

Financial Participation, Quality of Work and the New Industrial Relations: The Italian Case in a Comparative Perspective*

1. Introduction

Recent comparative studies conducted within the framework of a broad research project, as well as Andrew Pendleton's Report published in this book, indicate that there is a growing interest in employee financial participation in enterprises throughout the European Union.¹

These research studies generally contain many indications about the theoretical and practical reasons underlying employee financial participation, both in the prospective of Human Resource Management and more traditional industrial relations system. Hence, they acquire a major importance in providing a theoretical framework for this formula. In so doing, they bridge a

* *The present contribution was previously published in M. Biagi, Quality of Work and Employee In-volvement in Europe, Kluwer Law International, The Hague, 2002, pp. 135-148.*

¹ See Poutsma, Van Ommeren, Brewster, *Employee Share Ownership and Profit-Sharing in the European Union*, European Foundation for the Improvement of Living and Working Conditions – European Commission, 2001; Poutsma, *Recent Trends in Employee Financial Participation in the EU*, European Foundation for the Improvement of Living and Working Conditions – European Commission, 2001; Poutsma (ed.), *Practices of Financial Participation in Europe: the Situation in Six Member States*, Nijmegen School of Management, Nijmegen, 2001; Pendleton, Pérotin (eds.), *Profit-Sharing in Europe – The Characteristics and Impact of Profit-Sharing in France, Germany, Italy and the United*, Edward Elgar, Cheltenham, 2001; Poutsma, De Nijs, Doorewaard, *Promotion of Employee Ownership and Profit-Sharing in Europe, in Economic and Industrial Democracy*, 1999, pp. 171-196.

wide gap in relation to empirical research studies aimed at understanding not just the right dimension but also the evolution trends of this phenomenon.

Without any pretension to summarise what has already been more effectively highlighted by these studies, it can be briefly noted that financial participation is recognized as a means to provide workers with greater wage flexibility, namely as a staff management technique aimed at improving corporate productivity and competitiveness, workers loyalty or, to put it in more modern and Community-style terms, enhancing the 'quality' of work and the 'quality' of effective industrial relations.²

This brings us to the focal point of this seminar: discussion of the relationship between various forms of employee involvement, quality of work and industrial relations. From this point of view, financial participation would be a tool that contrives to strengthen enterprise efficiency, competitiveness, equality, the development of individual companies and the economic system in general.

Although this study is carried out through a comparative investigation perspective, where the Italian case occupies a relatively marginal role³ (and it is entirely absent from the study conducted by the Dublin Foundation), the argumentation about the theoretical and practical reasons in favour of financial participation of workers coincide by far and large with what emerges from the Italian context. The consensus in favour of this question is continuously growing in Italy and not just among scholars.⁴ One of the latest news pieces concerning the Government's financial law is that a proposal is currently under discussion to introduce a large number of tax and contribution incentives to encourage employee financial participation more strongly than in the past.

² On matters relating to quality see the *Communication of the European Commission Employment and Social Policies: a Framework for Investing in Quality*, Brussels, COM (2001)313 final and Biagi (ed.), *Quality of Work and Employee Involvement in Europe*, Kluwer Law International, 2002 and also Biagi, Rymkevitch, Tiraboschi, *Literature Review on 'Europeanisation' of Industrial Relations, especially the Quality of the European Industrial Relations benchmarked in the Global Perspective*, European Foundation for the Improvement of Living and Working Conditions – European Commission, 2002.

³ It is sufficient to remember in this regard that only a few empirical studies specified in footnote 1 take the Italian Case also into consideration, and while the research that did the Italian Case under consideration raise more questions about the representation of trade unions in the same study.

⁴ For a wide prospective of Italian debate see in 'La partecipazione finanziaria', *L'Impresa al Plurale – I Quaderni della partecipazione*, nn. 7-8/2001.

