www.adapt.it, 24 April 2012

The Paradoxical Case of an Unsound Reform that Will be Put in Place although No One Likes it.

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Reviewing the regulatory framework governing the employment relations is arguably an arduous task, particularly in Italy. For this reason, the effort of those who commit themselves in carrying out such complex – if important – assignment, in order to help get our country back on track is certainly commendable, even more so if taking account of implications in social, political, and economic terms and the relevance of the issue nationally. Indeed, innovative ideas and forward-thinking ability have never been lacking in this connection. What is needed, however, is to overcome ideological prejudice and social tensions that slow down for no good purpose, the necessary reforms that should lead current developments in labour market. This point, which was already made cogently by Marco Biagi ten years ago, still appears relevant today.

Draft Law No. 3249 of 5 April 2012 presented by the Monti's government has been issued in a particular, and to some respects unique, political context. However, its attempt to move away from business constraints and preconceived notions that have so far penalised Italian companies and workers – who suffer a disadvantage in comparison with their foreign counterparts – is unprecedented. On close inspection, this is perhaps the most remarkable accomplishment of the proposal put forward by the Italian Minister of Labour, Elsa Fornero, who should thus be credited with being brave, reliable, and determined. Leading figures from the labour law community have at once pointed out "a sense of awkwardness resulting from a limited understanding of labour law issues evidenced in a considerable number of interviews, remarks and comments by the President of the Council of Ministers, the Minister of Labour Law, and the Secretary of the State". This statement can be true, even though the list of those mentioned does not appear to be exhaustive. In any case, one cannot agree with those who criticise any attempt to reform without examining the proposals in detail, an attitude which is typical of Italian commentators.

It is also undeniable, however, that objections which concern more technical and legal issues – as is the case of criticisms made to the reform of the Italian labour market – are usually linked to certain ideologies and schools of thought questioning the relationship between capital and labour. The same happens with the Biagi Law and, more recently, with Article No. 8 of Law Decree No. 138/2011, with the latter that represents an innovation in the field of labour law as it empowers decentralized bargaining to lay down – also by means of derogation – provisions that are modelled on the real needs of actors operating in companies at a local level. In a similar vein, the authoritative Italian labour lawyer Gino Giugni had to face strong reservations at the time of drawing up the set of labour law rules known as the "Worker's Statute" (Law No. 300/1970), which was regarded by opponents as "poorly made". Significantly, Law No. 300/1970, that more than forty years ago generated a heated debate concerning its legal and technical content, is now praised for being an outstanding model of conceptual clarity and coherence. This might be sufficient to question the remarks made by labour law experts, according to whom this reform is weak as not being drafted by labour law specialists, thus lacking a conceptual and coherent framework. Like some other labour law reforms put in place in the past (e.g. the Treu Law and the Biagi Law), the legislative measures laid down by Mr. Monti need to go through an initial phase to help us to appreciate and assess its potential, a time over which the impact of "living law" in the real word is evaluated, also in consideration of the existing legal framework. In consequence, the Prime Minister Mario Monti,

