



Work Organisation, New Forms of Employment and Good Practice for Health and Safety at Work: a focus on the Italian case

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Methodology and scope

- This paper reports part of the desk research outcomes of surveys carried by ADAPT-CSMB within two projects funded by the Italian Ministry of Labour respectively in 2008 and 2009.
- The experimentation and the study of individual cases, both at regulatory and enterprise management level, is still going on: “work in progress”.
- The aim of the paper is to analyse the phenomenology and the new regulatory OSH needs related to the emergency of new risks arising from both contractual and personal factors of vulnerability among workers, as a consequence of the recent changes in labour organization processes and in the composition of the labour market.

Methodology and scope

- Special focus on the needs of non-traditional forms of employment (such as telework or different forms of homework and personal care activities, informal work) and atypical contractual relationships in the Italian system within the European context.
- The term “traditional work” usually identifies the area of full and permanent subordination, which still represents the most common labour status in Italy.
- In this light, the paper also aims to show an analysis of the regulatory framework evolution and the impact of the Consolidate Act (recently passed Legislative Decree n. 81/2008 and its following amendments) in the development of a more modern approach.

Soft law and best practices in OSH

“Safety and health at work represents today one of the principal and most developed areas of EU social policy. However Community action in this field is not limited to legislation...it also requires to enhance the flow of information, promotion and advice and the exemplification of good practices” [and the evolution of effective systems of risk management] “in order to achieve a healthier working environment, particularly in small and medium size enterprises ...” (J. M. Barroso, EU-OSHA press release, 20 March 2006).

Facts and figures: Italy vs EU

Standardized incidence rates by number of workers (100.000), sectors of activity and sex of the victim.

| | UE 15 | | Italy | |
|--|--------------|-------|--------------|-------|
| | Total number | Women | Total number | Women |
| 9 NACE common sectors | 3.013 | 1.524 | 2.812 | 1.507 |
| Agriculture | 3.879 | 2.738 | 6.013 | 4.552 |
| Manufacturing | 3.463 | 1.767 | 3.488 | 1.454 |
| Elettricità, gas, water distribution | 1.577 | 436 | 2.288 | 1.598 |
| Constructions | 5.974 | 1.115 | 4.539 | 950 |
| Trade | 2.096 | 1.402 | 1.551 | 1.014 |
| Hotel and restaurants | 2.909 | 2.633 | 2.133 | 2.282 |
| Transports and communications | 3.674 | 1.824 | 4.562 | 2.978 |
| Financial broking and real estate activities | 1.464 | 900 | 1.184 | 1.002 |

Source: Eurostat.

Facts and figures: Sectors

Accidents by branches and main sectors of activities, 2007-2008, Italy

| Branch/Sector | Total accidents | | | Fatal accidents | | |
|---|-----------------|----------------|--------------|-----------------|--------------|--------------|
| | 2007 | 2008 | Var. % | 2007 | 2008 | Var. % |
| Agriculture | 57.206 | 53.278 | -6,9 | 105 | 121 | 15,2 |
| Industry | 400.103 | 367.132 | -8,2 | 611 | 554 | -9,3 |
| <i>Constructions</i> | <i>101.898</i> | <i>89.254</i> | <i>-12,4</i> | <i>275</i> | <i>235</i> | <i>-14,5</i> |
| <i>Metal working activities</i> | <i>89.324</i> | <i>79.848</i> | <i>-10,6</i> | <i>105</i> | <i>100</i> | <i>-4,8</i> |
| Services | 455.101 | 454.530 | -0,1 | 491 | 445 | -9,4 |
| <i>di cui:</i> | | | | | | |
| <i>Transports</i> | <i>70.403</i> | <i>66.716</i> | <i>-5,2</i> | <i>153</i> | <i>145</i> | <i>-5,2</i> |
| <i>Trade</i> | <i>77.623</i> | <i>73.460</i> | <i>-5,4</i> | <i>119</i> | <i>104</i> | <i>-12,6</i> |
| <i>Homecare and homework activities</i> | <i>2.938</i> | <i>3.576</i> | <i>21,7</i> | <i>2</i> | <i>2</i> | <i>-</i> |
| Totale | 912.410 | 874.940 | -4,1 | 1.207 | 1.120 | -7,2 |

Source: Inail.

Temporary agency workers in industry and services: EBITEMP observatory 2009

| | Industria | Servizi | Totale | <i>Di cui mortali</i> |
|------|-----------|---------|--------|-----------------------|
| 2002 | 3.352 | 6.910 | 10.262 | 10 |
| 2003 | 5.160 | 7.814 | 12.974 | 10 |
| 2004 | 6.883 | 6.156 | 13.039 | 16 |
| 2005 | 7.142 | 6.396 | 13.538 | 8 |
| 2006 | 8.822 | 7.356 | 16.178 | 10 |
| 2007 | 9.913 | 8.470 | 18.383 | 13 |

