LABOUR LAW REFORM IN ITALY AND THE PROBLEM OF PRECARIOUS EMPLOYMENT

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1. Introduction

Although in Italy today precarious employment has become almost the norm, the legal framework is still based on the traditional form of open-ended salaried employment which discriminates other types of contract from the point of view of social protection. According to some experts such an approach is not in line with the provisions of the Italian Constitution which attributes equal dignity to all forms of work.[2] From this point of view there is an evident incongruence between the legislative provisions, especially as regards the social protection of open-ended contracts, and the progressive liberalisation of "atypical" or flexible contracts. Until 2003 there were about 14 different employment contracts corresponding to approximately 33 forms of atypical employment, after the reform of 2003 non-standard employment resulted in 22 types of contract corresponding to 48 atypical forms of employment.[3] In spite of the ongoing debate about the need to reduce the number of contractual typologies, only access-to-work contracts (*contratti di inserimento*) were eliminated by the Fornero reform in 2012.

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[2] Art. 4, comma 2, Art 35, comma 1 of the Italian Constitution, A. Vallebona, La riforma del lavoro, 2012, Giappichelli, Torino, p. 10

[3] L. Tronti, F. Ceccato, Il lavoro atipico in Italia: caratteristiche, diffusione e dinamica, http://host.uniroma3.it/facolta/economia/db/materiali/insegnamenti/430_2694.pdf, p. 34.

The main problems deriving from the deviations from the standard open-ended contract are the "dualisation" of the labour market resulting in an increasing polarisation between low-income precarious workers and those working on open-ended contracts, and the abuse of flexibility in order to disguise salaried employment as various forms of self-employment. As shown in Table 1, the wage difference between atypical (quasi salaried) employees and employees on open-ended contracts is significant.

Table 1 *Annual average remuneration for quasi salaried employees and those on open-ended contracts (euros)*

	Quasi salaried employees	**Employees on open-ended contracts**
Gender		
Men	12,735	17,898
Women	7,420	14,243
Age groups		
Younger than 24	3,179	11,400
25-29	6,391	13,677
30-39	9,839	15,635
40-49	11,497	16,954
50-59	14,225	18,476
Older than 60	19,797	19,462
Geographical distribution		
North	11,217	16,856
Centre	10,073	16,166
South	7,108	15,266
Other employment		
No	8,656	16,309
Yes	15,903	15,033
Total	**9,908**	**16,290**

Source: Isfol, 2010, Istat, 2010

Another significant issue in the Italian system is the exclusion from the employee protective legislation of atypical workers with most of them belonging to vulnerable

categories, like young workers, older workers, women, people with disabilities and immigrants. Other critical issues in the Italian labour market include major regional disparities, high levels of youth and female unemployment, low labour mobility, low job-to-job mobility and long-term unemployment, especially for the disadvantaged categories. The transition from one job to another is usually easier than the move from unemployment to employment.