who holds a technocratic government at the moment, is right in stating that its proposal is deserving of "a serious analysis rather than snap judgements". Indeed, the Italian labour law system traditionally lacks legal instruments to predict the effects of the proposals put forward. The premise behind Monti's reasoning is, however, likewise questionable, particularly when he states that the reform of the Italian labour market "will have a major and positive impact on the Italian economy". The opening section of the document timely envisages a permanent monitoring and evaluation system of the dynamics of labour market. Nevertheless, one might note that the same monitoring system was also envisioned in the Biagi Law a number of years ago, with this state of affairs that reveals that shortcomings in Italian labour market are neither the result of (countless) provisions nor of the technical content of the rules issued, but rather the limited implementation of existing measures in practical terms. In point of fact, Article No. 17 of Legislative Decree No. 276/2003 (the so-called Biagi Law) provided for a monitoring system for the assessment of labour policies through the analysis of relevant statistics that has never been fully employed by the relevant authorities (the Minister of Labour, local and other competent bodies). The same holds for a number of measures intended to positively affect the main legal institutions in Italian labour law that, after fuelling several ideological debates, have been applied only partly. The Biagi Law offers several examples in this connection: special instruments to help the matching of labour demand and supply (*borsa nazionale del lavoro*), access-to-work contracts for women in southern Italy, apprenticeship contracts for exercising the right and duty to take part in education and training, advanced-level apprenticeship schemes, a record of personal achievement (*libretto formativo del cittadino*), occupational and training standards, skills certification schemes, a further cooperation between public and private bodies in the labour market, the licensing system for temporary work agencies, an innovative income-support system to financially support workers made redundant who refuse to enter into new positions or take part in training programmes. Draft Law No. 3249 has revived – and to some extent amended – all of these legal institutions. Nevertheless, they are doomed to remain unenforced if discussed just within the legal circles and without the involvement of political institutions, operators and actors from industrial relations. As far as the amendments made to contractual schemes are concerned, the proposal envisages some constraints on the conclusion of certain contractual arrangements, a move that characterized Romano Prodi's government a number of years ago. In this sense, lessons from the past have remained unheard. Paradoxically, limitations in the use of temporary employment contracts and project work (*lavoro a progetto*), and the difficulty faced by employers at the time of stabilizing the position of permanent workers, penalized both employers who abide by the law and workers who remained unemployed at the end of the maximum duration of fixed-term contracts (36 months). Evidently, this state of affairs is not generated by the recourse to flexible and temporary forms of employment, and will inevitably cause the upsurge of a shadow economy. In strengthening the sanctions for violation of the rules, increasing the cost of flexibility and increasing the amount of "red tape", this reform might lead to increased levels of precariousness and undeclared work, as well as to a widespread recourse to outsourcing, issues that were successfully addressed by the Biagi Law and the Treu Law.

The way the regulation of apprenticeship has been dealt with deserves special mention. This form of employment has been regarded as the most widely used instrument to help young people enter the labour market. The excessive focus on the details of the reform, and the proposal for a single employment contract (*contratto unico*) that has been the subject of a lively, although pointless, debate, have led the Ministry of Labour and social partners to neglect the recent amendments made to the 2011 Consolidated Act on apprenticeship. Such amendments have been acknowledged in Draft Law No. 3249. Yet we are still at the planning stage and the implementation is far from being completed. This is a serious issue because at the end of the transitional period (25 April 2012), and in the absence of provisions regulating this forms of employment contract, employers in many industries will no longer be able to stipulate apprenticeship contracts. To be more precise, they will be able to do so, but without envisioning instruments such as the record of personal achievement, occupational and training standards, and skills certification schemes, which are already in place at

an international level. This aspect further upholds the assumption that provisions, be they adequate or not, are doomed to have a limited impact in practical terms without social actors or institutions that implement them effectively.

Briefly, mention should be also made of the debate centred on Article 18 of the Workers' Statute, which captured the attention of both media and public opinion, as this situation backfired on those arguing for it to be repealed or amended profoundly. Indeed, limited attention is given to the issue in Draft Law No. 3249, save for serious limitations to the levels of flexibility at the time of hiring (the so-called entry flexibility) which fails to explain the consultation process between the government and the social partners. For large companies that already fall within the scope of application of Article No. 18, the intervention of the legislator will heighten the sense of uncertainty of employers and those operating in the labour market more generally, discouraging them from providing stable employment, which should be the main goal of the reform. Small-sized companies will suffer a disadvantage from this state of play with regard to both levels of flexibility (at the time of hiring or dismissing workers). Over the last months, I have tried to explain that focusing on Article No. 18 – particularly in the current economic and political context – might be counter-productive. In this sense, one might recall the teachings of Marco Biagi, who always argued for the need to resort to common sense in envisaging interventions that would not affect the modernisation of the labour market or jeopardize the dialogue between law-makers and social partners. He used to say "Why didn't I make reference to Article No. 18? The reason is quite simple. The White Paper made a passing reference to Article 18, but it was not regarded as a key aspect, even though it shows a bias towards its amendments. I think that re-instatement is no longer applicable. It is just a sort of symbol, a deterrent measure with no power of discouraging dismissals. Indeed, its deterrent nature lies in the fact that it promotes fraudulent practices. Worldwide, unfairly dismissed workers are entitled to compensation. This is done under civil law, pursuant to which the only way to deal with the damage suffered by workers is to grant them the payment of compensation – regardless of the amount and the waiting time. Notwithstanding its marginal role, one might ask why we still discuss Art. 18. Actually, I do not think that this topic should be discussed. We had better focus on some other, and far more relevant, issues".

