargaining that provides the structural basis of participation in Italian industrial relations. By defining bargaining levels and their function, the 1993 agreement succeeded in providing the industrial relations system with a degree of stability.
Even if participation was not explicitly regulated, the 1993 agreement offered a new starting point for participatory experience at the company level in the form of "performance-related pay increases negotiated at company level, to be linked to the results of development programmes agreed between the parties. These programmes were aimed at improving productivity, quality and other aspects affecting the competitive position of the company. In general, trade unions preferred to link this performance-related pay increase to quality and productivity parameters but not to profits, as it was more difficult to control and influence them.
In 1994, with the advent of a centre-right Government, tripartite bargaining slowed down considerably. In particular, the breakdown of negotiations between the social partners in relation to financial policy choices, together with a possible reform of the pension system, forced the Government to eliminate from the annual budget legislation the proposed measures relating to social insurance, and to deal with these matters as part of a general reform of the pension system.
Considering that Italy's economic situation had deteriorated, an agreement was concluded on 12 April 1995, albeit only between the Government and the unions. The employers' association, Confindustria, refused to take part in this agreement, the main purpose of which was to make provision for supplementary pensions, that were intended to make up for the reduction in state pensions.
The agreement of 24 September 1996, on the other hand, mainly focused on the need to combat unemployment by means of a preliminary reform of the labour market. This represents an example, as has rightly been noted, of the

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preliminary negotiation of provisions that were to become almost entirely legislative (partly transformed into Act No. 196/1997, containing measures for the promotion of employment, and Legislative Decree No. 469/1997, that devolved powers relating to the labour market to the regional and local authorities, based on a model in keeping with information and consultation procedures). The aim of the agreement was above all to reduce passive support measures for employment (tax incentives, early retirement, generalised state funding of enterprises), in order to adopt more active policy measures, including a range of provisions mainly aimed at promoting access to the labour market by means of the introduction of flexibility measures. This was also the purpose of the decision to bring to an end the public monopoly on placement, and the reform of public employment services.

The social pact of December 1998 was concluded by the Italian government and 32 organisations representing the social partners. The primary aim of the agreement was to create employment by reducing labour costs and taxes on the one hand and reforming the system of vocational training on the other. Moreover, the trade unions managed to defend the two-level collective bargaining system. However, participation issues were not discussed at all.

It is important to underline that with this agreement the regional and local institutions started to play a role in tripartite bargaining, that was therefore strengthened.

In October 2001, the Government presented a White Paper, drafted by a group of experts, outlining its reform policies for the labour market and industrial relations. After talks with the social partners on the contents of the White Paper, in November and December 2001 the government issued proposals for the reform of the labour market, the tax system and pension provisions. These reforms were to be introduced by means of "delegated legislation", by which Parliament delegates to the Government the power to legislate on a particular issue.

The three main trade-union confederations reacted in different ways to these proposals: CGIL was highly critical and expressed its total opposition to the reforms, whereas CISL and UIL also criticised the Government positions, but expressed their willingness to continue negotiations.

Negotiations with the social partners over the Government's proposals continued, but were broken off many times. On 5 July 2002, the Italian Government and the main employers' organisations and trade-union confederations, with the exception of CGIL, signed a Pact for Italy (*Patto per l'Italia*), dealing with the labour market, the tax system, the South of Italy (*Mezzogiorno*) and irregular work.

The lack of unity among the union confederations reflected their contrasting views on the Government's proposals. Meanwhile, at its annual assembly in May 2002 the employers' confederation, Confindustria, reiterated its position, stressing the importance of reform of the labour market and the tax system in order to increase competitiveness.
The Pact for Italy recognised that the tripartite national agreement of 1992 and that of 23 July 1993 on incomes policy and bargaining had played a key role in Italy's ability to take part in EU Economic and Monetary Union (EMU). The social dialogue practices and the incomes policy resulting from these agreements made possible the recovery of Italy's public finances and the control of inflation. In the Pact the Government also explicitly recognised the importance of concertation among the social partners, something that it had previously questioned, and stated that it considered this method fundamental to achieving the employment and modernisation objectives agreed at the Lisbon EU summit.

2. The Structural Perspective

2.1. Sources

The Italian legislative framework for workers' participation is not highly developed. However, the Constitution lays down in Article 46 that: "For the purpose of raising the economic and social level of labour, and subject to the requirements of production, the Republic recognises the right of the workers to participate, in ways and within limits established by law, in the management of undertakings".
Not only has this constitutional provision never been brought into force from a technical point of view, in the sense that Parliament has not enacted legislation referring explicitly to Article 46, but the Italian system of industrial relations as a whole has not developed historically along the lines foreseen at the time of the Constitution. In fact, the role exercised by Italian trade unions in the workplace has, been for a long time mainly interpreted in an adversarial perspective, and until recently, in an ideological sense of conflict between different social classes that were irremediably antagonistic towards each other.
The law has naturally intervened also in Italy to regulate collective labour relations, though to quite a limited extent. Arguably, the most important intervention to date is the *Statuto dei diritti dei lavoratori* (Act No. 300/1970). This legislation gave great importance to supporting and strengthening the so-

called "most representative" trade unions, i.e. those affiliated to the three major confederations, CGIL, CISL and UIL.

Thanks also to this legislation, trade unions in the workplace enjoy a good deal of protection and, because of this, a kind of "participation through conflict" is given considerable support. The *Statuto* not only prohibits any form of discrimination on trade union grounds (or for any other reason) but also gives express protection to the rights of the *rappresentanze sindacali aziendali* (RSA). This is the case for the right to call meetings of employees (whether union members or not), to hold ballots, to make use of notice boards for displaying trade union material, to take paid or unpaid leave for carrying out trade union duties outside the workplace, and to be protected against transfers from one unit to another without the approval of the trade union to which the official belongs. This is not to mention the special protection that union activists enjoy in cases of unlawful dismissal.

Although at micro level it is possible to identify this type of legislation that indirectly concerns the capacity of workers' representatives in a company to influence management decision-making, it may be said that at macro level a legislative framework favouring employee participation is almost entirely lacking.

Overall, it may therefore be argued that, from the point of view of the sources, by far the most important role is carried out by collective bargaining. In other words, the conditioning of management initiative takes place by means of bargaining, typically carried out by the trade unions.

In this connection, it must be borne in mind that the Italian Constitution (Article 39) provides for collective agreements applying to all those belonging to the economic sector in question, but so far this provision has not been implemented by Parliament. However, the universal effect of collective agreements, making them binding even for employers and workers who are not affiliated to the bargaining agents, has partly been enforced by case law.

On the basis of Article 36 of the Constitution (the principle of fair remuneration), the courts have declared null and void those clauses in individual contracts of employment that set lower levels of pay than those laid down by the applicable collective agreement. More recently, legislation has laid down an obligation on the part of undertakings in receipt of state grants or awarded public works contracts to ensure that conditions applied or made to apply for workers must not be worse than those set by collective agreements for the relevant category and area (Article 36, Act No. 300/1970).

On other occasions, as a prerequisite for employers applying for relief on social security contributions, legislation has laid down that the remuneration

paid to the workers must not be lower than the minimum set by the collective agreement in force.

Apart from these technical points, important as they may be, with regard to the application of collective agreements it must be underlined that in Italy the system of collective bargaining is highly developed. Originally, it consisted of several levels (national agreements for each category, company agreements, as well as intermediate levels such as regional agreements) and applied to all workers. It was quite varied also because of the considerable diversity on the employers' side.

There are in fact several employers' associations, characterised both on the basis of the type of company in the association (small or large, private or state owned, cooperative, artisan, local authority-owned, etc.) and of the political and ideological orientation (e.g. for artisan or co-operative firms). The fact that there are a number of associations is explained by the traditional political allegiances that are to be found in the trade union movements, Socialist, Communist and Catholic. This is why at times there are several national industrial agreements for workers employed in the same sector but in companies of different kinds.

As mentioned above, the Italian system of collective bargaining was redesigned by the agreement of 23 July 1993 between the trade union confederations, the employers' associations and the Government. The system is now based on two levels of bargaining: industry-wide bargaining at national level and a second level that can be either company or territorial (region, district) level. Pursuant to the 1993 reforms, industry-wide agreements are negotiated for four-year periods with regard to normative matters and for two-year periods with regard to pay.

Although collective bargaining is by far the most important source for the regulation of participatory forms, it is by no means the only one. There is a tendency towards the expansion of participatory forms that have not been formally defined in agreements but that are being experimented with at the initiative of management.

The management of human resources by means other than trade union negotiations is no longer anomalous or infrequent, especially in medium to large undertakings. Quality circles and similar strategies for favouring employee participation for the purposes of achieving greater productivity at work no longer meet with a hostile response from the trade unions, that was often the case until not so long ago.

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2.2. Channels and Institutions of Representation

2.2.1. Autonomous Representative Bodies and Unified Representative Bodies

At present, in Italy representation chiefly takes place through a single channel, the methods of which were clarified and standardised following the cross-sectoral agreements of 1991 and 1993.
In 1991, under pressure from Parliament, the trade-union confederations drew up joint plans for representatives to be elected by all workers every three years from trade union lists. The protocol of 1 March 1991 changed the name of this form of representation, and it became the *Rappresentanze Sindacali Unitarie* (RSU), i.e. unitary trade-union representative bodies. The dual nature of representation was retained: the RSU were considered to be trade-union institutions, while elections were open to all workers (albeit from trade union or independent lists).
The draft protocol of 1991 was fleshed out by the cross-sectoral protocols and agreements of 23 July 1993 and 20 December 1993.
The agreement of July 1993 redesigned trade-union representative bodies at company level, the so-called RSU. They are unitary structures of plant representation, elected for a three-year term of office by employees and, for the first time, recognised by employers.
It is important to note that there is an explicit mention of the requirement for contact between the trade-union organisations that negotiate the national agreements and the unitary trade-union representatives (RSU) set up under those agreements, reflected in the composition of the RSU: two-thirds elected by the entire workforce, and one-third appointed or elected by the unions that are party to the national agreements. This clause was strongly favoured by the employers, who wanted an assurance that these bodies would be dominated by the same unions as those signing the sectoral agreement. The "one-third rule" also acts as a safeguard for the smallest of the confederations, or for the one least favoured by the electorate.
A typical problem of Italian industrial relations, based on the single-channel model, regards the overlapping in a single representative body of both bargaining prerogatives and participatory activities. The RSUs are the only workers' representative bodies legitimised at company level. Although they have in certain cases the possibility to delegate their rights to other participatory bodies (e.g. joint committees) set up by agreement, this does not