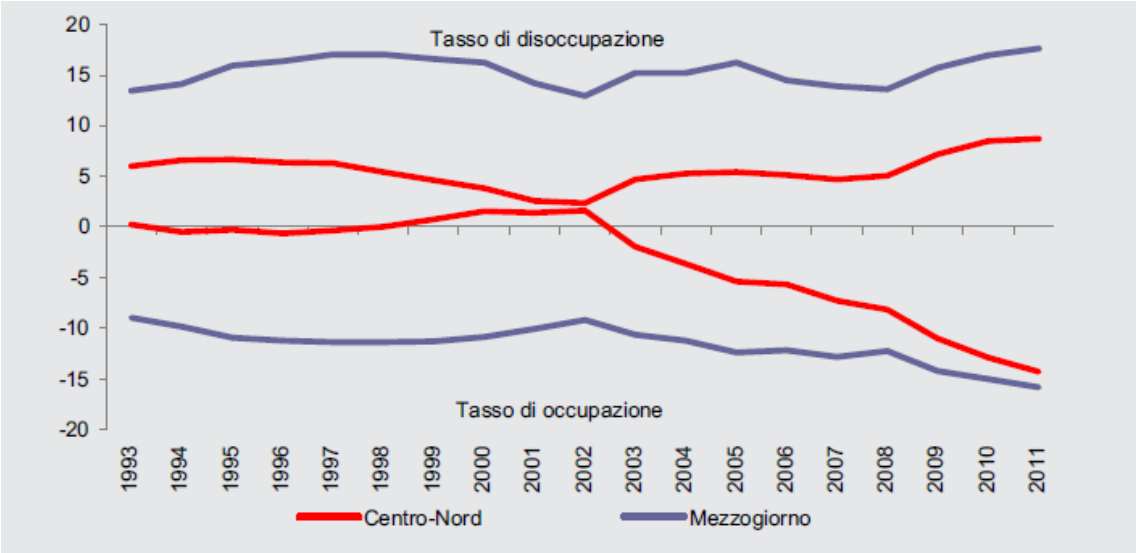
In the past year the unemployment rate has significantly increased. According to the latest Istat[4] data there were 1.4 million more unemployed in 2012 than in 1977. The number increased from 1,340,000 to 2,744,000 and the increase concerned both men (+863.000) and women (+541.000). The worst affected are young people aged between 15-24 whose unemployment rate increased from 21.7% in 1977 to 35.3% in 2012. The percentage of young people not in employment, education or training (NEET) is high compared to the other EU countries. In 2010 they amounted to 22.1% against a European average of 15.3%. In 2010 the figure was 10.7% for Germany and 14.5 for both the UK and France. In Italy more than 2.1 million young people are inactive, and the South of Italy is particularly affected. Compared to northern Italy, the percentage of inactive young people is almost double in the South: 35% in Sicily, 31.8% in Calabria and 29.2% in Apulia.[5]

These problems have been periodically highlighted by the European Commission in the national recommendations. In order to tackle them, Italian governments have opted for greater flexibility in employment. Some steps in this direction were taken in 1997 with Act no. 196 (the Treu package). Further liberalisation measures were undertaken in Legislative Decree no. 276/2003 and Act no. 183 of 4 November 2010.

[4] http://www.clandestinoweb.com/sondaggi-da-tutto-il-mondo/104932-istat-14-milioni-di-disoccupati-in-piu-in-italia-in-35-anni-senza-lavoro-4-giovani-su-10/

[5] Istat, Annual report 2012, p. 124.

Table 2 *Difference between employment /unemployment rates of people aged 18-29 per geographic area, 1993-2011*



Source: Istat[6]

2. Recent developments in Italian labour law reform

On 5 April 2012 in response to the letter from the European Central Bank of 5 August 2011 the Monti government presented a proposed law[7] for the reform of labour law in Italy, which after a long legislative process was enacted with Act no. 92 of 28 June 2012, known as the Fornero reform.[8] The main aims were to combat the improper use of atypical contracts, to update the dismissals regulation to current economic realities, and to simplify and make more efficient and universal the system of safety-net measures. The pursuit of these goals resulted in the tightening of the rules governing access to the labour market in order to prevent abuses of flexible contracts in exchange for a certain relaxation of the rules governing dismissals. This paper will briefly outline

[6] Istat, Annual report 2012, p. 123.
[7] Legislative Decree no. 3249.
[8] Published in OJ No. 136 of 3 July 2012.

the main points of the Fornero reform concerning the novelties in matter of atypical contracts, dismissals and safety net measures.