From the vantage point of an Italian observer, this new interest arouses astonishment and perplexity given the great distance between the growing interest in financial participation schemes and the limited extent to which they have already been practiced. Taking this into consideration, the research studies carried out so far, with a few exceptions, offer little or no information regarding legislation that encourage or discourage the use of employee financial participation. An understanding as to why employee financial participation is not practiced more in Italy as it has in other EU countries, despite a revival in interest and recent developments, would be interesting.⁵ Is this simply a question of poor regulation and implementation or could resistance to employee financial participation be stronger than it actually appears?

Certainly any attempt to make comparisons, in this field, more so than in any other legal domain, provided that it is not an end to itself, often runs the risk of oversimplifying – if not trivialising – an especially thorny issue, whose complexity goes much beyond mere technical and legal aspects. These knots have become even more difficult to unravel after the recent evolution in work relationships and in the industrial relations system.

The comparative analyses that have been conducted so far, especially in those cases where no multidisciplinary approach had been adopted, confirm the extreme difficulty in tackling the issue especially from the point of view of industrial relations system rather than from the technical and analytical point of view of the legal question.⁶ The issue is analysed from many angles going beyond the perspective of labour law, and becomes easier to understand, when considered through juridical, institutional, accounting, and taxation contexts.⁷ The complexity of the issue should nevertheless be forgotten when economic, management, organisation and sociological considerations are also made.

The point is that – and by making this statement I realise that it is far from original – the financial participation of employees involves several different concepts.⁸ At the European level, significant differences concern not just the

⁵ As recently maintained by Schlesinger, 'Un fenomeno con un significativo rilancio, ma senza rilevanti sviluppi', in *L'impresa al Plurale, Quaderni della partecipazione*, nn. 7/8, 2001 pp.379-383.

⁶ Treu is among the first to make refer to this issue, *La partecipazione dei lavoratori alla economia delle imprese*, in GComm, 1988, p. 815.

⁷ For the evolution of legal frame work, also with particular reference to fiscal incentives referred to Biagi, Tiraboschi, *La partecipazione finanziaria dei lavoratori*, in B&L, 2001, n. 8, and other bibliographic references.

⁸ The obligatory theme attributed, *Democrazia impossibile? Il cammino e i problemi della partecipazione nell'impresa*, Bologna, il Mulino, 1995 and more recent,, Id., 'Partecipazione

various degrees of diffusion but also the types of schemes that are implemented, the objectives that are pursued, the involvement or exclusion of the trade unions, and the changing definitions accorded to the pillars (i.e. direct participation or representation via the trade unions). Therefore, the extreme uncertainty and conceptual ambiguity of terminology not only render the issue of financial participation complex but ambiguous to the extent that those who advocate it do not discuss and leave many questions unsolved. This is true even at the level of Community institutions, which are among the strongest advocates of employee financial participation.

2. The Reference Community Framework: from the Council Recommendation dated 27 July 1992 (92/443/Eec) to the Commission Discussion Document dated 27 July 2001

The considerations which have so far been made concerning the paradox of the financial participation of employees, which is characterised by the growth of ‘theoretical’ interest but a lack of concrete examples where theory has been put to practice, are confirmed even starting at the Community level. It is important to know that Community institutions have long since urged the adoption of financial participation schemes: lacking any indication of a ‘philosophy’ that should underpin the actions in favour of shareholding, the Community recommendations nonetheless still prove to be more unsatisfactory and inadequate than what the participation schemes would require, as further illustrated here below (EWC, ECS, the directive on information and consultation rights in national undertakings, etc.).

Regarding financial participation of employees, the reference Community document is the ‘*Council Recommendation of 27 July 1992 (92/443/EEC), concerning the employee participation in profits and enterprises results (including equity participation)*’.⁹

The ‘political’ tenets underlying the Recommendation no. 92/443/CEE, as is well-known, are rooted in the ‘*Commission Report concerning the action programme related to the implementation of the Community Charter of*

finanziaria e azionariato dei dipendenti’, in *L’impresa al Plurale, Quaderni della partecipazione*, nn. 7/8, 2001, pp. 59-81. See also Cella, ‘Forme di scambio e forme di partecipazione’, in *L’impresa al Plurale, Quaderni della partecipazione*, n. 2/1998, pp. 11-36.