overcome the basic contradiction that RSUs continue to hold a power of veto over the activity and decisions of such participatory bodies.
With regard to the public sector, Decree Laws No. 421/1992 and No. 29/1993 brought the system of collective bargaining more or less into line with the methods used in the private sector. Legal provisions drawn up in Legislative Decree No. 396/1997 laid down the reference framework for the introduction of RSUs. Two framework agreements on RSUs, electoral rules and guidelines for the use of trade-union time, signed on 7 August 1998 by ARAN (the Italian advisory, conciliation and arbitration service) and the three confederations CGIL, CISL and UIL, followed on from these provisions.
Still with reference to the public sector, pursuant to Article 43, Legislative Decree No. 165/2001, sectoral collective agreements may be concluded only by trade unions that are considered to be "representative", that is to say those that in a given sector represent at least 5% of the workers, considering for this purpose the average of the membership and the election results. Membership is calculated as the percentage of authorisations for the deduction of trade-union dues in relation to the total number of such authorisations in the workplace or establishment concerned. The election results are considered as the percentage of votes obtained in the elections for the RSU, in relation to the total number of votes cast in the workplace or establishment concerned.
Efforts are made to ensure that the various categories of workers are fairly represented through the composition of the lists or the establishment of separate electoral colleges. Some collective agreements (such as for the chemical sector) make provision for separate representation for managerial staff. Moreover, electoral methods, a source of disagreement in the past, have been more clearly defined in the agreements concluded since 1993.
After the elections, a list of representatives has to be forwarded to the employer, so that those elected can benefit from statutory provisions (i.e. the right to time-off).

2.2.2. Joint Committees

The Italian system also includes several examples of joint committees, normally consisting of equal numbers of representatives of each side. Once again, it is collective bargaining that increasingly defines arrangements at company level, often providing for contractual matters (e.g. information rights, to be dealt with below) to be dealt with by joint committees.

Especially in state-owned industry (IRI, ENI groups, etc.) there have been "bilateral committees" since the mid-1980s. These are bodies on which representatives of the two sides of industry sit, and that may be defined as specialised, distinct, but not separate, from (and therefore not in opposition to) general representative bodies. In this connection, it is significant that at company level the appointment of members is the prerogative of the *Consiglio di fabbrica* or, as the case may be, of the RSA. They are specialised in terms of the matters dealt with and not in terms of their composition. They are in fact standing committees for information and consultation, with a duty to evaluate proposals and to issue an opinion that is obligatory, but not binding on the employer.

2.2.3. Bilateral Bodies

This type of concerted action in industrial relations is to be found not only at company level. Some interconfederal agreements and national industry-wide collective agreements for certain sectors have introduced bodies for the joint management on a territorial basis of vocational training, a subject about which there is a considerable and interesting convergence of views between the two sides of industry.

These joint bodies, known in the Italian system as *enti bilaterali* or bilateral bodies, were first set up, in an embryonic form, in the 1950s, as *casse edili*, mutual funds for the building industry.

However, it was only in the 1970s that collective bargaining introduced joint bodies that were similar to those that are now widespread, aimed at dealing with certain matters, such as the examination and resolution of labour disputes, and the interpretation and classification of labour agreements. The real turning point for bilateral bodies came in the mid-1990s, when the social partners strengthened them, redefining their functions and area of operations.

This period saw the conclusion of a number of cross-sectoral agreements between workers and employers, laying down the competences of these bodies, not just in the coordination of services and vocational training systems (introducing a certification process for the quality of the services provided), but also as a means of providing support for workers involved in restructuring processes leading to the termination or suspension of the employment relationship, and providing services favouring technological and organisational innovation in the enterprise.

The most significant agreements are those with the employers' association Confindustria, the one in the artisan sector, the one concluded by Confapi in 1993, and finally the interconfederal agreement of 23 July 1994 for the cooperative sector. From an analysis of these agreements and their implementation, it can be seen that the first services to be developed were those providing mutual support, as opposed to those providing vocational training. Measures were taken in support of employment, in an attempt to make up for the inadequacy of social security "shock absorbers" or safety-net measures that have never been extended to cover small enterprises.
These measures consist mainly of funds supported by the enterprises, and in certain cases also by the employees, by means of small contributions, and subsequently the payment of subsidies to firms at critical moments.
The legislator has also underlined the importance of bilateral bodies, in particular by means of Article 9, Act No. 236/1993, that provided for the setting up of these bodies in implementation of agreements between the most representative trade unions and employers' associations at national level, making provision for them to sign agreements with autonomous regions and provinces for the analysis and in-depth study of local employment markets and surveys of vocational training needs.
The tripartite agreement of 23 July 1993 that opened up a new phase in industrial relations in Italy makes various references to bilateral bodies, especially with regard to training. In particular, in the sections devoted to youth employment and training, the parties to the agreement recognise the fundamental powers of the bilateral bodies in the design, implementation and certification of employment contracts with a training element. These bodies are given powers relating to course planning, the organisation of training plans, surveys at local level of the supply and demand for training services, the implementation of measures facilitating access to the labour market on the part of certain categories of workers and for promoting the employment of those at risk of exclusion from the labour market. Finally, the Pact for Labour of September 1996 recognises the role of bilateral bodies, once again with particular reference to vocational training policies.
With regard to the form that these bodies generally take on, in most cases, they are set up as non-recognised associations pursuant to Articles 36 et seq. of the Civil Code, on the basis of an agreement between the trade unions and the employers' associations. However, they may also be set up as limited liability companies, as consortia pursuant to Article 2615 of the Civil Code or as non-profit organisations pursuant to Section III, Title II, Book I of the Civil Code and generally without the distribution of earnings. Bilateral bodies may in

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general be defined as "associations of associations" in which the parties are, for the trade unions, the confederal associations – CGIL, CISL, UIL – each with its own autonomy and separate identity, while for the employers the signatories may be individual associations (for example, Confindustria) or pluralist associations (Confartigianato, Can, Casa, Claai).
Bilateral bodies may have an internal structure consisting of an ordinary and extraordinary general meeting of the members, a board of directors or management, and an audit committee. All the management and administrative bodies are appointed on the basis of the principle of joint representation of the employers and the trade unions, generally for a renewable three-year term of office. The chair of the bilateral body, in particular, as the legal representative, is normally appointed by the employers' association, whereas his or her deputy is normally appointed by the trade unions. With regard to internal management procedures, the unanimity rule is prevalent, and is applied for all major decisions, to underline the consensual approach that these bodies are intended to take.
The system of bilateral bodies is strongly decentralised to regional and, in certain cases, provincial level. The four national bodies (Bilateral body for the artisan trades, for Confindustria, Confapi and Cooperation) are cross-sectoral and confederal. In addition there are bilateral bodies for tourism and commerce that in spite of the particular characteristics of this sector, are defined in the same way.
From an analysis of certain legislative provisions recently enacted (Act No. 30/2003 and Legislative Decree No. 276/2003, implementing this Act), there emerges an intention on the part of the Italian legislator to provide incentives, by means of a range of measures, for bilateral bodies and methods. In these legislative provisions, the role played in the past by these bodies is considerably strengthened, on the one hand promoting the tasks that they have traditionally performed, and on the other hand assigning new competences and functions. This strengthening concerns three areas of bilateral action, in particular the regulation of the labour market (with future prospects for the management of supplementary measures or measures replacing the general obligatory system of income support), the matter of the reorganisation of training contracts, and finally, the certification of employment contracts, transactions and contracting out, conferring on the bilateral bodies an important role, in order to avoid the use of fictitious job descriptions, that in many cases are intended to circumvent employment protection measures.
In particular, Article 2 (1) (h) of Legislative Decree No. 276/2003 lays down a definition of bilateral bodies, that on the whole confirms that they may be set

up in various ways, and lists in a non-exclusive manner the functions they may perform. The long-standing practice in Italian industrial relations is therefore confirmed, by which bilateral bodies are "set up at the initiative of one or more employers' associations and the most representative trade unions", that are destined, from this legislative provision onwards, to become the preferred forum for the regulation of the labour market "by means of the promotion of regular employment of good quality; the matching of the supply and demand for labour; the promotion of training initiatives and the identification of ways of providing in-company training; the promotion of best practices against discrimination and for the inclusion of the most disadvantaged groups; the joint management of funds for training and income support; the certification of employment contracts and of regular and proportionate remuneration; the development of actions relating to health and safety at work" and, perhaps even more important, "any other activity or function assigned to them".

It should be noted that this measure provides for bilateral bodies to be set up only by the most representative trade unions, and is therefore not of general application, but only for those bodies that intend to perform the functions laid down.

In this report it is not possible to provide an exhaustive account of the functions laid down for bilateral bodies by the legislator. However, it is clear that they will be able to play a fundamental role with regard to the participation of workers in management decision-making in small enterprises.

In this connection there is a fundamental aspect to take into consideration: the instruments that the Italian system has provided in the past, in an uncoordinated manner, to promote employee participation in the broad sense depend on the enterprise reaching certain employment thresholds, with only a few marginal exceptions.

One of the exceptions that should be mentioned is the provision in Article 43 of the *Legge Finanziaria* for 2004, applicable to all companies regardless of the number of employees, and legislative proposal C. 2778, to be discussed below, expressly designed for small companies, that is limited to profit-sharing.

Consequently, it has generally been impossible for employees in small and medium-sized enterprises to take advantage of participation schemes, in spite of the benefits that these schemes clearly could provide, in an area in which there would not be any reason for conflict with representative bodies in the company.

It is at this point that the "bilateral" system of joint bodies can play an important role. In fact, in the productive sectors in which the social partners

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have set up bilateral bodies, with an equal number of representatives of each side, the employees of very small companies have seen the emergence of participatory mechanisms in the broad sense. However, these mechanisms can clearly not be considered in formal terms to be procedures of information and consultation or employee participation in company decision-making strictly speaking.

One example in this connection is to be found in the tourist sector where, following the issue of Legislative Decree No. 626/1994 on health and safety at work (to be dealt with below), the interconfederal agreement of 18 November 1996 gave rise to the setting up of a special section of the national bilateral body, to take over the functions of the joint national body for health and safety at work, and provided that the functions of the provincial joint body for health and safety at work are to be carried out by territorial bilateral bodies. The numerous activities carried out by these territorial structures as joint bodies dealing with health and safety at work have produced positive results, providing support for the argument that Legislative Decree No. 276/2003, entrusting the bilateral bodies with the development of actions relating to health and safety at work, takes full advantage of the strategy adopted in the tourist sector.