Facts and figures: Sectors

Accidents at work by types of contract, 2004-2008

| Total accidents | | | | | | |
|---|----------------|----------------|----------------|----------------|----------------|-----------------|
| Type of contract | 2004 | 2005 | 2006 | 2007 | 2008 | Var % 2008-2004 |
| Apprenticeship | 26.548 | 26.146 | 26.905 | 26.367 | 23.975 | -9,7 |
| Self-employed | 124.111 | 121.123 | 116.544 | 106.738 | 101.479 | -18,2 |
| Subordinate | 808.794 | 785.677 | 776.502 | 770.647 | 740.919 | -8,4 |
| Self-employed, economically dependant (parasubordinate) | 7.276 | 7.075 | 8.207 | 8.658 | 8.567 | 17,7 |
| Total | 966.729 | 940.021 | 928.158 | 912.410 | 874.940 | -9,5 |
| Fatal accidents | | | | | | |
| Type of contract | 2004 | 2005 | 2006 | 2007 | 2008 | Var % 2008-2004 |
| Apprenticeship | 26 | 26 | 30 | 27 | 27 | 3,8 |
| Self-employed | 276 | 222 | 251 | 212 | 210 | -23,9 |
| Subordinate | 1.013 | 1.018 | 1.038 | 948 | 863 | -14,8 |
| Self-employed, economically dependant (parasubordinati) | 13 | 14 | 22 | 20 | 20 | 53,8 |
| Total | 1.328 | 1.280 | 1.341 | 1.207 | 1.120 | -15,7 |

The legal framework: 3 periods

- A first traditional approach characterized by the necessity to enact the general principles stated by the Constitution, the Civil Code and the transposal of the first EC regulations.
- A long approach characterized by plentiful and sophisticated laws most of them corresponding to the “formal” transposal and implementation of EU binding standards and directives. This process has undoubtedly arose the level of OSH awareness and formal protection of workers, irrespective of their particular status. It brought to the introduction of the core of framework directive (and its particular implementation directives) commitment for building a culture of prevention in Europe.
- A new philosophy, recently started with the adoption of the so called Consolidate Act on OSH (Legislative Decree n. 81/2008), especially in light of the changes introduced by the recent amendments (Legislative Decree No. 106/2009). Indeed this act revised, reorganized and harmonized all relevant national laws in force in compliance with Community directives from an “effectiveness” perspective and besides enlarging the scope of the law protective systems from a contractual and personal point of view, these new regulations are mostly characterized by the necessity to improve the development of managing tools, risk assessment approach and best practices dissemination, taking into account workforce diversities in OSH issues.

Equal treatment and formal protection (1)

DIRECTIVE 91/383/EC INTRODUCED:

- The formal principle of equal treatment between standard and non standard workers;
- The effectiveness principle of a risk assessment prevention approach based on workforce diversity analysis by nationality, work experience, psychosocial maturity and mostly on contractual conditions. Furthermore the introduction of special and supplementary medical surveillance, information and training, according to workers' individual/special group situation.

Equal treatment and formal protection (2)

CONTRACTUAL FACTORS OF VULNERABILITY

The transposal of 91/383 directive formally began in 1996. More attentive observers immediately noticed the limits of implementation, which was considered partial and merely formal, neglecting the fact it was not a merely formal statement by means of which the temporary workers are applied entire preventive discipline in order to guarantee to these workers adequate protection level considering the fact that normally, in comparison with permanent workers.

More detailed provisions regarding health and safety protection for atypical workers are contained in numerous provisions of the 'Biagi Law' (Law n. 30/2003 and Legislative decree n. 276/2003) which played a crucial role in the modernisation of Italian labour market, introducing and liberalising the use of different sorts of atypical contracts.

Significant measures for protection against industrial accidents are provided for temporary agency work, for self-employed economically dependent workers, intermittent work, job-sharing, contracting and subcontracting.

Equal treatment and formal protection (3)

PERSONAL FACTORS OF VULNERABILITY (*age, sex, nationality, disability and psychosocial conditions*)

- As for women, young people and children, migrant and mature workers, apart from peculiar provisions specifically dedicated to each individual group, from a systematic point of view the regulatory approach has been traditionally based on a very sophisticated legislation inspired to control, prevention and prohibition policies in terms of: organisation of working time patterns, ergonomics, skills updating, access to work or to dangerous activities, application of special supplementary education and training in the use of machinery or individual technical equipment; exposure limits to dangerous substances and agents (coherently with the *ratio* of the directives n. 92/85/CE, directive 94/33/CE).
- On the other hand all these personal factors were mostly indistinctly and tacitly contained in the norms on risk assessment, by the use of the term «particular risks».
- As for psychosocial factors, there are no specific legal provisions in matter of mobbing as well as in matter of burn-out. It is noteworthy how the case law reduced the concrete legal paradigm of mobbing within the general provisions of the Civil Law Code provisions OSH (art. 2087 c.c.) and no special laws or agreements were introduced on work-related stress before of the transposal of the European Framework. by the social partners in 2008.

The Consolidated Act: a new philosophy in OSH culture

(1)

THE NEW SCOPE OF THE LAW

The recent approval in Italy of the Consolidated Act on occupational health and safety protection, reorganized, revised and harmonized all the relevant national laws in force, in compliance with Community Directives. It has inevitably become the predominant backdrop for all campaign activities and legal evolution in the field.