2.1. Regulation of atypical contractual forms: less flexibility in access to the labour market

a) Fixed-term contracts

Certain changes to the regulation of fixed-term contracts were introduced by Legislative Decree no. 368, 6 September 2001, transposing European Directive 1999/70/CE. While confirming that "full-time open-ended salaried employment is the standard form of employment",[9] it introduced new measures, increasing flexibility of this contractual form while attempting to counterbalance them with some limitations. In particular, under these provisions, there was no longer a need to justify recourse to the first fixed-term contract of less than 12 months. In addition the period by which a fixed-term contract could be extended beyond its original deadline to meet organisational needs was increased from 20 to 30 days for contracts lasting less than six months, and from 30 to 50 days for those exceeding six months. On the other hand, the waiting period between successive fixed-term contracts was also extended, and was now set at 60 days for contracts of less than six months and 90 days for those exceeding six months.[10] However, this limitation could be set aside and the waiting period could be reduced to 20 or to 30 days if the collective agreements signed by the (comparatively) most representative social partners at sectoral level adopted such a provision. The maximum duration of fixed-term contracts was 36 months (including extensions and renewals). This period was calculated considering the periods of temporary agency work with the same employer for the same kind of job. Moreover, the conclusion of fixed-term (agency work) contracts, not justified by reasons recognised by the law, could be allowed by collective agreement signed by the (comparatively) most representative social partners at inter-sectoral level in case of: a) start-up of new activities, products or services; b) substantial technological changes; c) extension of high value research projects; d) renewal or extension of large job orders. In the case of the unlawful

[9] Art. 1, para 1 Legislative Decree no 368, 2001.
[10] Before the amendments the terms were 10 and 20 days respectively.

conclusion of fixed-term contracts the sanction was the conversion into an open-ended contract and employees were entitled to a compensation ranging from 2.5 to 12 times their last monthly salary. This was intended as compensation for any loss on the part of the workers, including social contributions.[11] The alternative option was the establishment of quantitative threshold. Fixed-term contracts could not be concluded for more than 6% of the workers in any unit of production. This limit was adopted in various collective agreements in order to establish the maximum admissible threshold for the use of fixed-term contracts.[12]

With the Fornero reform, on the other hand, one important innovation is that the employers willing to hire fixed-term workers are required to pay 1.4% to finance new Social Insurance for Employment (*assicurazione sociale per l'impiego*) as from 2013. Employers will be reimbursed for this contribution for an amount up to six months' salary in the case of the conversion of the employment contract into an open-ended contract, or if the worker is hired within six months of the termination of the fixed-term contract.[13]

b) *Access-to-work contracts*

The access-to-work contract (*contratto di inserimento*)[14] was the only contractual form suppressed by Fornero reform. It was intended to increase the employment of disadvantaged workers by providing employers with the incentives for hiring such people. Now these categories of workers may be hired by means of apprenticeship contracts or temporary agency work.

c) *Apprenticeships*

Apprenticeships are considered the main means of access to the labour market for young people (Art. 1(1)). The traditional Achilles heel of these contracts is the insufficient training provided. As for the duration, a minimum period of six months is

[11] S. Clauwaert, I. Schomann, The crises and ntional labour reforms: a mapping exercise. Country report: Italy. ETUI, 2013.
[12] T. Treu, Flessibilità e tutele nella riforma del lavoro, WP CSDLE "Massimo D'Antona", University of Catania, on –line journal, 155/2012, p. 23.
[13] See more on this point M. Tiraboschi, Italian Labour Law after the so-called Monti-Fornero Reform (Act no. 92/2012), Labour Studies, vol. 1, no. 3/4, Adapt Labour Studies E-Book Series, 59
[14] Articles 54 to 59 of Legislative Decree 10 September 2003, No. 276.

foreseen except for seasonal work, for which only vocational apprenticeship contracts are admissible. This period can be reduced in the case of seasonal activities and other exceptional circumstances specified by law. A new limitation consists of the prohibition for employers with more than 10 employees from hiring more than one new apprentice at a time if the percentage of apprentices hired on open-ended contracts over the previous 36 months is less than 50% (30% for the first 36 months after the reform). Dismissals for justified reasons, just cause, resignation or for failure to pass the trial period are not taken into account. Apprentices hired in breach of this legislative provision are deemed to be hired on an open-ended contract from the beginning of the employment relationship. The purpose of the norm is to ensure adequate training for potential employees and discourage the inappropriate use of this type of contract. It is expected that over time the obligation to hire 50% of the apprentices in a firm will provide enterprises with a sufficient number of skilled workers and they will not need new apprentices for some time. On the other hand, the previous regulations have been relaxed, reflecting the intention to extend the use of this form of contract with a view to promoting skilled employment.[15] Following the reform, employers with more than 10 employees are allowed to hire three apprentices for every two employees, compared to the previous ratio of 1:1. For employers with fewer than 10 employees the ratio is 1:1. Employers who do not employ qualified workers at all or who employ fewer than three such workers can hire no more than three apprentices.[16]