In fact, the artisan sector has also moved in the same direction, setting up a fund for territorial health and safety representatives under the auspices of the bilateral body.

Another example goes farther back in time, and for this reason is even more innovative. A scheme was developed in the 1980s in the artisan sector, where, for companies with up to 15 employees, permanent forums were set up to enable the employers' representatives and the "territorial" trade-union representatives to meet, in order to deal with individual grievances and collective disputes not resolved at company level. In this way, as noted in, "conflict" was moved outside the company and trade-union representation was able to play a full role, exercising the workers' rights in the bilateral or joint bodies set up for this purpose.

In this connection, mention should be made of the provision included in the national agreement for the tertiary sector, the retail trade and services (concluded on 20 September 1999 by Confcommercio and the sectoral organisations, Filcams-Cgil, Fisascat-Cisl e Uiltucs-Uil), by which, in cases in which flexible working hours are introduced, the territorial bilateral body must always be notified, in the absence of company-level collective bargaining (in other cases, however, notice must be given to the RSU).

There is therefore a widespread belief that, albeit with an operational form that is manifested "outside" the company, bilateralism is the form that participatory schemes take on in territorial contexts with small and medium-sized enterprises since it provides a channel for the permanent development of convergent strategic interests. Moreover, bilateralism is also one of the most appropriate means for small enterprises to make up for their asymmetrical position compared to large companies, probably mainly due to their ability, by means of interaction and continuous exchanges between the social partners, to promote reciprocal trust.
It is for this reason that the promotion of the system of bilateral bodies, first introduced in Act No. 30/2003, and more recently implemented with Decree No. 276/2003, must be seen also as a contribution to and an incentive for worker participation in the broad sense.

2.3. "Specialised" Participation (via Collective Forms): Health and Safety

Collective bargaining has in many cases set up joint bodies at company level for the protection of the health and safety of workers, a tendency partly in contradiction with legislative provision on the subject, that was originally to be found only in Article 9 of the *Statuto dei diritti dei lavoratori*. This norm lays down that the initiative in monitoring these matters as well as in proposing new measures for the prevention of accidents is to be taken by the employees through their "representative bodies". Whereas at first legal opinion considered such representative bodies to be distinct and separate from the RSA (and moreover not bound to the most representative trade unions), case law (supported by subsequent legislative modification) has since held that the two forms of representation are one and the same thing. Therefore, the law has in the final analysis been corrected by case law, leaving no room for specialised bodies in this area.
However, this contrast has not been too evident. As mentioned above, collective bargaining has reconsidered the matter, often setting up joint bodies with a view to achieving close collaboration between the parties.
At present, the transposition of Directive 89/391/EC by means of Legislative Decree No. 626/1994 makes provision for the appointment of specific representatives as regards health and safety, with rights of information, consultation, supervision and proposal.

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In particular, hazard prevention and protection services have been set up, consisting of the human resources, technical systems and internal and external resources of the company (from Article 2 of Legislative Decree No. 626/94) aimed at providing prevention and protection from occupational hazards in the company or the productive unit. This is an operational instrument that the employer can make use of to comply with the obligations laid down by law.

With regard to the organisation of these services, there are three possible approaches. They may be organised within the company or productive unit by the employer, who is required to appoint a health and safety officer in charge of prevention and protection from among those with the aptitude and skills, as well as safety stewards who are also required to have the appropriate skills and to be allocated the resources and the time necessary to carry out the tasks assigned to them. It is also possible for such services to be outsourced. In addition, in this case, however, those outside the company appointed by the employer to provide the services are required to be in possession of the necessary skills. Finally, the employer may opt to perform these tasks directly (pursuant to Article 10 of the Legislative Decree under consideration, this is possible only in certain cases and prior notice to the workers' health and safety representative is required: these cases are generally correlated to the size of the company or the type of activity carried out).

The health and safety officer must be appointed (pursuant to Article 8(2) of the Legislative Decree under consideration) from among the employees involved in health and safety services, and is distinct from the health and safety "delegate" (or health and safety representative) who is required to monitor compliance with safety regulations; he or she does not have the power to adopt safety measures in practical terms and does not have power to allocate resources, but carries out a largely consultative but obligatory role. Consequently, the law does not lay down specific sanctions for the health and safety representative, nor for the safety stewards, for failure to comply with safety measures, since they do not have power to take practical measures and are therefore not liable to prosecution if these measures are not implemented.

One of the tasks of the health and safety service (Article 9, Legislative Decree No. 626/94) is to draw up proposals for a plan of information and training for the employees, as well as to take part in consultations on health and safety issues (periodic meetings for hazard prevention and protection) and to provide employees with the necessary information for the protection of their health and safety.

The former is in fact one of the most significant and innovative aspects of Legislative Decree No. 626/94, in that it represents the main forum for

participation in health and safety matters on the part of all the individuals concerned by the legislative provisions, as well as the channel for the information, training, consultation and participation of the workers, through their representatives. There is an obligation to hold such a meeting periodically, at least once a year, only in companies with at least 15 employees. In companies or productive units below this threshold, such a meeting is held only at the request of the health and safety representative, and only if circumstances arise that justify calling such a meeting. The employer is in general responsible for convening a meeting of this kind, where necessary through the health and safety representative.

The employer, on the other hand, is required to provide the health and safety service with information relating to the nature of hazards and work organisation, and the design and implementation of preventive and protective measures; a description of the productive installations and processes; information from the register of accidents and occupational diseases, and finally the measures taken by the monitoring bodies.

A fundamental role is played by the workers' health and safety representative, who is defined (Article 2(1)(f) of Legislative Decree No. 626/94) as the person, or persons, elected or appointed to represent the workers in relation to aspects of health and safety at work.

This representative is not expected simply to put forward trade union demands. He/she is a worker who is able to interact with the employer in a competent and well informed manner, thanks to the fact that the health and safety provisions guarantee on the one hand the right to information and consultation on matters relating to the protection of health and safety at work, and access to the relevant company documents, and on the other hand the right to receive (at the expense of the employer) the necessary training to carry out the tasks for which he/she was appointed, in relation to health and safety legislation and the specific hazards in the workplace represented (pursuant to Article 22(4) of Legislative Decree No. 626/94).

For the first time in the workplace, a specific and institutionalised form of worker representation on health and safety has been set up, to which specific prerogatives and participatory rights are granted in connection with significant decision-making processes.

The general principle (laid down by Article 18 of Legislative Decree No. 626/94) is that in all companies or establishments there is a requirement to elect or appoint a health and safety representative. With regard to the appointment or election of the representative, as well as the means for the

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exercise of his/her specific functions, the law refers the matter explicitly to collective bargaining.
Among the main functions assigned to the health and safety representative, mention must be made of the right of access to places where work is carried out; the right to be consulted in advance and in a timely manner about risk assessment; the identification, planning, implementation and monitoring of prevention in the company or the productive unit; to be consulted about the appointment of health and safety stewards, measures for fire prevention and first aid services and the evacuation of workers; to be consulted about the organisation of training for the workers appointed to take charge in an emergency; to receive company information and documentation relating to the assessment of risks and the related preventive measures, as well as information about hazardous substances, processes, machines and equipment, the organisation of the working environment, occupational injuries and diseases; to receive information from the health and safety monitoring service; to promote the drafting, design and implementation of preventive measures for protecting the health and physical integrity of the workers; to report any relevant facts during visits and inspections carried out by the competent authorities; to take part in regular meetings to discuss health and safety matters; to make proposals relating to preventive measures; to notify the company health and safety officer of hazards identified at work; and to refer matters to the competent authorities when it appears that the measures of prevention and protection adopted by the employer and the resources allocated to implement them are not sufficient to safeguard health and safety at work.
Finally, Legislative Decree No. 626/1994 lays down that among the trade unions joint bodies may be set up (pursuant to Article 20, Legislative Decree No. 626/94) involving the employers and the workers, with a view to providing guidance and promoting vocational training for the workers. These bodies are also the first port of call for resolving disputes arising from the application of rights of representation, information and training laid down by the health and safety legislation.

2.4. Quality Circles and Direct Communication Techniques

The discussion so far should not overshadow the growing importance of communication strategies aimed directly at employees in order to give them an incentive to participate and therefore to cooperate. Normally these are experiments in forms of active and explicit involvement of the employees with

regard to certain aspects of production. In this regard, it is worth mentioning not only quality circles but also more generally the use of direct communication techniques (by means of various forms of information and/or meetings) between management and employees in order to increase their awareness of company aims and perspectives.
It may be stated in this respect that these are not always alternatives to traditional forms of worker representation (trade union or otherwise). In fact, from this point of view, the tendency of companies to cooperate with the unions appears to be more marked where the unionisation rate is higher and, more generally, where there is greater willingness on the part of management to take into serious consideration the views put forward by the formal representatives of employees in day-to-day management.

3. The Functional Perspective

3.1. Collective Bargaining

Also in a functional perspective, as well as in terms of sources, collective bargaining must be considered the means which, more than any other, makes employee participation possible, at the same time exerting a strong influence over decision-making in private-sector companies. This is even more the case when considering the fact that bargaining does not always lead to collective agreements in the strict sense. On the contrary, it quite often leads to informal accords, i.e. to arrangements that are made without signing an official agreement, but that are no less important in practical terms as instruments for the regulation of labour relations.
The intensity of bargaining in Italy can clearly not be explained by a general obligation to negotiate that is not laid down by legislation at least in the terms provided in the United States or France, though management may only exercise certain powers after having initiated a negotiating process with the RSA at company level. The reference here is to Articles 4 and 6 of the *Statuto dei lavoratori,* that lay down two instances of what might be called a "duty" to negotiate. These statutory provisions state that the use of television and other equipment for the remote monitoring of workers' activity as well as personal searches of the worker (considered indispensable for safeguarding the property of the undertaking) may only take place after negotiations have been attempted between the RSA and the employer. Only if these negotiations fail ("in the

absence of an agreement" the Act says) may the employer ask the Labour Inspectorate to issue the necessary authorisation.
However, statutory legislation plays a role in the wide variety of negotiating that takes place in Italy also at micro level. A considerable part of the *Statuto dei lavoratori* (Title III), that confers powers on the RSA, undoubtedly has the effect of promoting bargaining activity, though it does not deal with other questions such as the identification of bargaining agents. While only a few years ago the powers of the *Consigli di fabbrica* could not be seriously brought into question, more recently Italy too has begun to suffer from the problems typical of rival unionism.
In the private sector this is due to the break-up (albeit not complete and not everywhere) of the unitary relationship between CGIL, CISL and UIL but another important factor is the ambition of middle-managerial employees to have their own representative bodies and therefore their own agreements. There is also a risk that the fragmentation of the trade-union front, with the proliferation of unions in the public sector spreading to the private sector.
Significantly, private-sector employers have proposed statutory intervention to clarify which bodies have the right to bargain collectively.
However, the key element of the Italian bargaining system is to be found at macro level in relation to national negotiations for each category. This level has traditionally tended to unify working conditions in each sector and guaranteed certain minimum terms relating to fundamental issues such as job classification, work organisation, wages, working hours, trade union rights and, of great importance in the perspective analysed here, information and consultation rights. With regard to the relations between collective agreements at various levels, as seen above they have been characterised by alternating phases of centralisation and decentralisation.