Extension of the field of the subjective application (art. 3). The new discipline is interesting for all workers independently from the contractual type binding them to a certain user. Indeed, the measures find their application not only in the subject of so-called “atypical work” , but also in that one of the atypical work till to be interested for the workers which are outside the labour market such as apprenticeship and voluntary work. The new discipline extends further than the traditional area of full and permanent subordination and begins to cover more and more widespread form of flexible, independent and self-employed economically dependent workers.

There also some specific obligations for self-employed/autonomous workers - as “self-protection” - imposing them to use individual protection equipment and ensure self-protection devices as well as the use of appropriate ID containing photos and personal general information in cases of contracting and subcontracting activities.

The Consolidated Act: a new philosophy in OSH culture

(2)

As ratified by the European directive 191/1989, risk assessment is the cornerstone of prevention in the workplace

- A more substantial and effective approach aimed at ensuring the efficiency of protection of vulnerable workers, including the obligation to provide a risk assessment based on equal treatment and workforce diversity, is one of the best results of the Consolidated Act.
- Art. 28 of the legislative decree n. 81 of 2008 indeed foresees that «risk assessment, described in art.17, comma 1 lett. a) also in choosing of labour equipment and of chemical substances and compounds for being used, as well as of the ordering of workplaces, must take into account all risks of labour safety and health, including those which concern groups of workers who are exposed to particular risks, among which there are those which are connected to workrelated stress, [...] pregnant women at work [...]as well as those connected to gender-differences, age, country of origin, type of contract».

The Consolidated Act: a new philosophy in OSH culture

(3)

In cases of contracting, subcontracting, supply and installation of materials and provision contracts, apart from the drafting of the ordinary risk assessment report, the principal employer promotes cooperation and coordination with the contractor and drafts a Unified Interference Risk Assessment Document (DUVRI) which must be dated and must contain the following compulsory elements:

- a report in the assessment of all health and safety risks, which specifies the criteria adopted for the assessment;
- Indication of the prevention and protection measures implemented and the personal protective equipment adopted;
- The programme of measures necessary to improve safety levels over the time;
- Identification of the procedures to implement the measures to be taken and the roles of the company organisation that must apply these procedures;
- The identification of the tasks that expose workers to specific risks, which require recognised professional know how, specific experience, adequate training and preparation;

In the criminal sector: the enforcement of compliance programs and corporate social responsibility.

Best practices and selection of “virtuous employers”

Another important innovation introduced by the law, was the codification of best practices development and dissemination, as a soft law mechanism to improve health and safety standards.

- The definition of good practice varies between Member States due to different OSH systems and legislation, culture, language and experiences. In addition different groups with different interests and level of knowledge have different points of view on good practice in the workplace. In the past the EU-OSHA highlighted the difficulty in finding an exact definition of good practice.
- «organisational or procedural solutions, which are compliant with current legislation and employ good technique; are adopted voluntarily and are aimed at promoting occupational health and safety by reducing risks and improving working conditions; are developed and collected by the regions, the National Institute for Occupational Safety and Prevention (ISPESL), the national Institute for Insurance against Occupational Accidents and the joint bodies; they are approved by the Permanent Consultative Committee as per article 6, subject to a technical review by ISPESL, which ensures its broadest possible dissemination».

Best practices and selection of “virtuous employers”

Art. No. 27 (Evaluation scheme for businesses and self-employed workers)

- “With regard to the Permanent Commission referred to in Art. No. 6, and considering instructions provided by a Joint Committee dealing with the health and safety at work, a risk evaluation system for companies and self-employed workers is to be set up, also taking into account specific activities and criteria (including the sterilization of textile products and surgical tools). In this connection, attention will be paid also to related working experiences and professional skills acquired by means of training programs, pursuant to Art. 21 par. 2, and to contractual provisions and organizational standards dealing with workforce in relation to contract and flexible work arrangements (under Part VIII, Chapter I of the Legislative Decree 10 September 2003, No. 276)”.
- In this light the Permanent Consultative Committee, a ministerial body with advisory and addressing functions, is working on behalf of the law (Art. 27) on the identification of economic sectors and on the definition of individual group criteria for a selection of virtuous stakeholder within the market based no more on formal compliances and certifications, but on the permanent monitoring of their professional capacity in terms of: training activities, use of genuine labour contracts and tenders, accompanied by a quality certification by the Biagi Law.

An implementation of the “Biagi Law” certification?

- The Biagi Law certification is a voluntary administrative process played by the “Certification Commissions (neutral public bodies established within the public universities, the local labour inspectorates and the bilateral bodies) whose main task is the deflation of the use of litigation in labour law matters.
- Starting from a preliminary investigation on the formal content of the contract and an eventual investigation on its practical management, a judgment is issued by the Commissions of Certification. This judgment, which can be positive or negative, aims to check and test the genuineness of the contracts. It has a legal effect in case of litigations on labour matters even if not binding. At a certain stage it can also stop and postpone the inspections in the workplace.