⁹ In *OJ L 245*, 26 August 1992, pp. 53-55.

workers' fundamental social rights of 1989,¹⁰ where the Commission announced its intention to introduce a community instrument on equity participation and financial participation of employees.

Within the framework of a more complex research project funded by the European Commission it is possible to find the cultural and regulatory tenets of the main proposals contained in the Recommendation. This research was then channelled into the famous PEPPER I report, presented to the social partners during the conference organised by the European Commission in Namur in October 1990, then updated over the course of the following year.¹¹

The research study, which clearly highlights the different forms of employee financial participation available in the European Union, was further upgraded and included in the PEPPER II Report.¹² This second report contains a review of the measures that have been adopted in various Member States that promote the financial participation of employees.

In the Recommendation dated 27 July 1992 the Council invited the Member States:

- to acknowledge the potential advantages deriving from a greater use of a wide variety of employee participation in enterprise results and profits, both individually and collectively, with reference both to private and public enterprises;
- to take into account the role to be played by social partners in the issue of employee financial participation in compliance with national laws and practices.

In particular, the Council has recommended that Member States:

- adjust national legal systems to the promotional needs of employee financial participation mechanisms;
- study a possible introduction of adequate tax and financial incentives;
- support the use of different types of financial participation by making information available to all the parties concerned, including details regarding comparative experience with the usage of each type;

¹⁰ *Communication from the Commission Concerning its Action Programme relating to the implementation of the Community Charter of Basic Social Rights for Workers*, Com(89) 569 final, Brussels, 29 November 1989.

¹¹ European Commission, *The PEPPER Report – Promotion of employee participation in profits and enterprise results*, in *Social Europe*, supplement 3/1991.

¹² European Commission, *PEPPER II – Promotion of participation by employed persons in profits and enterprise results (including equity participation) in Member States*, Com(96) 697 final, Brussels, 8 January 1997.

- take actions that are designed to meet employees' requirements as much as possible.

In light of this framework, the Council has urged:

- the adoption of voluntary-based financial participation schemes and other forms of involvement calculated on the employees' earnings;
- that financial participation schemes not be introduced as an alternative to the collective bargaining of wages;
- the timely dissemination of information to employees regarding the risks involved in financial participation formulas;
- the widest involvement as possible of all the company's employees;
- providing workers in similar situations with equal access opportunities to financial participation formulas;
- the application of financial participation schemes also for employees working in small and medium sized enterprises.

It should be highlighted that in this case the choice of a *soft* tool, such as a recommendation, was not the result of a precise law policy guideline aimed at creating a spontaneous convergence framework, but rather the outcome of an uncertain debate, characterised not only by extremely diverse juridical and institutional frameworks, but also by the lack of a unanimous consensus, at least on the fundamental tenets, among the Member States.¹³ The Recommendation does not only explicitly state its intention not to foster an active harmonisation or reduction in the number of existing instruments, but it reflects a change in the overall notion of this formula as against the preparatory documents of the previous years. It actually subscribes a managerial and, to a certain extent, neo-liberal notion of financial participation, thus ruling out any idea of a tool devised to redistribute the produced wealth or the corporate power or of a tool to be used over and above undertakings (such as, regional, sectoral or national reserve funds). The analysis of the contents lets us understand that the recommendation is mainly addressed to those States (such as Italy, and before the recent legislation,¹⁴ Belgium), who lack any specific legislation on this issue.

¹³ See Limardo, 'La partecipazione finanziaria dei lavoratori nel diritto comunitario', in *L'impresa al Plurale, Quaderni della partecipazione*, nn. 7/8, 2001, pp. 213-214; Alaimo, 'La partecipazione finanziaria', in Baylos Grau, Caruso, D'Antona, Sciarra, *Dizionario di diritto del lavoro comunitario*, Monduzzi, Bologna.

¹⁴ See essay of Blanpain that follows in this issue.