3.2. Information and Consultation Rights

3.2.1. Consultation Rights in the Broad Sense

In Italy it is necessary to distinguish between information and consultation rights in the broad sense and in the strict sense. Traditionally, in the broad sense these rights depend above all on the size of the company (whether public or private), whereas, in the strict sense, it is possible to refer to these rights only in state-owned industry (the IRI, ENI, EFIM groups, etc.).

Collective bargaining has played a significant role in the implementation of information and consultation rights. For example, the collective agreement for private-sector metalworkers of 18 January 1987 laid down that information in an undertaking must be supplied by the management of establishments with more than 200 employees to the RSA (therefore to the *Consigli di fabbrica*) "with regard to substantial modifications in the productive system affecting in a decisive manner the technology adopted so far or the overall organisation of work or the type of production carried out and overall levels of employment".
Different provisions are made by the same collective agreement with regard to "information about the options and forecasts for productive activity as well as about plans involving new industrial establishments or significant extensions of existing ones", as well as the "foreseeable implications of the above-mentioned investments on employment, environmental and ecological conditions, and the criteria for the selection of sites". In this case companies with more than 350 employees are required to inform the trade unions on an annual basis, at a meeting to be held at the headquarters of the employers' association in question (the Federmeccanica, affiliated to the Confindustria, in the case of the collective agreement taken as an example) in the area where the head office of the undertaking is located.
In some cases, the unions have tried to introduce performance-related pay schemes based on the improvement of quality and productivity by developing autonomous proposals with regard to new forms of work organisation. In theory, the trade unions have the chance to play a part in changes in work organisation and the definition of quality programmes aimed at strengthening the company's competitive position. This means that these agreements, like those in restructuring processes, also serve to define participatory models, based in general on the setting up of joint technical committees, to monitor the most significant aspects, such as economic and employment strategies and company prospects, work organisation, product quality, vocational training, and health and safety. In general, these joint committees have a technical advisory role rather than a direct negotiating function. As noted above, there are also cases in which joint committees include outside experts.
The introduction of company-level participation is mainly to be found in the agreements of large groups (e.g. Zanussi, Galbani-Danone, Nestlé, Ferrero and Fiat).
Zanussi has implemented one of the most highly developed participation systems, characterised by joint technical committees. Additionally, in this case participation focuses on influencing central enterprise decision-making. In a 1997 agreement, Zanussi introduced a supervisory board consisting of six

trade-union representatives that meets three times a year with the management and whose role is to consider the group's results and to examine in advance any industrial and organisational decisions under consideration.

Moreover, since the 1996 agreement at Alitalia that was intended to promote cooperation and to restructure the company, three of the 17 members of the Alitalia Board of Directors have been employee representatives. Two of these seats are allocated to representatives of the CGIL and the CISL, while the third seat is reserved for a representative of pilots who have one-third of the 20% of shares allocated to company employees. In March 2002, an agreement was reached by management and trade unions on the restructuring of Alitalia, supporting the company's business plan for 2002-2003 and providing for a joint procedure for monitoring the implementation of the plan. To this end, the agreement made provision for monitoring by the monitoring committee, the technical secretariat and the adviser.

The monitoring committee is set up on a joint basis, including one representative for each union signing the agreement. The work of the committee is supported by an advisor and the technical secretariat, to provide information and opinions on market developments, and on trends in air traffic and demand in relation to the business plan forecasts. The monitoring committee is convened every month, and holds periodic meetings with the technical secretariat every two months and the advisor every three months. The committee may submit written proposals and requests to the company relating to measures intended to consolidate and develop the company in relation to the business plan for 2004-2006.

The technical secretariat consists of two independent experts, one appointed by the company and one by the unions, and coordinated by a member of the senior management (the senior vice-president for finance and control). It has the task of monitoring trends in markets, air traffic and demand, and of drawing up reports and technical papers for each session of the committee and providing the information required to accompany the requests put forward by the monitoring committee.

The *super partes* advisor is appointed jointly by the company and unions. Should they not agree, the advisor is nominated by the Minister of the Economy and Finance. The advisor expresses opinions on trends in markets, air traffic and demand, and on the proposals made by the monitoring committee. The parties take the advisor's assessments and opinions as the final stage of the monitoring procedure, and they are then submitted to the company board. Alitalia makes available the facilities and resources required by the monitoring bodies.

In other cases, for example Italtel, a system of participation has been introduced in order to deal with processes of reorganisation and in particular aspects such as the allocation of production, working hours, and workloads.
With regard to participation in small and medium-sized enterprises, we find the most advanced participatory experiences in the Emilia-Romagna region. In the mid-1980s, the metalworkers' unions started to negotiate the introduction of new forms of work organisation and define new models of employee participation. In these cases, there was a clear separation of functions: while the trade union bodies negotiated the introduction of joint technical committees, the members of the committees were workers chosen according to their particular skills. This principle has not always been adopted in other sectors and regions. In many cases, appointments to joint technical committees have been decided by the trade unions at company level based on political criteria.
Since industrial relations in Italy are characterised by the single-channel system, the involvement of the RSU implies a strong position also for external trade unions.
Among the experiments carried out in Italy in recent years, mention should be made of the national collective agreement for railway workers, concluded on 23 November 1999. Part 5 of this agreement, dealing with industrial relations and participation, viewed the participatory approach as not just a useful but as a necessary instrument for improving relations between the two sides and promoting the involvement of workers in the process of company transformation. For this reason, the agreement specified that the system of participation in the company covered three areas: the right to information, consultation mechanisms and the setting up of joint bodies.
With regard to the first matter, it was laid down in particular that matters relating to information rights should be dealt with by making a distinction between rights relating to bargaining and those relating to consultation, and these rights are assigned to two separate bodies, with the participation of representatives of the employer and those of the trade unions signing the agreement.
The first of these bodies is the standing bilateral committee, set up for consultation purposes, that is called upon to give a prior opinion, obligatory but non-binding, on matters of strategic importance for the company, without encroaching on the powers of the company decision-making bodies, and fully respecting the autonomy of the participatory organisations. This committee took over the powers of the Participation Committee set up under Article 5 of

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the previous collective agreement of the same company signed on 6 February 1998.
Secondly, a series of joint bodies were set up with a consultative and monitoring function in matters relating to the working environment, health and safety (taking over the functions of other joint bodies previously dealing with these matters), job mobility, quality and training, with the task of monitoring training initiatives linked to restructuring processes and with the aim of improving training quality, as well as examining training programmes for newly recruited staff, on the basis of agreements regulating access to employment and training for various employment grades. In addition these bodies can deal with any other activities considered useful for enhancing participation.
Provisions of this kind are also to be found in Article 12 of the national collective agreement for textile workers of 19 May 2000, that lays down a series of procedures for information, consultation and monitoring, for the purposes of sharing information between the social partners and defining the aims of collective bargaining, with a view to improving the competitive position of the enterprise, as well as the development of the industrial relations system. To this end, provision is made for the workers' and the employer's representatives to hold meetings at company level to evaluate the future development and productive needs of the company, in relation to the need for profitability and efficiency, together with working conditions and employment prospects.
While the company-level agreement remains in force, the implementation of the programme must be monitored on the basis of performance indicators, in discussions that may take place also in the form of information meetings pursuant to Article 22 of the agreement, to be discussed below. At company level, methods may be determined for improving the exchange of information and the monitoring activities.
Article 22 makes provision for an information system organised at various levels. In particular, at provincial level the employers' associations are required, at the request of the trade unions in a given territory, to provide annual aggregate figures for the entire sector and where appropriate for individual units, with information about any problems arising and measures proposed to deal with them.
Moreover, they are expected to provide information about economic and employment trends, investment and diversification plans, new industrial establishments and their location; initiatives aimed at energy saving and ecological conditions relating to industrial processes; the application of equal

opportunities legislation and positive action programmes, the laws relating to the employment of young people and interconfederal agreements on employment training contracts. Further matters to be dealt with include the most significant trends in the local labour market and their relation to future training needs. A joint examination is also carried out of the likely implications for employment levels and job mobility, the working environment and ecological matters, and vocational training issues, for the purposes of providing workers with adequate knowledge and skills in connection with technological and organisational change and of enabling companies to make optimal use of their human resources in relation to emerging needs and to deal with issues relating to the employment of women.
Any practical proposals relating to these matters dealt with by mutual information and consultation are submitted to the competent public authorities and the joint industry-wide bodies, so that the planning and implementation of initiatives can take account of the expected requirements of the clothing and textile sector.
In addition to the provisions for information systems at local level, the various territorial organisations are authorised to jointly determine the timescale, methods and techniques for gathering information (for example, by setting up Observatories) and the means for carrying out the information process.
These examples are perhaps sufficient to give at least an idea of the complex provision for this matter in collective agreements.
Below the employment levels indicated by way of example above, sometimes information need not be given, while in other cases a system of information is provided at territorial level. This consists of meetings between the employers' associations and the trade unions at local level where matters such as new technologies and the overall trends in employment levels in the area are discussed. An information system also exists at central level, where, for example, the national industry-wide agreement provides for the setting up of a "database of new technologies".

3.2.1.1. The Ordinary and Special Wage Guarantee Funds

Measures relating to workers' information and consultation rights are also to be found, first of all, in the legal provisions regulating one of the most important social "shock absorbers" in the Italian system, the *cassa integrazione guadagni* or wage guarantee fund, that provides direct support in the form of 80% of overall earnings for workers who have been laid off or

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made redundant due to the closing down or scaling back of production in the enterprises where they work.

