

THE MINIMUM WAGE IN ITALY DURING THE EUROZONE CRISIS AGE AND BEYOND

Marco Tufo

PhD in Labour Relations, University of Siena, Italy

Abstract

During the Eurozone crisis age, the EU has called for the introduction in the Member States of a minimum wage as a tool to reduce the social dumping. Taken into account the EU suggestions, the debate around the minimum wage flourished also in Italy. Here, a legal minimum wage does not exist, as the minimum wages for each workers category are set by non-erga omnes collective agreements, which are nevertheless extended by judges to all employees. The present paper aims to rebuild the debate on the minimum wage in Italy during the crisis age and beyond, offering a solution in order to reach a balance between the demands of the labour market and those of industrial relations.

Durante la era de la crisis de la zona del euro, la Unión Europea ha pedido que se introduzca un salario mínimo en los Estados miembros como medio para reducir el social dumping. teniendo en cuenta las sugerencias de la Unión Europea, el debate sobre el salario mínimo también ha florecido en Italia. Aquí, no existe un salario mínimo legal, ya que el salario mínimo de cada categoría de trabajadores se establece mediante convenios colectivos sin efectividad erga omnes, que sin embargo los jueces extienden a todos los empleados. El presente trabajo tiene como objetivo reconstruir el debate sobre el salario mínimo en Italia durante la era de la crisis y más allá, ofreciendo una solución para lograr un equilibrio entre las demandas del mercado laboral y las de las relaciones laborales.

Título: El salario mínimo en Italia durante la crisis de la eurozona y más allá

Key words: minimum wage, Italy, European Union, crisis, collective bargaining, non-erga omnes effects, Trade Union representativeness, legal minimum wage.

Palabras clave: salario mínimo, Italia, Unión Europea, crisis, negociación colectiva, efectividad non-erga omnes, representatividad sindical, salario mínimo legal.

IUSLabor 1/2018, ISSN 1699-2938, p. 205-231.

Summary

1. Introduction
2. The Italian way to the minimum wage
3. Minimum wage, Trade Union representativeness and decentralisation of collective bargaining
4. The Italian legal provisions on minimum wage
5. The EU wages' policies
6. The minimum wage beyond the crisis
7. Conclusions
8. Bibliography

1. Introduction

Italy is one of the few European countries without a legal minimum wage¹ but this has not ever been perceived as a real problem. Indeed, the Italian minimum wage is set by collective agreements, whose wages are applied to the most part of employees, on the one hand, due to the high coverage of collective agreements² and, on the other hand, because of the action of the Italian jurisprudence (*infra*).

Nevertheless, during the crisis age some factors have determined a new emergence of the legal minimum wage issue. Among others, it is worth mentioning the increase of the working poor³, the drop in salaries⁴ and the high number of people living below the poverty line⁵. These phenomena, with the precarisation of labour⁶, could find their solution in the introduction of a minimum wage set by law.

¹ The others are Austria, Cyprus Denmark, Finland, Norway and Sweden (see SPEZIALE, V., “Il salario minimo legale”, in *WP CSDLE “Massimo D’Antona”.IT – 244/2015*, p. 2; CAMPANELLA, P., “Salari e contrattazione collettiva nel governo della crisi europea”, in *Cultura giuridica e diritto vivente, Special issue*, 2015, p. 190; BOERI, T., LUCIFORA C., “Salario minimo e legge delega”, available at: <http://www.lavoce.info/archives/30187/salario-minimo-e-legge-delega/> (Accessed 21 February 2018); MAGNANI, M., “Salario minimo”, in CARINCI, F. (ed.), *La politica del lavoro del Governo Renzi. Atti del X Seminario di Bertinoro-Bologna del 23-24 ottobre 2014*, Adapt University Press, 2014, p. 538; LEONARDI, S., “Salario minimo e ruolo del sindacato: il quadro europea fra legge e contrattazione”, in *Lavoro e Diritto*, 2014, n° 1, p. 189).