Successively – on January 15th 1998 – the European Parliament approved a ‘Resolution on the Commission report concerning PEPPER II – The Promotion of participation by employed persons in profits and enterprise results (including equity participation in the Member States)’.¹⁵

In this Resolution, the European Parliament showed to be more determined than the European Commission in supporting the positive impact of employee financial participation:

- on employees’ productivity levels;
- on the building of employee loyalty for the company by which they are employed;
- on encouraging an ongoing work relationship which would promote workers’ professional career and enhance their skills and qualifications.¹⁶

The European Parliament was equally determined in reporting that, in spite of the Recommendation no. 92/443/CE of the Council, Member States had not significantly changed their policy vis-à-vis employee financial participation and that enormous disagreements exist between the different Member States concerning the role to be played by the State in the development of employee financial participation schemes in profits and enterprise results.

More specifically, the European Parliament observed that:

- Member States have complied with the Recommendation no. 92/443/CE only to a limited extent, if not at all;
- Member States have not exchanged any information concerning best practices
- the Member States have only partially introduced tax incentives to support the PEPPER systems.

Given this perspective, which has actually so far remained unchanged, except for the exchange of *best practices*,¹⁷ in order to contribute to re-launching the issue of financial participation, the European Parliament recalls:

- both the idea illustrated in the White Paper on Growth, Competitiveness and Employment of 1993, of a productivity-oriented wage policy, to allow profits to be earmarked for the funding of investments’

¹⁵ COM(96)0687 – C4 – 0019/97.

¹⁶ Demonstrates the connection between unexpected return of focus of attention to participation and the advantage of the forms of co-operation in respect to the risks of post-contractual opportunism, G.P. Cella, *Forme di scambio etc.*, espec. Pp. 27-28.

¹⁷ See www.financialparticipation.org, the site of the *Centre of International and Comparative Studies of the University of Modena and Reggio Emilia* on request of the European Commission. It contains the collection of best practices at the European level in matter of workers financial participation.

- and the idea illustrated in the Green Paper of 1997 on Partnership for a New Labour Organisation, to stimulate the financial participation of employees as a tool for the modernisation of the European labour market.

Drawing inspiration from the ideas illustrated in the White Paper on Growth, Competitiveness and Employment and in the Green Paper on Partnership for a New Labour Organisation, the European Union institutions have recently taken action to link the issue of financial participation of employees to job creation policies and, more generally, to the modernisation of the European labour market.

In the 1998 Report on the *'Risk Capital: A key to Job Creation in the EU'*,¹⁸ the Commission, although only incidentally, highlighted the financial participation of employees as one of the best tools to make profits to be earmarked for the creation of venture capital, with all the positive effects that might derive from it, in terms of long-lasting and additional employment.

This profile, which is closely connected with the need to rapidly contribute to the modernisation of the labour organisation, has now become an integral part of the *'European Employment Strategy'*. The 2001 employment guidelines clearly state that 'the creation of new enterprises, in general, and, particularly the contribution provided by small and medium sized enterprises (SME's) to economic growth are essential to create new jobs and to develop new training opportunities for young people. This process must be fostered by an entrepreneurial spirit, within society and learning programmes, by working out a clear, stable and reliable regulation, by improving the conditions that promote the development of venture capital markets and the access to these markets'.

The issue has recently been re-launched at a Community level: the Agenda on the 'social policy' adopted by the Commission on June 28th 2000, which heralded a report on financial participation and an action plan by the year 2001.

Given the complexity of the issue, it has become impossible to draft these documents. Only a working paper was published on this issue on July 27th 2001, which draws inspiration mainly from the theoretical and empirical contributions drawn by the PEPPER I and II reports, whose objective was to re-launch the debate on financial participation at a European level among all the parties concerned such as community institutions, social partners, and undertakings and associations supporting financial participation, etc. so that it

¹⁸ SEC(1998)552.

would be taken into account during the final drafting of the national action plan.¹⁹

From a formal point of view, this working paper has so far led to positive outcomes in the sense that the community initiative has been favourably welcomed. In my opinion, however, the community has still been only mildly encouraging in concrete terms, in particular with regards to UNICE and ETUC reactions to it. In fact, UNICE and ETUC have drawn up two feedback reports in response to the Commission's invitation that witness the still-present wide gap that exists today between enterprises and trade unions.