d) *Part-time work*

The norms on part-time work have been modified several times mainly with regard to clauses allowing for a more flexible distribution of tworking time (*clausole flessibili e elastiche*).[17] The so-called Stability Law 2012, Act No. 183, 12 November 2011 reintroduced the option of stipulating such clauses as from 2012, delegating to collective bargaining the task of specifying the terms and conditions. To strengthen protection for part-time workers, the Fornero reform introduced supplementary

[15] Treu, op. cit. p. 28.
[16] S. Clauwaert, I. Schomann, op. cit.
[17] *Clausole elastiche* are the clauses that make it possible to increase the number of working hours in a given period; *clausole flessibili* allow a redistribution of the existing working hours without increasing the total number.

provisions to Legislative Decree No. 61/2000. In particular it delegated to collective bargaining the task of specifying the terms and conditions by which employees have the right to change or repeal these clauses. The following categories of workers are granted the option of reverting to the previous working hours regime:

- Workers with children up to 13 years of age
- Part-time students
- Workers with an oncological condition with a reduced capacity to work
- Workers with a spouse, child or parent with an oncological condition
- Workers with a family member with a disability.

e) *On-call work*

In this case flexibility has been considerably reduced. Employers are allowed to make use of on-call working only in the presence of specific conditions laid down in collective agreements. There are no limits for employees younger than 24 and older than 55 years (before this the thresholds were 25 and 45 years respectively). In order to prevent abuses and working in the black economy, employers are required to inform the Labour Inspectorate (*Direzione Provinciale del Lavoro*) each time they make recourse to this form of work, communicating the duration in advance. On-call work at weekends, during the summer holidays, and during the Easter and Christmas holidays has been abolished.

f) *Project work* (coordinated and continuous employment / quasi-salaried employment)

This is a form of work that is easily confused with salaried employment. In order to combat the abuse of project work, the Fornero reform requires the project and the expected final results to be clearly defined. The work specified in the project may not correspond to the routine activities of the firm's salaried employees. These activities may not require a low level of skill or be of a repetitive nature. The sanction for the breach of this provisions, including the absence of the project, is the conversion of the employment relationship into a salaried employment contract, backdated to the beginning of the relationship. To ensure the principle of non-discrimination, project

workers are entitled to the same remuneration as comparable salaried workers in the same sector according to the collective agreements signed by the most representative social partners at inter-sectoral, sectoral and in some cases local level.

g) *Self-employed persons with a VAT number*

This contractual form[18] is often used to circumvent employee protective legislation. According to the new provisions, self-employed persons with a VAT number (*partita IVA*) will be deemed to be coordinated and continuous autonomous workers (or project workers) with possible conversion into an open-ended employment contract. This sanction is applied in the presence of the following conditions: the relationship lasts for at least eight months per year in two consecutive years; the worker earns more than 80% of his/her income from this activity in the period of two consecutive years; the employee has a permanent workplace on the premises of the company even if the employment relationship is not exclusive.

However the scope of application of this new norm is reduced due to the provisions excluding legal presumption in the following cases: when the job is characterised by knowledge acquired through specific training or by practical skills acquired on the job; when the work is carried out by a person whose annual income from self-employment is no less than 1.25 times the minimum income taken to determine whether the worker is liable to pay social security contributions.[19] This annual income amounts to approximately 18,000 euros (14,930 x 1.25); when it consists of the performance of activities requiring enrolment in public registries of professionals. In the case of failure to respect these clauses the payment of higher social contributions may be required.

h) Associated workers (associazione in partecipazione)

This kind of commercial contract is also subject to frequent misuse in order to disguise salaried employment. According to this type of contract, the associated worker contributes to the business by providing labour in exchange for a share of the profits. Associated workers have the right to a share of the profits of the enterprise in proportion