² CAMPANELLA, P., “Salari e contrattazione...” cit., p. 194. According to EUROFOUND, *Living and working in Italy*, available at: <https://www.eurofound.europa.eu/country/italy#collective-bargaining> (Accessed 22 February 2018), 18 October 2017, the collective wage bargaining coverage in Italy for employees, and without distinction about levels, is between 97 and 99 per cent (N.B. these data are referred to the years 2010 and 2013). However, there are no precise data on the collective wage bargaining coverage. For example, according to SPEZIALE, V., “Il salario minimo legale...” cit., p. 4, BOERI, T., LUCIFORA, C., “Salario minimo...” cit., and LEONARDI, S., “Salario minimo...” cit., the percentage for employees is 80 per cent.

³ As it is known «The working poor are defined as the proportion of employed persons living below the poverty line» (see <https://stats.oecd.org/glossary/detail.asp?ID=4841>, accessed 20 February 2018). The percentage of working poor was the 16 per cent of employees in 2013, with an increase of the 2 per cent of the Gini coefficient (BOERI, T., LUCIFORA, C., “Salario minimo...” cit.). LEONARDI, S., “Salario minimo...” cit., p. 196, provides the lower percentage of 12,5.

⁴ MENEGATTI, E., *Il salario minimo legale. Aspettative e prospettive*, Giappichelli, Turin, 2017, p. 117-118. According to BOERI, T., LUCIFORA, C., “Salario minimo...” cit., this phenomenon affected especially the lowest wages.

⁵ According to DE MARTINO, V., “Poverty in Italy (2016)”, available at: https://www.istat.it/en/files/2017/07/Poverty-in-Italy_2016.pdf?title=Poverty+in+Italy+-+13+Jul+2017+-+Full+text.pdf (Accessed 20 February 2018), 13 July 2017, 1,4 million and 742.000 Italian people were in absolute poverty in 2016.

The present paper aims to offer a general overview of the minimum wage in Italy during the crisis age and after.

In the first part the Italian minimum wage system is exposed, with particular reference to the role of jurisprudence. The second part is dedicated to the relationships between minimum wage, Trade Union representativeness and collective bargaining, in order to understand how industrial relations can affect the minimum wage. In the third part, the specific Italian dispositions on minimum wage are analysed, especially those about non-standard workers, while the fourth part copes with the minimum wage issue in the EU. Finally, the actual debate on minimum wage is shown and the opportunity of introducing a legal minimum wage is faced, taking into account the present situation of the Italian labour market.

2. The Italian way to the minimum wage

It can be said that the Italian minimum wage system is a jurisprudential creation.

The starting point is Article 36, paragraph 2, Italian Constitution, which states that «Workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence». Even if this disposition does not use the expression “minimum wage”, there is no doubt about the intention of the founding fathers to guarantee a minimum wage through Article 36. This emerges from the debate which took place into the Constituent Assembly, where the possibility to set minimum wages by law was discussed but also criticized by those who preferred leaving the issue to collective bargaining⁷. To avoid more contrasts on this point, nothing was specified in Article 36, which does not specify both “how” and “if” to set minimum wages⁸. However, if we look at constitutional collective labour law dispositions it is possible to better understand the real reason

⁶ GUARRIELLO, F., “Verso l’introduzione del salario minimo legale?”, in CARINCI, F. (ed.), *La politica del lavoro del Governo Renzi. Atti del X Seminario di Bertinoro-Bologna del 23-24 ottobre 2014*, Adapt University Press, 2014, p. 327.

⁷ MENEGATTI, E., *Il salario minimo... cit.*, p. 62-63; MAGNANI, M., “Il salario minimo legale”, in *Rivista Italiana di Diritto del Lavoro*, 2010, n° 4, I, p. 775. For the reconstruction of the debate about Article 36 into the Constituent Assembly see FALERI, C., “Le origini ideologiche e culturali del principio della giusta retribuzione”, in GAETA, L. (ed.), *Prima di tutto il lavoro. La costruzione di un diritto all’Assemblea Costituente*, Ediesse, Rome, 2014, p. 166-181.