2.1. The UNICE's Position

The UNICE stance was illustrated in a report dated October 19th 2001.²⁰

As expected, a managerial if not a neo-liberal vision of financial participation emerges from this report. The issue of financial participation is referred to as being part of the wage policies adopted at the enterprise level. Financial participation is also defined as a possible motivational and loyalty-building tool for employees intended to contribute to reconcile employers' and employees' interests (although not all the employees are included, with reference to temporary workers). The document basically calls for the introduction of a adequate tax and social contribution incentives in all the Member States. UNICE does not deny the explanation provided by the Commission, although it regards it as of minor importance, as it regards cultural barriers the main obstacle to the diffusion of this practice. This undoubtedly is a legitimate position which, however, points out a clear view of the role played by financial participation mechanisms within the industrial relations context. Its widening should not be hindered, provided that, however, management and owners' prerogatives are not called into question. A similar stance, although formally more nuanced, is taken up by the Italy's Confindustria, which is in favour of employee financial participation in the case of listed companies, but ruling out any co-management prospects.²¹

¹⁹ European Commission, *Commission Staff Working Paper – Financial Participation of Employee in the European Union*, Brussels, 26.7.2001, SEC(2001) 1308, www.financialparticipation.org.

²⁰ See www.financialparticipation.org.

²¹ See Guidi, 'Per un azionario come incentive individuale', in *L'impresa al Plurale, Quaderni della partecipazione*, nn. 7/8, 2001, pp. 347-350.

Hence, a ‘weak’ participation notion emerges from this stance. Employee equity participation is regarded as a way to stimulate their commitment to improve the enterprise performance and, as such, as a performance-based incentive mechanism, thus to be made available only for the those key workers, which can indeed influence the enterprise share value.²²

2.2. The ETUC’s Position

The ETUC’s position was illustrated in a report dated November 23rd 2001.²³ Similar to UNICE, the ETUC favourably welcomes the Commission’s document and the intention to re-launch the debate on financial participation. Several details are contained in the document which provide a much more complex and different view of financial participation.

Whereas UNICE relegates financial participation solely to the realm of wage policy, the ETUC views financial participation as vehicle for the enhancement of financial participation (in the respect of a ‘strong’ participation or involvement in the enterprise strategic decisions). According to ETUC, financial participation can have a positive impact only if it is part of a wider and more comprehensive employee involvement pattern, starting from the workplace, up to the enterprise level or to a group of enterprises. In other words, employees must have a sufficient training and information background if they are to have an influence on the decision-making process through their presence on the board of directors or in a Supervisory Council.

From this point of view, ETUC rightly criticises the definitions contained in the Community documents because they lack specificity and clarity. The ETUC specifically criticises the link identified by the Commission between financial participation and productivity for its neglect of the social and redistribution profile, in addition to aspects related to company power structures. Hence, it is not surprising that the ETUC criticises the lack of reference to the social sharing of the financial participation scheme and, more specifically, to the agreement with workers’ representatives as a prerequisite for the introduction of such a scheme.

To this regard, the ETUC rightly refers to an ‘easy way’ chosen by the Commission to tackle the issue, thus carefully avoiding the controversial aspects of the financial participation issue. Hence, the cultural and political question emerges again: what underlying reasons for financial participation or

²² *Ibidem*.

²³ See www.financialparticipation.org.

what does it mean? Does it pave the way for a real form of participation or is it just a sharing of the risks and benefits of enterprise productivity? Or what benefit are financial participation schemes to workers if they are not accompanied by a say in company strategic decisions?

The trade unions' position towards this issue is all too well known, especially in Italy, where sentiments are extremely differentiated if not in opposition.²⁴ Some trade unions do not trust financial participation schemes as they destroy the traditional separation of roles and responsibilities between employers and employees.