[18] The activity of self-employed workers with a VAT number is regulated by Art. 2222 of the Italian Civil Code.
[19] S. Clauwaert, I. Schomann, op. cit.

to their contribution and can periodically check the accounts. The Fornero reform introduces limits to this type of contract, so that there can be no more than three associated workers in the same business, unless these workers are a spouse, a family member related to the principal within the second degree of kinship, or a second-degree ascendant. In cases of violation of this rule, all the contracts of associated workers can be converted into open-ended employment contracts. The presumption of salaried employment arises when an associated workers does not share in the profits of the enterprise, when they do not have regular access to the company accounts, when the work performed is of low skill and is not characterised by knowledge acquired by specific training, nor by practical skills acquired on the job.

i) *Occasional and accessory work*

In the case of occasional work, the worker is not allowed to earn more than 5,000 euros per calendar year per client and may not exceed 30 working days per year (or 240 hours for personal care services). In the case of accessory work the annual limit of 5,000 euros is applied to all the clients making use of services of the worker, representing a significant restriction on the use of this form of contract. Moreover, if the work is performed for a firm or for professional service providers, the individual contract may not exceed 2,000 euros per annum. Recourse to this contractual form is allowed for all kinds of work.

One of the main problems of precarious employment in Italy is still the transition to stable employment. In the period 2008-2010, 37% of atypical workers made the transition to open-ended salaried employment, while 43% remained in the same condition and 20% became unemployed. The situation is more critical for those who are in search for work. The probability of making the transition from unemployment to salaried employment declined from 21% in the period 2006-2008 to 16% in the period 2008-2010. Those worst affected are young people and women. Apprenticeship contracts, providing training for the employee and tax breaks for the employer, continue to be one of the best ways to facilitate the transition to stable employment. However, the economic recession has also affected this type of employment and in 2010 there was a

decrease of 8.9% in the number of people hired as apprentices.[20] It is difficult to predict the impact of apprenticeship contracts on employer preferences for atypical contracts. In all probability employers will opt for the least expensive type of contract. However, the measures adopted do not necessarily guarantee the stabilisation of precarious workers.

2.2. Regulation of dismissals: greater flexibility with regard to dismissals

The Fornero reform introduces important innovations regarding dismissals by modifying Art. 6 and 7 of Act no. 604/66 and Art. 18 of the Workers Statute (Act no. 300/1970). In particular the procedure of obligatory conciliation is introduced. The sanctions for unfair dismissal, especially reinstatement that has been the subject of intense debate for a long time, vary depending on the type of dismissal, that can be disciplinary, discriminatory or for justified objective reasons. So the innovative nature of the reform concerns not the causes legitimating the dismissal but the sanctions applied.[21] The reformulated Art. 18 broke the automatic link between unjustified dismissal and reinstatement, specifying the cases in which reinstatement remains[22] and when it can be substituted by compensation.

Disciplinary dismissals are those relating to serious contractual breaches by the worker. Such a dismissal may be considered null and void if the judge ascertains the absence of a justified subjective reason or just cause, or when an alternative less radical sanction can be imposed pursuant to collective agreements or codes of conduct. In this case the judge may order reinstatement or on employee's request the compensation of up to 15 months' salary. Moreover, the employer is required to pay the accrued salary from the date of dismissal to reinstatement for a maximum of 12 months' salary plus social contributions.

In another type of case, when the judge ascertains the lack of a justified subjective reason or just cause presented by the employer, the unjustified dismissal may be not recognised null and void and the employee is entitled to compensation of 12 to 24 months' salary with social contributions. In the case of discriminatory dismissal, if there is no justification or procedural defect, the dismissal is null and void and the

[20] Isfol notizie, n1/2012.
[21] Treu, op. cit., p. 49.
[22] Treu, op. cit, 52.

employee is entitled to compensation of 12 to 24 months' salary plus social contributions.