The *cassa integrazione guadagni ordinaria*, or ordinary wage guarantee fund, intervenes in the event of partial suspension of production of a temporary or transitory nature in manufacturing (except for the artisan sector and regardless of the number of employees), in the construction industry and in agriculture (in the event of adverse climate conditions).

The *cassa integrazione guadagni straordinaria,* or special wage guarantee fund, provides support in the case of total or partial suspension of production resulting from processes of restructuring, reorganisation or transformation of a company, as well as in the event of company crisis, insolvency or bankruptcy. This fund may be used to support industrial companies with more than 15 employees and commercial undertakings with more than 50 employees, as well as publishing companies.

In connection with the procedure to be implemented by undertakings applying for support from the wage guarantee fund, Act No. 164/1975 and No. 427/1975 lay down an obligation to carry out prior consultation and negotiation with the unions. Trade union information and consultation are therefore seen as necessary conditions to be met prior to an application for support from the wage guarantee fund, as the employer is obliged to specify that these requirements have been fulfilled when submitting the wage guarantee fund application. The same procedural requirements are laid down for the ordinary wage guarantee fund.

In cases in which for objective reasons production has to be stopped as a matter of urgency and negotiations cannot take place prior to the stoppage, provision is made for notification to be made at a later date to the representative bodies, the RSA or the RSU, or alternatively to the most representative trade unions for the sector at provincial level. In addition, the trade unions have the right to request joint negotiations (to be held within five days of the request being made) regarding any suspension or reduction in working hours of more than 16 hours per week.

In other (non-urgent) cases of a reduction of working hours or total stoppage, the employer is required to give prior notice to the representative bodies, the RSA or the RSU, and to the most representative trade unions for the sector at provincial level. In addition, the trade unions have the right to request joint negotiations (to be held within 25 or 10 days of the request being made, depending on whether the number of employees is greater or less than 50).

With regard to the special wage, guarantee fund, in all cases prior notification is required, which the employer is obliged to give in a timely manner to the

RSU, or in the absence of such a representative body, to the trade unions that in comparative terms are most representative at provincial level. Moreover, at the request of the employer or the above-mentioned representative bodies, within three days of the notification a joint examination must be carried out of the situation of the company in the presence of the competent regional authorities or the Ministry of Labour (in cases of productive units located in a several different regions), once again to be held within 25 or 10 days of the request being made, depending on whether the number of employees is greater or less than 50).
After completing the trade-union consultation process, in the case of the ordinary wage guarantee fund the application for redundancy measures and any further renewals must be submitted to INPS, the social insurance board. However, in the case of the special wage guarantee fund, the application, including the plan that the undertaking intends to implement, must be submitted to the Ministry of Labour (Directorate General for social insurance and social assistance) accompanied by supporting documentation provided by the Regional authorities.
The notification and the joint negotiations with the unions are required to deal with the selection criteria for the workers to be laid off and a system of rotation. Where the employer claims that there are objective reasons for not adopting a system of rotation, these reasons must be notified to the trade unions and specified in the wage guarantee application. If considered justified, the Ministry of Labour will seek an agreement between the social partners, or in the absence of such an agreement will issue a decree laying down a system of rotation on the basis of the proposals of the social partners.

3.2.1.2. Collective Redundancies and Mobility Schemes

Another instance of information and consultation procedures is to be found in Act No. 223/1991, as amended by Legislative Decree No. 151/1997 that lays down two kinds of collective redundancy: one consisting of a reduction in staffing levels, and the other of mobility schemes.
These provisions uphold the power of the employer to reduce staffing levels in the enterprise, but require the employer to adopt a procedure, known as a mobility scheme, intended primarily to enable the trade unions to ascertain the validity of the reasons given for the reduction in staffing levels, and secondly to promote the conclusion of trade-union agreements preventing redundancies,

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or at least reducing the number of workers to be made redundant, also by the adoption of alternative measures.
In order to dismiss employees as part of a redundancy package, it is necessary for the employer to have at least 15 employees, and to intend to dismiss at least five of them in the same province within a 120-day period. The cause of redundancy is required to be the same in all cases, and associated with a reduction or transformation of production in the undertaking. This definition is taken to include those cases in which the reduction in the number of workers depends on the introduction of new technology without reducing the level of production or activity (known as technological redundancy).
An undertaking with more than 15 employees may implement a mobility scheme when, during or at the end of a period of support from the special wage guarantee fund, the employer is not in a position to rehire all the suspended workers or to take alternative measures. For this type of redundancy, there are no quantitative or time limits.
A mobility scheme takes effect by means of the written notification that the undertaking is required to submit to the representative trade-union bodies in the company and the sectoral associations affiliated to the most representative confederations stating the technical and organisational reasons giving rise to the need to dismiss the redundant workers. This notification must be detailed and complete, and in any case provide the basis for negotiations with the trade unions. It is required to specify the number, company position and job classification of the employees to be made redundant, as well as of the workers usually employed, the time scale for the implementation of redundancies and any measures designed to deal with the social consequences of the plan.
The procedure that begins with the written notification may be implemented in two stages. The first phase, known as the trade-union phase, is preliminary, and gives the trade unions the right to request within seven days of receiving notification a joint examination of the factors leading to the excessive staffing levels and of possible alternatives for the workers at risk of redundancy. In this way, there can be an open discussion between the trade union and the employer, in which the employer is free not to take on board the trade union proposals, in cases in which they are not considered acceptable. If no agreement is reached during these discussions, the administrative phase begins, and the examination of the situation continues in the presence of the provincial labour directorate in order to reach a negotiated settlement.

Once the entire procedure has been completed without having reached an agreement, over a period that may not be more than 75 days, the employer has the right to dismiss the redundant employees.
The selection of the employees for redundancy must be carried out on the basis of the criteria laid down in the collective agreement, in the absence of which the legal criteria must be applied, based on technical, productive and organisational requirements, number of dependants and seniority.
In case of a failure to comply with the selection criteria, the redundancies can be declared null and void. However, in this case, the employer is allowed to dismiss a number of employees equivalent to the number reinstated, without having to implement a new procedure, but in compliance with the trade union or legal criteria of selection, giving prior notification to the trade-union representative body in the company.

3.2.1.3. Transfer of Undertakings

Finally, a particular procedure for trade-union information and consultation was introduced by Article 2112 of the Civil Code, as amended by Article 47 of Act No. 428/1990 (implementing Directive No. 77/187/EC) in the event of the transfer of an undertaking. These provisions were further amended and supplemented by Legislative Decree No. 18/2001, implementing Directive No. 98/50/EC) and by Legislative Decree No. 276/2003 (implementing Act No. 30/2003), amending the provisions relating to the transfer of part of an enterprise with Article 32. This reform needs to be considered in the light of the explicit reference in the above-mentioned delegated legislation to the recent Directive No. 2001/23/EC, concerning the approximation of the legislation of the Member States in relation to the safeguarding of workers' rights in the case of the transfer of an undertaking. However, it had no effect on the information and consultation procedures to be discussed below.
On the basis of the above-mentioned provisions, when it is intended to transfer an undertaking employing more than 15 workers overall (though the same provisions apply also in the case of the transfer of a branch of an undertaking), the transferor and the transferee must give written notification at least 25 days prior to the execution of the transfer or prior to a binding agreement between the parties, if such an agreement is made prior to the transfer.
The bodies entitled to exercise such information rights are the unitary trade union representative bodies (RSU) or the plant-level trade union representative bodies (RSA) set up in the establishments concerned (of both the transferor

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and the transferee), as well as the employers' associations and trade unions signing the collective agreement applied in the undertakings involved in the transfer. In the absence of representative bodies in the undertaking, notification must be given to the employers' associations and most representative trade unions in comparative terms at national level.

In essence, the implementation of the trade-union procedure during negotiations is required in order to allow the unions to intervene in what is seen as a crucial phase, in which the future of the workers employed is still uncertain, and to verify the ability (both technical and financial) of the new owner of the undertaking to manage and/or restructure the company, with regard to investment plans, production goals and above all guarantees concerning employment levels and working conditions.

The notification must include such information as the date of the transfer, the reasons for the planned transfer, the legal, economic and social consequences for the workers and any measures planned in relation to the workers. However, the notification does not need to include economic and financial information that is of a confidential nature for reasons of competition between enterprises.

At the written request of the plant-level representative bodies or the sectoral trade unions, submitted within seven days of receiving the notification, the transferor and the transferee are under an obligation to carry out, within seven days of receiving the request, a joint examination with the trade unions submitting the request. This consultation is considered complete when a 10-day period of negotiation has gone by and no agreement is reached.

The obligation to provide information and to carry out a joint examination must be fulfilled also in cases in which the decision over the transfer has been taken by a parent company. The failure on the part of a parent company to supply the necessary information cannot be used to justify non-compliance with these obligations.

The failure on the part of the transferor or the transferee to comply with the obligation to supply information, as well as the obligation to carry out a joint examination, is deemed to be anti-trade union behaviour pursuant to Article 28 of the *Statuto dei lavoratori*. Moreover, it should be noted that it does not invalidate the transfer negotiations, since compliance with the above-mentioned trade-union procedures cannot be considered to be a necessary precondition for the validity of the transfer.

Finally, it must be underlined that the information and consultation procedures pursuant to Article 47 of Act No. 428/1990 are applicable, in the absence of special provisions, also in relation to public employees in the case of the transfer of a public-sector business to other entities, whether private

companies or public bodies (pursuant to Article 31, Legislative Decree No. 165/2001). This provision was introduced due to the serious repercussions on the employment relationship that such a transfer may have.

3.2.2. Consultation Rights in the Strict Sense

As regards consultation rights in the strict sense, once again it was collective bargaining (starting in the IRI group in 1984) that set up a system based on joint consultative committees at various levels (group, sector territorial, company, etc.). The general duties of such committees (with equal numbers of representatives of the IRI group and of CGIL, CISL, UIL) are as follows:

– to examine and carry out a preliminary investigation, at the planning stage, of economic and industrial policy options, major operational plans for restructuring and development and the most significant matters concerning labour policy and industrial relations;
– to issue a formal opinion, obligatory but not binding, on these questions, as well as indications for any alternative options and plans;
– to inspect and monitor the operational stages of the overall policy plans examined;
– to draft proposals for strategies for work organisation, industrial relations and the labour market.

The collective agreements specify more exactly and in greater detail the matters that the various joint committees may deal with at the different levels. Meetings are normally held every four months but further meetings may be held at the request of one of the parties.