3. Problems and Perspectives of Financial Participation of Employees in Europe

The efforts made by the Commission (as well as by the community institutions, in general) undoubtedly are to be judged in a positive light. Although Community documents contain important theoretical and methodological indications, they are ambiguous and ambivalent and will remain useless as long as the issue underlying the notion financial participation is not clarified to give substance and significance to the reference of a technical set of rules.

What is employee financial participation from the point of view of the Commission? Is it a practice, to be regarded as an alternative to more intense political participation of social partners (what Prof. Baglioni²⁵ calls *sharing* rather than mere 'involvement' of workers, in his report), namely a staff management technique focusing on high occupational profiles, therefore mainly based on an individual element, which is difficult to be organised in collective terms based on a strong participation?

Therefore, it is not just a question of preventing the issue of financial participation from impacting on the wage system, by putting together wages and savings.²⁶ The true question focuses on whether or not to promote full employee participation in the decision making process or to simply permit

²⁴ See recent studies of Bonfanti, Di Flippo and Cerfeda, in 'La partecipazione finanziaria', *L'Impresa al Plurale – I Quaderni della partecipazione*, nn. 7-8/2001.

²⁵ See Baglioni, 'Employee Participation: the Way Ahead', in Biagi (ed.), *Quality of Work and Employee Involvement in Europe*, cit.; Id., *La partecipazione nel tempo della globalizzazione*, in *L'impresa al Plurale – I Quaderni della partecipazione*, n. 5/2000, pp. 13-43, espec. pp. 39 ff.

²⁶ See Baglioni, *Partecipazione finanziaria e azionariato dei dipendenti*, op. cit.

their economic involvement. The community documents lack a fundamental theoretical and conceptual tenet underpinning financial participation that would place this practice within a clear regulatory and conceptual framework, both in terms of the aims to be pursued and of the means to be used.

Even comparative analyses highlight the risk of oversimplifying things, as indicated by the essays that are mentioned here below. The surveys carried out in France and Germany (and partially also in Spain) clearly show that financial participation is mainly used to introduce flexibility in the wage structure. In Germany, financial participation is mainly regarded as a goal and a means to change the wage system, which is collectively agreed upon, thus including a variable linked to the enterprise performance (competitiveness/productivity). Similarly, in France, financial participation is generally used to influence the wage dynamics (which is, in turn, influenced by the minimum inter-professional wage) and to surmount social partners' long-standing difficulty to promote and stabilise effective forms of dialogue within the enterprise. On the other hand, in the United Kingdom, the financial participation systems are mainly designed to spur competition between workers.

Financial participation does not necessarily become an *anti-union* tool, even though a few trade unions still regard it that way. Financial participation is actually perceived as a staff management tool, to be adopted in often customised formulas that are specifically designed to reach merely wage policy aims, rather than a true participation tool or as a true industrial relations philosophy – at least in those countries that do not envisage a dual representation system.

Similar considerations can be made with reference to the Italian case. From this point of view it would be sufficient to think of the surreptitious resort to the tool of financial participation, even in spite of a lack of any reference statutory framework. As highlighted by a few recent studies,²⁷ the support and promotion of shareholding has mainly been geared towards the development of stock markets, whereas no specific importance has been attached to employee shareholding seeing that it as an essential element in the post-privatisation corporate governance. A whole set of considerations underscore this essentially 'financial' interpretation of employee shareholding formulas implemented during privatisation. First of all,²⁸ it was regarded as an all-time allotment, devoid of any perspective of becoming part of a wider corporate «policy». Secondly, the incentives, which have been granted to the employees

²⁷ See Pedersini, 'L'azionariato dei dipendenti nelle privatizzazioni italiane', in *L'impresa al Plurale – I Quaderni della partecipazione*, n. 7-8/2001, pp. 257-268.

²⁸ *Ibidem*, pp. 258-259.

for the purchasing of company shares, were merely economic ones (financial allowances, discounts on the share purchasing price, loyalty bonuses, minimum share allocation), rather than institutional ones (statutory recognition of a significant role to employees-shareholders and to their associations within the corporate bodies, 'voice' rights, possibility of access to company information sources, communication with employees, etc.).