⁸ ICHINO, P., “La nozione di giusta retribuzione nell’articolo 36 della Costituzione”, in *Rivista Italiana di Diritto del Lavoro*, 2010, n° 4, I, p. 734.

behind the formulation of Article 36⁹. Indeed, Article 39 of Italian Constitution, declaring the freedom of association, establishes, at paragraphs 2, 3 and 4, a legal mechanism to give collective agreements *erga omnes* effects, namely to extend their effectiveness to all employees framed into a category referred to into the collective agreement. In particular, the mechanism provides the registration of Trade Unions at local and central offices, as they can become legal persons and then negotiate collectively, but only through a unified representation that is proportional to their membership. However, this disposition, which would have been enacted through legislation, has never been put into effects, mainly because Trade Unions did not agree on the mechanism of registration, which would have meant to be supervised by the public power, as it happened during the fascist era. Therefore, still today Italian collective agreements are binding only for those workers who are members of Trade Unions which have concluded such contracts, as well as for employers who join an employers' organisation which has done the same¹⁰.

In the light of this, although the high rate of Trade Union representativeness guaranteed wide collective bargaining coverage¹¹, there was still the possibility that the wages set in collective agreements would not have been applied to specific employees in some cases¹². As a consequence, here were in fact employers to set wages often under those collectively negotiated.

To overcome this hurdle the Court of Cassation proposed an interpretation which managed to extend the effectiveness of collective agreements' wages to all employees. The jurisprudence basically coordinates three sources: the legislation, the Constitution and collective agreements. The starting point is Article 2099 Italian Civil Code, which states that when wage is not set by the individual contract, it has to be determined by the judge. In other words, this disposition confers to the judge discretion in deciding the wage measure. However, courts had to find a criterion to set wages. This was identified in the concept of "fair wage" expressed by Article 36 Constitution. But, again, the former concept risked to appear vague without a parameter able to make clear what «a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence» was. Thus, jurisprudence sought help from national collective agreements, claiming that such remuneration was that agreed by collective bargaining because this parameter showed

⁹ MENEGATTI, E., *Il salario minimo...* cit., p. 63-64; BALLISTRERI, M., "La nuova contrattazione collettiva e il salario minimo legale in Italia", in *Revista de Estudios Económicos y Empresariales*, 2013, n° 25, p. 197; MAGNANI, M., "Il salario minimo legale..." cit., p. 776.

¹⁰ GAETA, L., *Il lavoro e il diritto. Un percorso storico*, Cacucci, Bari, 2013, p. 47.

¹¹ MAGNANI, M., "Il salario minimo legale..." cit., p. 782.

¹² MENEGATTI, E., *Il salario minimo...* cit., p. 64.

the balance between employers and Trade Unions¹³. In this sense, the national collective agreements' wages are extended to all employees, included those who are not members of Trade Unions and those whose employer does not apply any collective agreement, not being member of any employers' association¹⁴. Moreover, the judge who does not intend to apply the collective agreement's wage has to give a specific reason for this decision¹⁵, while no reason is required when a higher remuneration is decided as minimum wage¹⁶.

There are, however, some critical points connected to this thesis.

The main is to identify the specific components of wages set in collective agreements, which can be considered by the judge to define the minimum wage. As a general rule, courts use three fundamental voices: basic salary; cost of living allowances; 13th month pay. On the contrary, additional remunerations in general are excluded from this calculation¹⁷. However there are significant variations in the selection of voices by courts to build the minimum wage. Indeed, the major part of jurisprudence agrees on defining the "fair wage" case by case, so that the judge could set the minimum wage even in a measure different than that present in sectoral collective agreements¹⁸. In this sense, it is left to the judge's assessment to include additional remunerations in the calculation of minimum wage¹⁹. Moreover, sometimes the "fair wage" is defined according to the social and economic context in which the worker is placed, as well as the dimension and the geographic location of the undertaking²⁰. A case in point is the

¹³ *Ivi*, p. 67-68; BIASI, M., "Il salario minimo legale nel jobs act: promozione o svuotamento dell'azione contrattuale collettiva?", in *Argomenti di Diritto del Lavoro*, 2015, n° 2, p. 377-378; BELLAVISTA, A., "Il salario minimo legale", in *Diritto delle Relazioni Industriali*, 2014, n° 3, p. 743-744; BALLISTRERI, M., "La nuova contrattazione..." cit., p. 198-199; GIUGNI, G., *Diritto sindacale*, Cacucci, Bari, 2012 p. 142; ANGIELLO, L., *La retribuzione. Artt. 2099 – 2102*, in *Il Codice Civile. Commentario*, in SCHLESINGER P. (ed.), Giuffrè, Milan, 1990, p. 16; RICCI, G., "La retribuzione costituzionalmente adeguata e il dibattito sul diritto al salario minimo", in *Lavoro e Diritto*, 2011, n° 4, p. 642 ff. See for example Italian Court of Cassation 11 January 2012, n° 153; Italian Court of Cassation 13 November 2009, n° 24092. According to BALLISTRERI, M., "La nuova contrattazione..." cit., p. 198 and RICCI, G., "La retribuzione..." cit., p. 637, the first decision in this sense was Italian Court of Cassation 21 February 1952, n° 461.