In order to be able to form the opinions they are required to express, the committees must be given information by management on the following subjects (by way of example):

– production goals classified by sector, geographic area and undertaking;
– global investment and disinvestment goals and plans;
– plans for technological innovation and of a technical and organisational character;
– investment and financial goals and staff numbers in the field of research;
– plans relating to environmental and ecological conditions and employee health protection;
– employment structure classified by sector, geographic area and undertaking specifying sex, age group and job classification.

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It is clear from this brief outline that this is really a separate and distinct model of industrial relations, quite different from the model in use in the private sector. Moreover, state-owned industry in Italy has always had a pioneering role in the search for collaborative solutions in labour matters. The results of the first years of application may, on the whole, be said to be of some interest, even though there has obviously been (and this applies also to information rights) no lack of disputes that are at times resolved by the courts on the basis of complaints filed under Article 28 of the *Statuto dei lavoratori* (anti-trade union behaviour on the part of the employer).
It is worth specifying that this system of consultation is different from that existing in other countries, for example Germany: in Italy, these committees do not have the right to take binding decisions.
However, a unitary statement by both parties expressed as a "formal opinion" might take on a certain importance at a practical level even though it is not legally binding. In other words, it becomes difficult for management and the trade unions to adopt strategies different from those supported by their representatives on the joint consultative committee.

4. Employee involvement In Transnational Corporations

4.1. European Works Councils

Finally, it is necessary to underline the importance in Italy of the recent Legislative Decree No. 74, 2 April 2002, that implemented the Directive of the Council of 22 September 1994, 94/45/EC relating to the setting up of a European Work Council or, alternatively, a procedure for the information and consultation of workers in enterprises or groups of enterprises with a European dimension (provisions on this matter were made in the interconfederal agreement of 6 November 1996, that resulted in the partial transposition of the Directive as a result of negotiations, but that was considered to be insufficient for the purposes of full transposition.
This represented a step towards the implementation of a series of Directives of the European Council, that are linked by the intention of laying the foundations for a more extensive and effective involvement of workers in company decision-making. This was the case of Directive 2001/86/EC, that supplemented the European Company Statute with regard to employee involvement, Directive 2002/14/EC, that laid down the general framework for employees' information and consultation rights, and most recently Directive

2003/72/EC, that supplemented the European Cooperative Company Statute, once again with regard to employee participation. As regards the EU Directive on national information and consultation rights, EU Member States have until 23 March 2005 to comply with its requirements. Under the Directive, all undertakings with at least 50 employees (or establishments with at least 20 employees) must inform and consult employee representatives about business developments, employment trends and changes in work organisation. However, in Italy the only measure taken so far has been Act No. 14/2003 (Community Act for 2002), which delegated legislative powers to the Government to issue a legislative decree implementing the Directive within one year of the entry into force of the Act, a time limit that is about to run out.

The field of application of the above-mentioned decree continues to be rather limited, since it applies only to enterprises employing at least 1000 employees in the European Union, or at least 150 workers per Member State in at least two EU countries, as well as to groups of enterprises employing 1000 workers in the Member States, with two enterprises in the group located in two different Member States and with at least two companies in the group employing not less than 150 workers in two Member States. The companies and groups of companies covered by this definition are not required to apply Legislative Decree No. 74/2002 in cases in which they had concluded agreements before 22 September 1996 setting up transnational information and consultation rights with the trade unions signing the national collective agreement applying in the company or group of companies.

Directive 94/45/EC did not assign negotiating powers to the European Works Councils (EWCs), but at the same time it did not specify that they cannot have such powers. They can therefore operate as co-ordination centres for trade-union activities in the various countries in which companies covered by these norms operate, especially in cases in which some of their members are appointed by the trade unions (as laid down by the Italian transposition norm, in keeping with the national model of single-channel representation). The Directive left it to the individual states to determine the methods for appointing the members of the EWCs, but also of the Special Negotiating Delegation that has the task of setting up the EWC.

It is possible to identify certain divergences between the EWC Directive and the Italian transposition norms, though in this report it will be possible to examine only the most salient ones. First of all, whereas Directive 94/45/EC consists of three sections, Legislative Decree No. 74/2002 consists of just two parts, reflecting the interconfederal agreement of 1996. Like this agreement, the transposition norm differs from the Directive in the order given to the three

criteria of presumption for the purposes of identifying the parent company. In particular, priority is given to the power to appoint more than half the members of the Board of Directors. Moreover, unlike the Directive, the Decree defines not only the concept of consultation (the exchange of opinions and the setting up of a dialogue between the parties) but also information (that is to say, the provision of data, figures and news). Although the Community source made provision in setting up the Special Negotiating Delegation for the coordinated and negotiated involvement of workers employed by the company or the group with a European dimension in at least two states, the Italian decree gave powers of initiative also to the trade-union organisations signing the applicable national collective labour agreement.

For the purposes of defining the scope, composition, powers and term of office of the EWC, the Directive lays down an obligation on the part of the central management of the company to deal with the Special Negotiating Delegations which, on the basis of the transposition provisions of the Italian legislator, can also avail itself of the services of experts. Legislative Decree No. 74/2002 introduced a series of additional measures to be adopted in the absence of an agreement between the parties, laying down a series of indications providing the minimum provisions that may be agreed upon during negotiations, since it is unlikely that the Special Negotiating Delegation would agree to less favourable provisions than those that would automatically apply without an agreement. Some of these measures contain interesting additions in relation to the corresponding Annex to the Directive, for the purposes of improving the functioning and effectiveness of the EWC.

Finally, certain matters must also be mentioned, that Legislative Decree No. 74/2002 failed to address. In particular, it is not clear what is supposed to happen to the Special Negotiating Delegation once the EWC has been set up, given that its function has thereby been fulfilled. Considering that it is laid down that when their term of office runs out, the EWCs themselves are to renegotiate the agreements setting them up, presumably the Special Negotiating Delegation ceases to exist when the EWC has come into existence. Nor is it specified whether the Special Negotiating Delegation has the right to gather prior to the meeting with the management of the multinational company, but this may be taken to be implicit, to enable the members of this body coming from different countries to get to know each other and to draw up a joint negotiating strategy in advance of the negotiations.

4.2. European Company

Together with the Regulation of the European Council No. 2157/2001, on 8 October 2001 the European Council finally approved a Directive (2001/86/EC) integrating the regulation setting up the European Company (hereinafter simply referred to as EC), from the point of view of the involvement of employees and of their representatives. It is therefore necessary for Member States to take action for the transposition of the Directive into their legal systems. They have been granted a three-year period in which to do so. Until the Directive has been transposed into the Member States' national legislations, it will not be possible to envisage a European Company Statute.
The regulation clearly states that the fundamental prerequisite for the setting up of an EC is the solution of question of employee involvement.
A distinction must be made, however, between involvement and participation, as the Directive uses "participation" as a synonym for the presence of employees and their representatives in management bodies of the EC, while in Italy "participation" corresponds more closely to the concept of co-management.
In Italy Article 1(1) of the Community Act for 2001 (Act No. 39, 1 March 2002) delegated powers to the Government to issue, within one year of its entry into force on 10 April 2002, a legislative decree implementing Directive 2001/86/EC. However, the time limit for this authorisation ran out on 10 April 2003, without the implementation taking place. Considering that the final deadline for implementation is laid down by the Directive as 8 December 2004, it is expected that the Government will take the necessary steps in the coming months to implement this Directive. To this end, reference will be made to the guidelines drawn up by the group of experts appointed by the European Commission (that met in Brussels on 27 June 2003), with a view to avoiding contrasts between the different national systems in the transposition process.

5. Self-Employment and Workers' Participation

5.1. The Case of Workers' Co-operatives

This paper on the Italian system would not be sufficiently wide-ranging without at least a mention of a type of self-management that has been in use

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for over a century, i.e. workers' co-operatives. Indeed, it may be argued that in this model employee involvement and influence over management is to be found in its most advanced form.
It is possible in this context to speak of a self-management model. The majority of workers employed in these co-operatives are also shareholding members. They invest not only their physical energy but also part of the capital. They therefore have the right to elect the board of directors and to approve the financial statement at the annual general meeting. The originality of this model consists of the fact that they do not lose their prerogatives as employees: they join trade unions and their working conditions are laid down by national collective agreements for each sector negotiated by associations representing the co-operative companies and the trade unions. Moreover, there is a considerable amount of plant-level collective bargaining.
This may therefore be seen as a separate system of industrial relations properly speaking (i.e. a system in which trade unions and collective bargaining are to be found) in self-managed companies. What at first sight seems to be a contradiction is actually proof that an advanced model of participation is not incompatible with the role and activity of trade unions. Moreover, this trade union presence guarantees that the self-management model does not degenerate into bureaucratic or authoritarian forms. This is an important force also from an economic point of view: suffice it to mention that some of the most important Italian construction companies, operating both in Italy and abroad, are workers' co-operatives.
The law on this matter was amended by Act No. 142, 3 April 2001, introducing a "Reform of the legislation relating to the cooperative sector, with particular reference to the position of the worker member".
This law is highly significant, in that it introduced clear and consolidated regulations on a matter on which current legal opinion and case law had produced conflicting views and rulings, both with regard to the definition of the nature of the relationship between the worker member and the cooperative, and concerning the provisions to be applied to such workers.
The matter may be summarised as follows. The new law made clear that the provisions are applicable not only to production and labour cooperatives, but to all cooperatives in which mutual support takes the form of employment.
With regard to worker members of cooperatives, the law clearly laid down that they take part in two different and distinct legal relationships: not only as members of an association, but also as workers (with the member becoming an employee either at the time of joining the association or at a later date).

The question of membership is dealt with in Article 1(2): "The worker members of a cooperative: a) participate in the management of the undertaking by participating in the governing bodies and in the definition of the management or administrative structure of the company; b) take part in the drafting of development programmes and decisions concerning strategic choices, as well as in the implementation of productive processes in the undertaking; c) contribute to the formation of the capital stock, and share the commercial risk of the undertaking and company earnings, and take part in decisions about the distribution of such earnings; d) make available their vocational skills also in relation to the type of business carried on, as well as the quantity of labour dedicated to the cooperative".

With regard to the employment relation, this is governed by the provisions of Article 1(3), based on which work may be carried out "in the form of salaried employment or self-employment or in any other form, including quasi-salaried employment not of an occasional nature, in order to contribute to the achievement of the aims of the undertaking".