In cases in which the judge establishes that there is no cause for dismissal, another sanction alternative to dismissal may be applied. In this case the sanction of reinstatement and compensation continues to be available, with compensation of not less than five months' salary. The innovative element is that the maximum compensation cannot exceed 12 months' salary, which safeguards employers in the event of judicial delay. Moreover, the employer is required to pay social security contributions from the day of the dismissal up to reinstatement including any interest due. Another regime (restated Art 18 (5) of the Workers Statute) is applied in other cases when the judge ascertains that there are no reasons for just cause or subjective justified reason without prejudice to the procedural rules laid down in Art. 7 of Act no. 300/70. In this case the workers are only entitled to compensation but not to reinstatement.

Discriminatory dismissal. In case of discriminatory dismissal the norms remain the same as in the previous provisions. Such a dismissal is deemed to be null and void regardless of the size of the enterprise and motivations of the employer, and the employer is obliged to reinstate the worker. These provisions are applicable also in the case of executives of the company. The employment is deemed to be terminated if the employee does not resume work within 30 days of notification by the employer. In place of reinstatement, the worker can opt for 15 months' salary as compensation. The lack of a dismissal notice in writing also results in the dismissal being deemed null and void and the obligation of reinstatement. The judge may also order compensation for unfair dismissal that cannot be less than five months' salary plus social contributions, with the deduction of any amounts earned by the worker in the period after the dismissal.

Dismissals for justified objective reasons (economic dismissal). In contrast with the previous provisions, the employer is now obliged to inform the workers of the reasons for dismissal at the time of the dismissal. The obligation of conciliation is another innovative element introduced by the Fornero reform. The employer is required to communicate to the employee and to the Labour Inspectorate (Direzione Territoriale del Lavoro) the decision to terminate the employment contract, and indicate the reasons and any possible measures to help the dismissed worker to find alternative employment.

Within seven days of receipt of this communication, the Labour Inspectorate must bring the employer and the employee before the Commission of Conciliation of the Provincial Labour Inspectorate in an attempt to seek an agreement between the parties, taking alternatives to dismissal into consideration. The worker may be assisted by a trade union representative or lawyer. This procedure can last up to 20 days from the day on which the Labour Inspectorate convenes the parties for the meeting. This term may be prolonged by mutual agreement between the parties. If the conciliation fails, the employer can dismiss the employee concerned and the dismissal will take effect from the date on which the employer informed the employee and the Labour Inspectorate of the dismissal. The procedure may be suspended for up to 15 days in the case of a justified reason on the part of the employee, supported by adequate documentation. In cases in which the judge establishes that there are no justified reasons for dismissal, the employer is required to reinstate the employee and pay compensation amounting to 12 months' salary. In other cases where the dismissal is found to be unfair, the employer must pay compensation of between 12 to 24 months' salary.

When a dismissal is recognised as invalid pursuant to Art. 18(6) of the Statute, in the case of lack of adequate motivation, in violation of the procedure of conciliation or disciplinary procedure, the judge may award the workers compensation equivalent to between 6 and 12 months' salary. In case of the verification of the lack of justification for the dismissal, more severe sanctions may be applied, including reinstatement.

The law introduces some innovative elements also with regard to the regulation of collective dismissals (Act no. 223/1991). In particular, the communication of the list of employees placed on mobility lists must take place within seven days of the notification of dismissal to each worker concerned. Procedural shortcomings of the notification to trade unions can be remedied by means of subsequent agreement with the unions. In cases in which the dismissals are carried out without written notice of dismissal, reinstatement may be ordered. In case of non-respect of trade union procedures, the protection for economic dismissals will be applied, including compensation amounting to 12 months' salary. In cases of the violation of criteria of choice of workers to be placed on mobility schemes, reinstatement will be applied, as in cases of illegitimate disciplinary dismissals.[23]

[23] Tiraboschi, Italian Labour Law after the so-called Monti-Fornero Reform op. cit.