¹⁴ See Italian Court of Cassation 4 December 2013, n° 27138.

¹⁵ See Italian Court of Cassation n° 27138/2013 cit.

¹⁶ MENEGATTI, E., *Il salario minimo...* cit., p. 79.

¹⁷ MAGNANI, M., "Salario minimo..." cit., p. 540; EAD., "Il salario minimo legale..." cit., p. 777-778. See Italian Court of Cassation n° 27138/2013 cit.

¹⁸ BELLAVISTA, A., "Il salario minimo legale..." cit., p. 744.

¹⁹ See Italian Court of Cassation 26 August 2013, n° 19578.

²⁰ DELFINO, M., *Salario legale contrattazione collettiva e concorrenza*, ES, Naples, 2017, p. 35 ff.; BIASI, M., "Il salario minimo..." cit., p. 379; RICCI, G., "La retribuzione..." cit., p. 648-649; MAGNANI, M., "Il salario minimo legale..." cit., p. 778; ICHINO, P., "La nozione..." cit., p. 743.

jurisprudence on Southern Italy's minimum wage. Here judges have fixed the "fair wage" even the 15-20 percent less than the national collective agreements wages, reasoning this solution on the lower cost of living in Southern Italy compared to Northern Italy²¹.

In the light of this, two are the main critical points in the jurisprudential reconstruction shown above. The first is the wide discretion granted to judges in the definition of the minimum wage, due to the possibility for courts to use many different criteria depending on the concrete case which is at stake²². The second is the lack of a universal idea of minimum wage, because the reference for each specific case is the sectoral collective agreement, so that the "fair wage" varies according to workers' categories²³.

3. Minimum wage, Trade Union representativeness and decentralisation of collective bargaining

The jurisprudential thesis on minimum wage tries to compensate the lack of general coverage of collective agreements, with special regard to wages. However, this mechanism works until Trade Unions enjoy enough representativeness giving them the strength to negotiate satisfying wages levels. But during the last decades the Trade Unions membership dropped, due to many factors, as the precarisation of the labour market and the bureaucratisation and politicisation of Trade Union themselves²⁴.

The issue of representativeness has had some consequences on collective bargaining, especially during the crisis age.

First, this situation has led to the destructuralisation of collective bargaining levels and their competences with a growing role of plant collective agreements²⁵. Indeed, the Italian industrial relations system has been characterised for a long time by the predominance of the national collective agreement, while the plant level collective

²¹ BELLAVISTA, A., "Il salario minimo legale..." cit., p. 744-745.

²² *Ivi*, p. 745; MAGNANI, M., "Salario minimo..." cit., p. 541; EAD., "Il salario minimo legale..." cit., p. 778-779, 782. Indeed, this discretion has led to a "downward trend" in jurisprudence during the last years (SPEZIALE, V., "Il salario minimo legale..." cit., p. 3; LEONARDI, S., "Salario minimo..." cit., p. 208; RICCI, G., "La retribuzione..." cit., p. 647 ff.; GUARRIELLO, F., "Verso l'introduzione..." cit., p. 328).

²³ DELFINO, M., *Salario legale...* cit., p. 29.

²⁴ For a research on the Italian Trade Unions membership during the last decades, see CECCHI, D., BRATTI, M., FILIPPIN, A., "Diseguaglianza e sindacalizzazione", in DOSI, G. AND MARCUZZO, C. (eds.), *L'economia e la politica. Saggi in onore di Michele Salvati*, Il Mulino, Bologna, 2007, p. 189-205.