Still on the same issue, the struggle over unfair dismissals (Art. 18 of the Workers' Statute) allowed the Government to repeatedly (and naively?) assert the efficacy of the reform, on the assumption that, if the reform is criticized by everyone, it has got the balance right. This is the position of the Minister of Labour Elsa Fornero and the Prime Minister Mario Monti, who a few days ago in the Wall Street Journal maintained that "the fact that it has been attacked by both the main employers association and the metalworkers union, part of the leading trade union confederation, indicates that we have got the balance right". In our opinion, this is the heart of the problem. The idea that a reform is balanced because it makes everyone unhappy is paradoxical. The need to adapt to the societal changes has not been fully addressed, and the reform basically promotes once and again the same pattern of open-ended employment relationship which characterized Taylorism and Fordism over the last century.

The truth is that the Labour Market Reform is not poorly made or technically inadequate, but simply conceptually wrong because it draws on the assumption that it is possible to include diversified production and work processes within a single (or prevailing) and open-ended employment relationship, which for Mr. Monti himself no longer exists as labeled as "boring". In this way, employment relations in coordinated and continuative work or autonomous work will not be concluded also in cases where they will be needed. Temporary work is limited to exceptional cases and to temporary needs, and incentives for access-to-work contracts for disadvantaged workers are repealed. Part-time work and other forms of employment relationships (including the use of voucher system and on-call work) will also be limited, although over the years, they contributed to legalize undeclared work.

On reflection, however, the recourse to flexible and temporary employment is allowed only on the condition that "exit" flexibility is enhanced, also thanks to a reform of the unemployment benefit

system. No other possibility is given. A half-way solution, as the one proposed in the Draft Law No. 3249 would end up damaging businesses as well as workers. Younger workers and those currently forced out of the labour market will bear the brunt of the reform and, accordingly, they will no longer be pushed towards "precarious" employment but rather towards "illegal" and "undeclared" work. Today, labour legislation still does not fully satisfy either of parties to the employment relationship. Workers feel more insecure and precarious than in the past. Employers believe that the regulatory framework is unsuitable to face the challenges posed by globalisation and new markets. Despite the innovations introduced by the Treu Law and the Biagi Law, there is profound dissatisfaction with a very complex body of law, that does not provide workers with the necessary protection, hampering the dynamism of production processes and labour organisation. Against this background, it would be foolish to push for a radical reform of the labour market that will probably just remain on paper. Overindulging in reforms is certainly a lesser evil than partisanship and ideology that characterized the recent years of the Biagi Law, but at the end of the day, it is perhaps just as damaging and counterproductive. The truth is that today workers and businesses need a very simple regulatory framework, with effective rather than formal rules, to be complied with by everyone and contributing to fostering mutual trust and active collaboration at the workplaces.

A competitive economy must rely on highly-motivated workers that give their best, must invest in their skills and adaptability, rather than on a fixed protection system. This is what job stability really means. Stability should be based on mutual advantage rather than on legal impositions which are already largely overcome in real working environments. For instance, Art. 18 is now applicable only to an increasingly limited number of workers and it does not apply in the case of closing down of companies or transfer of undertaking.

The fact that the Labour Market Reform makes everyone unhappy should not be regarded as a positive feedback, rather as a serious weakness of a provision imposed by the Government which reduces the role of the social partners and that a free system of industrial relations in regulating employment relationships. Their role was recently strengthened by Art. 8 of Decree 138 of 2011. The fierce opposition of the social partners to the enforcement, even on an experimental basis, of Art. 8 gave the Government the opportunity to put in place the new labour law reform. With hindsight, it is a sort of poetic justice worthy of the most famous tales of Aesop. The trade unions that recently refused to enforce Art. 8, have now had to accept not only a substantial reform of the pension system that had been considered efficient so far, but also an unprecedented attack to Art. 18 of the Workers' Statute. The Draft Reform is therefore so far only a half-way reform and is still incomplete. It is up to Parliament to decide whether to go ahead with "exit" flexibility or to go back to "entry" flexibility. The only thing we know is that with a half-way reform, we will be stuck half-way.

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