3. Reform of safety-net measures

Safety-net measures include income support for employees in the case of loss or temporary suspension of the employment relationship. The traditional pillars of the Italian system are the Wage Guarantee Fund *(Cassa integrazione guadagni)* and mobility benefit (indennità di mobilità). However, these measures were designed mainly for large and medium-sized enterprises that are not so numerous in the Italian socio-economic structure, characterised by the prevalence of small and micro enterprises. As a result, a large number of workers remained excluded from the system. The Fornero reform aimed to move towards universal safety-net measures, comparable to other European countries, in order to protect the worker rather than the workplace. It aimed to reduce public expenditure on social safety-net measures, to increase the participation of the enterprises in funding the system, and to reinforce the system of welfare bargaining as a substitute for the public system becoming obligatory for enterprises with more than 15 employees. [24]

The innovative features of the reform include the schemes that will enter in force at different times. In order to deal with the need to achieve universal coverage by the social security system, a social insurance for employment scheme (*Assicurazione sociale per l'Impiego*, hereinafter ASPI) was set up, entering into force on 1 January 2013. This is intended to become the sole form of income support in the case of loss of employment, replacing existing unemployment benefits. The ASPI scheme covers salaried workers and some other categories like apprentices, members of worker cooperatives with a salaried employment relationship and artists. Agricultural workers remain excluded as they are enrolled on special registers. Indennità di mobilità (Act no. 223/1991), that was often accompanied by serious misuse of funds, has been eliminated.

To gain access to ASPI workers must be in salaried employment and lose their jobs involuntarily but be ready to seek and accept a suitable job. This means that the requisites are similar to those in the previous norms regulating unemployment benefit. Compared to the past the Fornero reform extended the list of beneficiaries to include apprentices and artists. From the point of view of contributions, the potential

[24] D. Garofalo, Guida alla riforma degli ammortizzatori sociali, June 2012.

beneficiaries of ASPI still need to have two years' seniority and at least 52 weeks in employment over the past two years. The duration of ASPI benefits will be increased progressively over the three-year period 2013-2015, up to a maximum of 12 months for those up to the age of 50, and 18 months for those over the age of 55. However, the allowance, limited to €1,119.32 a month, will be reduced by 15% every six months. Contributions will range from 1.31 % to 1.4 % for open-ended contracts. For quasi-salaried employment, the statutory income support scheme will be strengthened. For those who have not accrued the rights to full ASPI benefits, a mini ASPI is provided. To gain access to this benefit it is sufficient to accrue 13 weeks of social contributions in the 12-months before redundancy. Compared to the previous provisions, the two-year seniority requirement has been taken away. This benefit is paid monthly in proportion to the number of weeks of contributions over the past year.

For the purpose of funding of ASPI, from 1 January 2013 employers are required to pay a certain amount in case of termination of an open-ended employment contract for reasons other than resignation. This amount is calculated as 50% of the monthly ASPI benefit for each 12 months of seniority over the past three years.[25]

Another novelty is represented by bilateral solidarity funds[26] which are designed for workers in sectors where there is no Wage Guarantee Fund. These bilateral funds do not have their own legal personality and are managed by the state insurance body, INPS. These bilateral benefits are to be set up in all enterprises with more than 15 employees not covered by the Wage Guarantee Fund. The intention is to extend this type of benefit to all micro enterprises. These new funds should provide support for employees in small enterprises facing total or partial unemployment because of temporary economic problems. Most probably this income support will be delivered by means of solidarity contracts that already provide employees in some small enterprises with income support equivalent to up to 60% of their regular pay. In reality these funds are not a complete novelty in the Italian legal system. In different sectors not covered by the Wage Guarantee Fund there are forms of income support managed by bilateral bodies providing vocational training and unemployment benefit. These bodies will probably be involved in the management of the bilateral funds considering that the

[25] Art 2, par 31, Act no. 92/2012.
[26] Art 3 comma 4, Act no. 92/2012.

reform assigns to bilateral collective bargaining the task of filling in the details of how funds are to be collected and how benefits are to be distributed.