The new law makes detailed provisions for the various types of labour relationship of the cooperative member in relation to individual and collective rights (Article 2), remuneration (Article 3), social insurance matters (Article 4), the assignment of a general charge on the assets of the cooperative and of rights relating to legal procedures (Article 5), and matters relating to the internal regulation of the cooperative (Article 6).

With reference, in particular, to the exercise of trade-union rights, the new law lays down that "In relation to the special nature of the cooperative system, specific forms for the exercise of trade-union rights may be negotiated under collective agreements". However, the agreements that can regulate these rights in the cooperative sector were only those at national level, concluded by the comparatively most representative associations.

Article 9(1)(b) of Act No. 30/2003 laid down that the rights under Title III of Act No. 300/1970 are to be exercised in a manner compatible with the status of the worker member, as laid down in the collective agreements negotiated by the national associations of the cooperative movement and the most representative trade unions in comparative terms.

5.2. Past and Future Developments

Overall, it may be said that the Italian industrial relations system is characterised by more extensive participation than in the past, for example in

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the 1970s. From this point of view, in the 1980s some progress was undoubtedly made, above all in the area of information and consultation by means of what is known as the IRI model, that was briefly referred to above as a model that seems likely to be consolidated in public-sector companies.

It seems much less likely that such a model will be "exported" from this area and taken up in collective agreements in the private sector, regardless of the employers' association taking part in negotiations. Indeed many years after they were first introduced, trade union information rights have yet to be shown to be successful. On the contrary, some observers have concluded that they are a complete failure.

Several reasons may be given for this. Unlike management in public-sector industry, private-sector management in Italy is still reluctant to accept the logic of fair collaboration with trade unions.

Moreover, the unions continue to give much more importance to the bargaining process as the instrument for exerting real influence over the decision-making powers of management. It is therefore unlikely that the IRI model will spread beyond public-sector companies.

Meanwhile, it is necessary to take account of an element that only a few years ago could not have been foreseen, namely the marked decline in the representativeness of the CGIL, CISL and UIL trade union confederations. The question therefore arises as to what is the most useful channel for favouring employee participation.

In any case, the decline of trade union power, at both micro and macro level again raises the question of employee participation on a new basis in which the scope for management initiative is considerable. It is therefore foreseeable that, at least in the short term, it will be the companies themselves that take the initiative to achieve a style of human resources management capable of involving employees to the greatest possible extent in order to increase productivity and company profitability.

Moreover, some tentative steps in this direction may be seen in the case of certain initiatives relating to worker participation in company management. First, mention should be made of legislative proposal No. 2023, presented on 23 November 2001, containing "A delegation of powers to the Government for the adoption of a 'participatory statute' for companies aimed at worker participation in company management and profits".

This proposal was intended to implement Article 46 of the Constitution, Articles 21 and 22 of the European Social Charter, which lay down the right of workers to information, consultation and participation, and Recommendation

92/443/EEC of the Council, concerning the promotion of participation by salaried workers in company profits.
This is intended to be achieved by a mechanism that requires above all the determination of minimum conditions for enterprises intending to adopt a "participatory statute", so that they can implement such a statute by means of an agreement concluded with the representative bodies of the unions signing the collective labour agreements applying in the companies or with the respective coordinating bodies, or by means of a company proposal, subject to the approval by secret ballot of a majority of the salaried employees on open-ended contracts. Moreover, it is laid down that the benefits deriving from the adoption of the "participatory statute" are to be specified.
With regard to the minimum requirements, they should include the option of setting up joint bodies consisting of representatives of the enterprise and workers' representatives elected or appointed for this purpose by the representative trade union bodies, endowed with adequate powers of planning, control, decision-making and management of matters relating to the organisation of work, equal opportunities, vocational training, job security, health and safety in the workplace, performance-related pay and the regulation and resolution of collective disputes, or the adoption of formal binding and guaranteed procedures to provide information and consultation in advance as well as control by the workers' representatives over the most significant company decisions, also by setting up trade-union bodies to which these rights may be conferred.
Moreover, the proposed legislation provides for three methods of participation in company profits by employees. One method is the distribution to the employees of a share of profits above a certain threshold, another is the allocation of shares in the company, and a third method is "collective access by salaried workers to the capital stock of the company, by setting up workers' associations with the aim of using the shares in a non-speculative manner and by collective representation at company level".
Finally, it is proposed to set up at the Ministry of Labour and Social Policy (also known as the Ministry of Welfare) a Central Participation Committee, for certifying the requisites specified above, consisting of at least one representative of the same Ministry, of the Ministry of Economic Activity, the Ministry of Economics and Finance, and the national committee for equality and equal opportunities between men and women, and representatives of the employers' associations and the trade unions.
The legislative proposal outlined here is not the only one put forward in this connection. Parliament still has to examine Legislative Proposal No. 3926

(presented on 22 April 2003) containing "Provisions for promoting employee participation in the management of companies implementing Article 46 of the Constitution", and Legislative Proposal No. 4039 (presented on 4 June 2003), also containing provisions relating to workers' information and consultation rights.
The tendency that can undoubtedly be observed in Italy to dedicate particular attention to participation issues is also shown by Article 43 of the annual budget legislation or *Legge Finanziaria* for 2004, that provides for the setting up under the Ministry of Labour and Social Policy of a special fund providing incentives for the participation of workers in their companies, intended to act "in support of programmes drawn up for the implementation of trade-union agreements or company statutes aimed at promoting the participation of employees in the profits or management choices of companies".
The Fund has an initial allocation of 30 million euros, and is to be managed by a joint committee set up by ministerial decree consisting of 10 experts, including two representing the Ministry of Labour and Social Policy, and eight representing the employers' associations and the most representative trade unions at national level. The Committee will elect a Chair from among its members, and will draw up its own operational rules autonomously. The decree will lay down the fundamental management criteria of the Fund. On the basis of the adoption of interconfederal agreements or joint notices between the social parties, and in compliance with the policy objectives of the European Union, the Minister of Labour and Social Policy may make further provisions for the management of the Fund by means of decrees issued at a later date. Finally, the joint committee will draw up an annual report containing details of the monitoring of allocations by the Fund, to be presented by the Minister of Labour and Social Policy to the competent parliamentary committee and the National Council for the Economy and Labour (CNEL).

6. Employee Financial Participation

6.1. The Legal Framework

In Italy, the financial participation of employees in the enterprise is deeply rooted, though it continues to be a controversial matter. The issue of "economic democracy" was the object of a lively economic and juridical debate even at the beginning of the 1900s, before the emergence of the solidarity and non-conflictive approach to labour relations that was typical of

corporatist ideology and the social doctrine of the Catholic Church. It emerged in the Italian political debate for the first time in the late 1920s, when certain legislative proposals were put forward concerning employee share ownership and profit sharing, though these proposals were never enacted.

The matter was again considered, though not too enthusiastically, by the Civil Code, and later by the Constitution. This issue has therefore been through different phases, periodically surfacing in academic, trade union and political debate, yet without giving rise to legislative provisions suited to its increasing importance.

Council Recommendation No. 92/443/EEC, of 27 July 1992, concerning the financial participation of employees in enterprise results and profits (including share ownership), required Member States to adapt their national frameworks to the promotion of employee financial participation, also by means of financial or tax relief. However, these recommendations have not been followed up by any action, except for Legislative Decree No. 314/1997, which was not sufficient on its own to support or develop this concept.

Furthermore, the spread of employee financial participation has not been facilitated by the industrial relations climate, characterised by strong opposition on the part of employers (Confindustria) and by a significant part of the trade union movement and, in particular, by CGIL, despite strong support by CISL. The main fear, expressed by many parties, was that it would undermine the pluralistic and conflictive rationale of the traditional industrial relations model, which has been in place in Italy throughout the post-war period.

As already mentioned, the main regulatory tenets relating to employee financial participation are to be found in the Constitution of 1948 (Articles 46 and 47) and in the Civil Code of 1942. Although these two articles are generally cited in relation to employee financial participation in enterprise capital, no specific indication is found in the rules and regulations that have been issued.

Moreover, no significant measures have been taken to implement Article 46, where only the issue of employee cooperation in management has been highlighted; or Article 47, paragraph 2, where the references to favouring direct or indirect investment in the country's main industries are generally taken as references to savings in general, without any specific restriction to employees' savings or to investment in the capital stock of a company by individual employees.

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Therefore, the most important elements of the regulatory framework are to be found in the Civil Code, that governs the different forms of profit sharing and employee share ownership.

In particular, it is Article 2099(3) of the Civil Code that makes provision for employees to be remunerated in whole or in part by means of profit-sharing, though Article 2102 of the Civil Code lays down that the share of profits is to be determined, in the absence of an agreement to the contrary, on the basis of the net results reported in the annual financial statement. As a result this provision is only applicable in cases in which workers are employed in joint-stock companies.

With regard to the shareholding schemes laid down in Italian company law, provision is made in Article 2349 of the Civil Code (as recently amended by Legislative Decree No. 6/2003). On the basis of this provision, the general shareholders' meeting may, as an exceptional measure, allocate a share of the profits to the employees of the company (or of subsidiary companies) by means of the issue, for an amount equivalent to the profits to be distributed, of special categories of shares to be allocated to company employees on an individual and free basis (in other words by means of a free or nominal increase in capital). In contrast with this far-sighted provision the legislator now appears to intend to limit the issue of shares to employees to those cases in which there is an explicit provision for such profit-sharing in the company statute. The Civil Code also specifies that by means of this procedure special categories of shares may be allocated "with particular norms concerning the form, the method of transfer and the rights of shareholders". The shareholders' general meeting therefore has not only the task of determining the number of shares to be given to the employees but also of regulating the allocation of shares and the related rights. It should be noted that Article 2349 of the Civil Code grants the shareholders' meeting the right to allocate to employees of the company or of subsidiary companies financial instruments other than shares, with rights that do not include the right to vote at the shareholders' meeting (instruments of this kind are provided on a general basis by the new clause 6 of Article 2364 of the Civil Code).

In this case particular norms may be laid down regarding the conditions for the exercise of the rights assigned, the conditions for the transfer and any reasons for the expiry of shareholding rights or of redemption. It must be underlined that the employees are in any case free to accept or reject the offer of free shares.

As well as a free allocation of shares, the Italian Civil Code makes provision for employees to purchase shares on favourable terms. This arrangement is

more widely used by enterprises, and is regulated by Article 2441(8) of the Civil Code (as amended by Legislative Decree No. 6/2003), on the basis of which the company may pass a resolution for an increase in share capital with a corresponding increase in the number of shares issued at a given price to employees of the company or of the parent company or subsidiary companies. The same clause allows for the suspension of the stock option rights of existing shareholders, for up to one quarter of the new shares issued, by means of the approval of the majority required for extraordinary general meetings. For the suspension of stock option rights above this level, an absolute majority is required.