As a whole, data show how difficult it is, in the case of Italian privatisation, to talk about 'employee shareholding' in the true sense of the term, exactly because, on the one hand, there was no intention to award specific prerogatives to employees-shareholders, as against other small shareholders and, on the other hand, the employees-shareholders' associations – that have spontaneously mushroomed after the distribution of shares -, in spite of their best efforts, have not succeeded to gain any significant acknowledgement.

In such a context, the distribution of shares to employees came down to a mere financial investment to the majority of people involved.

The comparison of the various systems shows that the type of tools and the scope of application of the various forms of employee financial participation are extremely diverse. This makes the whole picture even more uncertain and confused. There is still a long way to go before employee shareholding can really become a tool to collect venture capital, as a privileged pathway in privatisation and/or restructuring processes, to foster change (also cultural and otherwise) within the company, as an alternative to collective dismissals, as a way to introduce flexibility into the wage systems and as an exit risk reduction factor of employees involved, and only in a few cases as a way to strengthen employee involvement in the company decision-making process, etc.

The ambivalence of this practice as well as the number of possible strategies that can be implemented both by the company management and by the trade unions cannot but further fuel distrust and reluctance among social partners and especially within trade unions, that run the risk of being overtaken by financial participation plans unilaterally designed by the company management and thought as exclusively individually-oriented schemes.

4. The Italian Case

The situation is fraught with several thorny issues, as already illustrated. Even from an Italian observer's point of view, there are several problematic issues involved, such the lack of a well-structured regulatory framework, as demanded by the European Union, that might be helpful to unravel the tightest

knots of such a controversial and complex issue and that might serve as a strong reference statutory basis, providing support and incentives, similar to many other legal systems in force in other European countries.²⁹

There are still several moot points that remain to be solved. First of all, the question of extending financial participation schemes to all employees, including atypical and temporary workers. If the solution is theoretically possible, suffices it to say that in Italy according to the recent law (specifically the 2001 budget law), contingency workers may benefit from the rules and regulations applying to temporary work, in practice, there are so many questions to be tackled, that it becomes actually almost impossible to allow contingency workers to benefit from this formula. This fact has been fully recognised by UNICE, whereby financial participation makes sense only for core employees linked to their enterprise. On the other hand, contingency workers allegedly attach a much greater importance to their present remuneration than any other forms of incentives or bonuses. The ETUC raises, instead, the question of extending these schemes to the public sector and to the small-sized enterprises, which do not seem to be interested in this form of employee involvement or, when they do, they often cross legal boundaries in doing so. In Italy employee involvement formulas have often been applied to atypical employee conditions rather than according to a true participation belief.³⁰

In this regard, two main considerations could be made – one more innovative and the other more traditional – especially interesting for Italian readers (although not solely for them).

The first consideration concerns the relationship between evolving labour relations, a new industrial relations system and the introduction of financial participation oriented towards the achievement of strategic objectives, which open up more significant new horizons than the mere exchange-based approach, which is typical of the subordinate employment contract. Financial participation may be the way to achieve the *individualisation of the work relationship* and the growth and empowerment of subjects who may become masters of their own destiny. It might concern not only key workers in the productive process but employees as a whole, thus viewing work performance

²⁹ For a short overview of Italian debate see Biagi, Tiraboschi, *La partecipazione finanziaria dei lavoratori*, *op. cit.*, and bibliographical references. In the perspective *de iure condendo* see the proposal of a discipline on workers shareholding in Treu, *Politiche del lavoro. Insegnamenti di un decennio*, il Mulino, Bologna, 2002, and the indications in *White Paper on the Labour Market in Italy*, October 2001, sec. III, § 3.

³⁰ See on this point *White Paper on the Labour Market in Italy*, sec. III, § 3.

more as a supply of services and consultancy rather than the mere provision of work energy. From this point of view, we should not underestimate the risk involved in employee financial participation, which might possibly lead to a work situation no longer based on an employment contract.³¹

It is true that financial participation is a complementary and significant aspect of employees' open-ended labour contracts, although the number of core workers having access to these open-ended contracts is ever more reduced, given the ever more precarious, fragmented and unstable labour market conditions. The traditional distinction between subordinate and independent work is now called into question and new alternative solutions emerge – and are suggested even by the authors of this paper³² –, which get away from the ruts left by the labour law concerning the concept of subordinate work. This is the perspective welcome by the recent *White Paper* issued by the Italian Government and by the *Workers' Statute*.