The most representative union and employers' organisations at national level are required to conclude agreements setting up bilateral funds within six months of the reform coming into force. The Senate has proposed with alternative systems for sectors that already have solidarity funds. In addition,, on a trial basis for 2013-2015, it gives workers in these sectors the possibility, if their work is suspended because of the crisis, to receive ASPI benefits provided that the joint funds provide income support amounting to 20% of the benefits. [27]

To sum up, the results of the safety-net reform in this field represent a partial adjustment to existing mechanisms rather than a radical reform.[28] The system of safety-net measures continues to be fragmented and complex and public expenditure in this connection is low in comparative terms.[29] Proposals to make safety-net measures universal encountered resistance on the part of those defending sectoral groups and insiders. The lack of resources reflects the role of bargaining by the social partners: once again the interests of insiders were protected by the most representative organisations and a significant difference persists between safeguards for insiders and outsiders. The new ASPI benefit is funded partly by means of taxation on fixed-term employment (1.4%). Even if the ASPI scheme is designed as a safety net with universal coverage, and with all its shortcomings represents a step towards the universalisation of protection in the case of unemployment, there is still a significant distance from other European countries in terms of protection regimes for precarious workers and in terms of the extension, duration and amount of benefit. As rightly pointed out by a number of scholars, in most European countries the system of safety-net measures was constructed gradually in periods of relative economic stability, while in Italy it was built in times of recession.[30] As a result the positive examples from other countries may be seen as a top-down imposition in a different institutional and socio-economic context affected by the economic crises.

[27] S. Clauwaert, op. cit.
[28] A. Vallebona, La riforma del lavoro 2012, Giappichelli, 2012, Turin.
[29] Treu, op. cit., p. 22.
[30] Treu, op. cit, pp. 16-19.

4. Concluding remarks

In a socio-economic context in which working life is becoming extended due to the increased longevity and the postponing of the retirement age, it is essential to rethink the models of work-life balance and social safety-net measures. The concept of flexicurity should be reassessed and as for flexibility, a compromise between flexibility of access, flexibility in dismissals, and welfare policies should be found. In particular considering demographic changes it is necessary to favour continuity of employment for older people on the labour market while promoting access and where possible stability of employment for younger workers. For this reason flexible forms of work, especially part-time and apprenticeship contracts, should be further promoted and social safety nets should be progressively extended to all categories of atypical workers, moving gradually towards universality. At first glance the Fornero reform seems to be a mix of somewhat contradictory measures in the field of labour and social security law. While some norms are aimed at increasing worker protection, others tend to limit it. This suggests that after the reallocation of legal safeguards and financial costs, the overall balance between security and flexibility remains more or less the same.

What can be expected is that because of new regulations of atypical employment contracts and increased costs for using them, employers may opt for certain types of atypical contracts that are cheaper compared to those in use before the reform. This will not necessarily result in the stabilisation of precarious workers, but rather an increased turnover of staff and quantitative variability of the workforce in response to labour market fluctuations. In this regard the German option of internal flexibility within the standard employment contract, especially in the form of working time regulation, is interesting as it shows that there are alternative instruments to flexibility in access to and exit from the labour market. Such an approach enables employers to maintain the workers in the enterprise while encouraging investment in human capital.[31]

In any case, it is too early to assess the real impact of the reform. It was enacted at a time of acute economic crisis when the compromise between the parties was more difficult and any innovation proposal tended to be viewed with suspicion. It is not surprising that the Italian government displayed considerable caution, avoiding radical

[31] M. T. Carinci, Il rapporto di lavoro al tempo della crisi: modelli europei e flexicurity “all’italiana” a confronto, Giornale di diritto del lavoro e relazioni industriali, n. 136, XXXIV, 2012, 4, 539- 564.

reform in favour of partial reallocation of resources in the area of labour law and welfare. Clearly Italy is not an exception, as many countries have adopted temporary measures and only a few of them have made recourse to radical reforms. In the case of Italy the economic crisis has highlighted the inherent structural problems such as fragmentation and polarisation of the labour market and following the reform a reasonable compromise between labour and social policies has still not been found. There are a number of reasons for this, including insufficient economic resources for innovation and restructuring, weak investment in active employment policies, and a lack of political consensus. Finally it is common knowledge that the reform of individual institutions is not sufficient to ensure a successful comprehensive reform programme. Arguably Italy is still in need of such a radical programme, but it does not appear to be high up on the political agenda at present.