The particularly favourable conditions consist in the derogation from the general principle laid down in Article 2441(1) of the Civil Code, on the basis of which, in the case of an increase in social capital, any new shares issued must be offered as an option to the shareholders in proportion to the number of shares held. Moreover, in this case the price of the new shares issued does not have to be calculated by taking account of the net worth of the company, but may be based on the nominal value, that in general is much lower.

A further arrangement by which workers are given preferential treatment for the purchase of shares in the company consists of the sale of company shares as laid down in Article 2357 et seq. of the Civil Code. In this case, the allocation of shares does not take place by means of an increase in capital stock, but by the redistribution of existing shares. Unlike the two schemes described above, this is not a particular form of employee shareholding, since in principle the employees are in the same position as investors in general. The particular nature of this arrangement depends on the special terms of purchase, comparable to the sale of shares to the public but with the employees having an option on the shares.

All the schemes so far outlined result in the individual allocation of shares to the employees. However, there are no legal provisions for the allocation of shares on a collective basis, so schemes of this kind may be considered to be an atypical form of share ownership.

The most widespread and representative form of collective investment is the unit trust fund. By means of this instrument the company does not allocate shares to individual employees, but places them in a professionally managed unit trust fund, and the employees have a share in the fund based on the number of units allocated. It is important here to distinguish between trust funds of a collective nature, including unit trust and pension funds, and employee shareholding schemes set up for the workers in a company. Whereas the unit trust is based on the collective management of shareholdings, the

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employee shareholding scheme is a collective arrangement for those participating in the shareholding plan. This structural difference is reflected also in the difference in the aims of these funds. First of all, unit trust or collective funds tend to interact closely with company management, exerting pressure for efficient and sustainable governance, and secondly, they operate as independent investors, diversifying their financial portfolios in order to minimise the risks arising from a crystallization of their shareholdings. On the other hand, employee shareholding schemes operate with a view to promoting the identification of the employees with management objectives, acting as collective incentive schemes in order to promote efficient practices within the company in both productive and organisational terms.

It must be noted that at times such schemes give rise to forms of control over management, albeit in embryonic form. In this connection mention should be made of the agreement of 22 July 1998 for promoting employee shareholding in Dalmine S.p.A., that made express provision for the presence of an employee representative on the Board of Directors in the event that the shares held by the employees amounted to 10 per cent of the capital stock.

Although Italy is still far from achieving the level of employee shareholding envisaged when provisions were first made (as mentioned above), it must be noted that the pension fund law is a highly significant development along the way towards greater "economic democracy". Although enacted with some delay in relation to developments in the main industrialised countries, the legislation on complementary social security (Legislative Decree No. 124/1993 and, especially, the changes introduced by Act No. 335/1995) made possible interesting developments, allowing employees to try out new institutional forms of "collective" investment, with an impact on the financial market, and significant repercussions on the Italian industrial relations system.

Among the most widespread forms of shareholding participation, mention should be made of stock option schemes. In this case the company gives the employee the right to purchase shares at a later date at a price determined when the stock option is made available. This is therefore an atypical form of share ownership, in which the transfer of shares to the employee does not take place when the scheme is launched, but after a set period when the employee can opt to purchase the shares. Such schemes are clearly not aimed at raising capital from the employees, but rather at increasing loyalty to the firm and productivity on the part of certain employees (nearly always senior management). For those benefiting from the stock option scheme, the correlation between their earnings and the value of the company shares at set intervals, known as vesting, provides a strong incentive for the employee to

promote the interests of the company, intended to result in greater loyalty and higher productivity.
However, since these schemes do not have a collective dimension, it is doubtful whether they can be included among participation schemes in the strict sense (unlike employee shareholding schemes for which all the company employees are eligible).
Finally, mention should be made of a legislative provision, relating only to tax and contributions, that is particularly advantageous for the companies that make use of it, introduced by Legislative Decree No. 505, 23 December 1999. This decree, amended and supplemented by Article 48, Decree of the President of the Republic No. 917/1986, relating to the transfer of shares to employees, provided tax exemptions for stock options for individual or certain categories of employees.
Other incentives are provided for employee shareholders by Legislative Decree No. 58/1998, for companies listed on the Stock Exchange, and in order to facilitate the sale and repurchase of shares in employee shareholding schemes in which the ownership of shares is planned for a period of time that is sufficient to maximise earnings and capital gains (Article 132).
In conclusion, it may be argued that recent legislative measures have tended to confirm the individual character of employee shareholding in Italy. Employee shareholders are not considered as an organised group, and do not have organisational autonomy, nor a functional position within the company, enabling them to exert pressure on management. However, it must be said that Legislative Decree No. 6/2003 lays down certain regulations with regard to supplementary agreements between the two sides of industry, laying the foundations for forms and procedures for organising the votes of small shareholders (and therefore also of employee shareholders).
It is evident that a number of schemes of considerable interest, at least from the industrial relations point of view, have been implemented in Italy, especially since the privatisation of public bodies and the transformation of State-owned companies into joint stock companies. However, it should be underlined that the level of employee shareholding is insignificant, even in those cases where this form of financial participation has been introduced. The only significant exceptions that might be mentioned in this scenario are the cases of Telecom and Alitalia. Since the privatisation of the company, Telecom employees have purchased shares amounting to more than 3 per cent of the entire share capital, becoming the major private shareholders, whereas in the case of Alitalia, employee shareholding amounts to more than 20% of the share capital.

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Concerning Alitalia, the 2002 agreement underlines the value of employee shareholding and the company's commitment to enhancing employee involvement, with a view to moving towards profitability. It also highlights the need to find ways to recognise the contribution made by employees to the company's recovery. To this end, Alitalia undertook to give free warrants (or options) to employees. These warrants were intended to enable workers to purchase shares issued by means of an *ad hoc* capital increase. The warrants are to be taken up three years after their issue (a condition introduced in order to benefit from tax incentives).

The beneficiaries are to be flight crew, cabin crew and ground staff. Each category is to receive a share of warrants proportionate to their contribution to the labour cost reduction for the period 2002-3. Pilots will thus receive 32.19% of the warrants, flight technicians 3.1%, cabin crew 25.85%, and ground staff 38.86%. Moreover, in view of the importance of employee shareholding for the company, Alitalia undertook to find statutory means to promote workforce representation on its governing bodies. However, it must be noted that the implementation of these plans depends on negotiations that are still in progress.

6.2. Future Developments

The social partners have taken up different positions in relation to the financial participation of employees. As mentioned above, with the exception of CISL, the trade unions have expressed their lack of interest, if not their hostility to this issue.

A tentative move towards systematic regulation was nevertheless made on 23 December 1998, with the signing of the "Agreement on concertation policies and on new industrial relations policies for the European integration and transformation of the transport system" by the Government and the social partners.

The signatories to the agreement stated their intention to "enable the industrial relations system to evolve towards new participation models in the ways envisaged by collective bargaining, aimed at involving all the workers' representatives in strategic decisions in the enterprise" (clause 4.6). To support this plan, "the Ministry of Transport was to submit a specific bill to the National Transport and Logistics Council to support and foster employee shareholding in transport companies".

What appeared to be just a sectoral initiative, planned for the critical and restless transport industry, was actually an attempt to re-launch employee shareholding in general. By concluding this agreement, the social partners showed for the first time that they were willing to overcome their traditional lack of interest if not hostility towards this issue. However, with the change in the legislature, this draft reform was not followed up by any concrete action.
The idea of employee shareholding was re-launched in the Government White Paper on the Italian labour market in October 2001. In particular, the White Paper highlighted the need to "verify financial participation formulas aimed at enhancing key workers' loyalty within small and very small-sized enterprises, including tourist businesses and craft firms. From this point of view, it is necessary to re-establish a participation agreement, i.e. to resort to other forms of profit-sharing, supporting these instruments also through adequate economic and tax incentives" (section III.3).
There appears to be a need above all for a legislative intervention regulating not only individual shareholding, but also collective shareholding schemes, since it may be argued that it is primarily through such collective schemes that it is possible to implement effective forms of economic democracy.
With regard to legislative proposals under examination by Parliament, as mentioned above, on 21 May 2002 a legislative proposal was presented, No. 2778, regarding profit-sharing among salaried employees in artisan firms and agricultural enterprises with up to 10 employees, hired on open-ended contracts and with at least six years of continuous employment with the same employer.
Based on this proposal, the extent, forms and means of profit-sharing are to be determined by agreement between the parties, in compliance with the provisions of Article 2102 of the Civil Code and without prejudice to the economic and legal rights accrued by the worker. In sharing out profits, the employer is required to take account of the different levels of seniority of the employees, and unless the parties agree otherwise, to pay out a share of the profits on an annual basis, as severance pay to be paid in advance, to be made by the company to the employee, on the basis of an overall sum determined by prior agreement between the parties.
Employers deciding to pay out or set aside sums of money in favour of employees as part of a profit-sharing scheme would be entitled to relief on social insurance contributions proportionate to the amount of profit paid out or set aside.

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Finally, the draft legislation provides for the drawing up of guidelines for the proper use of profit-sharing agreements, and compliance with these guidelines would be a decisive factor in the case of a dispute between the parties.
As further confirmation of the renewed attention of the Italian legislator for employee participation (including financial participation), it must be underlined that the proposal outlined above is just one of several currently before Parliament. Mention should also be made of Legislative Proposal No. 1003 (presented on 21 June 2001), containing "Measures for the participation of employee shareholders in the governing bodies of joint-stock companies"; Proposal No. 1943 (presented on 13 November 2001), containing "Measures for promoting widespread shareholding on the part of salaried workers" Proposal No. 3642 (presented on 5 February 2003), "Measures promoting the participation of employees in the capital stock of enterprises", and finally Legislative Proposal No. 4039, mentioned above, containing measures relating to share ownership by salaried workers.
In effect it appears that in the absence of an agreement between the social parties to set up a system of financial participation based on trade-union practice the legislator has suddenly recognised the urgent need to regulate this matter "from the top down" as it were. However, with the failure to take significant steps in this direction in Legislative Decree No. 6/2003 (the reform of Italian company law), it may be argued that the most appropriate opportunity for systematic reform of this matter has been missed.

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