With specific reference to the Italian case, and in a *de iure condendo* perspective, the second question to be tackled is that of the alternative between collective and individual shareholding: it is this alternative that represents the decisive political moot point for the future development of financial participation of employees in the enterprise.³³

If these schemes were unilaterally implemented by the enterprise, on a merely individual basis, the financial participation schemes would not only have little to do with the issue of economic democracy, but above all the trade union role and representation ability themselves might be called into question.

Yet, this issue must not necessarily be solved by the law-maker, but rather by social partners themselves within the industrial relations context.

In defining its scope of action, a future legislative action should confine itself to recognising the legitimacy of a wide range of financial participation schemes, either unilaterally defined by the company or agreed upon with trade unions. Once this wide 'financial participation scheme' definition is accepted,

³¹ See Manghi, 'Alla radice delle perplessità sindacali', in *L'Impresa al Plurale – I Quaderni della partecipazione*, nn. 7-8/2001, p.143 and also CESOS, *Oltre la soglia dello scambio: la partecipazione dei lavoratori nell'impresa. Idee e proposte*, Rome, September 2000.

³² See Biagi, Tiraboschi, 'Le proposte legislative in materia di lavoro parasubordinato: tipizzazione di un tertium genus o codificazione di uno 'Statuto dei Lavori?', in LD, 1999, p. 571. In a *de iure condendo* perspective, see also the proposal for a Workers' Statute in Treu, *Politiche del lavoro. Insegnamenti di un decennio*, Il Mulino, Bologna, 2012.

³³ See Biagi, 'La partecipazione azionaria dei dipendenti tra intervento legislativo e autonomia collettiva', in RIDL, n. 3/1999; Ghera, 'L'azionariato dei lavoratori dipendenti', in ADL 1997, p. 20.

law-maker should indeed define the forms of representation of employees-shareholders as well as the information and control rights.

From this point of view, the employees-shareholders' associations shall undoubtedly have to be overhauled, with the sole aim to represent their members, by promoting information about the company's life, the shareholders' position, share-linked rights and any other matter that directly or indirectly may concern them. In compliance with provisions set forth under article 141 of the legislative decree no. 58/1998, the employees-shareholders' associations, which would thus be set up, would enjoy the rights enshrined in articles 20-27 of the Workers' Statute, once suitable adjustments have been introduced. The ways to actually benefit from these rights could be agreed upon in a collective bargaining setting.

Yet, the true moot point to be tackled is that of employees-shareholders' representation within the corporate management and/or control bodies. From this point of view, it might be true that such a legal action – far from having dramatic effects on the corporate governance – would be consistent with the transformation process of large joint stock companies initiated by legislative decree no. 58/1998 aimed at providing shareholders not having any control at least with a power to have their voices heard within the company.³⁴

In a *de iure condendo* perspective, the problem might be rather that of choosing whether or not to support, through a specific promotional if not prescriptive legislation, a representation within the Board of Administration or within the Board of Auditors.

Common ground nevertheless exists to open the debate, including a few shared items, such as: the voluntary nature of financial participation schemes both for employers and for employees; and the concept that any policy designed to impact on the remuneration and/or decision-making process must take into account the corporate and organisation profiles; the social goals underlying participation, which cannot be realised if they are not integrated with its functional goal, which is that of favourably contributing to the performance of the company.³⁵

From this point of view, it might probably be easier to consider financial participation as complementary of a wider participation context, which goes much beyond the mere staff management technique.

³⁴ See Alaimo, *La partecipazione azionaria dei lavoratori. Retribuzione, rischio, e controllo*, Giuffrè, Milano, 1998, pp. 210-211.

³⁵ See Baglioni, *op. cit.*