²⁵ Actually, this trend is diffused through all Europe (SPEZIALE, V., "Il salario minimo legale..." cit., p. 3) and it is sometimes connected to the introduction of a legal minimum wage (MAGNANI, M., "Salario minimo..." cit., p. 537).

agreement has been often delegated on specific subjects²⁶. In particular, in 1993 the Social Partners and the Government transposed this system into an agreement²⁷, giving plant level the function to define the relationship between productivity and wages²⁸. Then, in 2009, the Social Partners signed two collective agreements which gave plant level collective agreements more functions, concerning again wages and companies' crises, with the aim of stimulating the economic growth in response to the economic crisis²⁹. However, the tension towards the decentralisation of collective bargaining reached its peak in 2011. Indeed, the same objectives above mentioned were persecuted through a cross-sectoral agreement signed on the 28th of June, which provided the possibility for the plant level collective agreement to derogate the national collective agreement, always in compliance with the rules of the national collective agreement itself³⁰. Then, the new structure of collective bargaining was extended to all workers in August 2011, when the European Central Bank, on the 5th of the same month, sent a letter to the Italian Government asking to improve the role of the plant level collective agreement, especially in regulating wages and working conditions³¹. As a consequence, the Berlusconi Government approved the Legislative Decree 138 on the 13th of August 2011, converted in Law 148/2011, 14 September 2011. Its Article 8 provides the possibility for Social Partners to conclude plant collective agreements (so-called "proximity contracts") able to derogate national collective agreements as well as law, not just setting better working conditions but also worse. It is worth noting that this power is limited to specific subjects and should be exercised in compliance with the Italian Constitution, the EU and International law³².

²⁶ VISCOMI, A., "Organizzazioni sindacali, relazioni industriali e contrattazione collettiva", in GAETA, L., VISCOMI, A., ZOPPOLI, A. (eds.), *Istituzioni di diritto del lavoro e sindacale*, Giappichelli, Turin, 2015, p. 20–21.

²⁷ Protocollo 23 luglio 1993 tra Governo e Parti Sociali – Politica dei redditi e dell'occupazione, assetti contrattuali, politiche del lavoro e sostegno al sistema produttivo.

²⁸ *Ivi*, point 2, paragraph 3.

²⁹ Accordo Quadro riforma degli assetti contrattuali, 22 January 2009; Accordo Interconfederale, 15 April 2009. This trend has been confirmed with the next cross-sectoral agreement (Accordo Interconfederale tra CONFINDUSTRIA e CISL e UIL e UGL del 21 novembre 2012), not signed by CGIL. In the same way see the so-called Testo Unico sulla Rappresentanza, concluded on the 10th January 2014, that is the last cross-sectoral agreement signed by CONFINDUSTRIA, CGIL, CISL and UIL.

³⁰ See Accordo Interconfederale fra CONFINDUSTRIA e CGIL, CISL e UIL, 28 June 2011, in particular point 7.

³¹ SENATORI, I., "Multinationals and National Industrial Relations in Times of Crisis: The Case of FIAT", in *International Journal of Comparative Labour Law and Industrial Relations*, 2012, vol. 28, n° 4, p. 470. The complete text of the letter is available at http://www.legacoopsardegna.it/OldSite/back_end/files_news/1314.pdf (Accessed 21 February 2018).

³² See Article 8, paragraph 2-bis, Law Decree 138/2011.

In the late 2011, the decentralisation of collective bargaining found another validation. Indeed, in 2009, Fiat, in order to face the crisis and restructure the Italian production sites, proposed to Trade Unions a deal through which an upgrade of the plants, maintaining the occupations, would have been developed, in exchange for the adoption of specific plant level regulations on work organisation, without any possibility for Trade Unions to negotiate those conditions³³. This proposal was signed by Trade Unions in Fiat but not by the most representative Union, FIOM-CGIL, creating a different regime of collective regulations, because, on the one hand, the new agreement was binding for the signatory parties, while, on the other hand, the agreement of 2008, concluded also by FIOM, was still valid for this latter Union. Therefore, Fiat management decided to test the effective consensus on the proposed agreement, namely its enforceability, through a ballot, which was held by the signatory Trade Unions. But the result was not satisfying for Fiat as, even if the proposal was agreed by the majority of workers in the plants of Pomigliano and Mirafiori, the number of workers who voted against the proposal was higher than that of FIOM members³⁴. Thus, Fiat adopted a stratagem to make the proposed agreement enforceable, namely to end its affiliation to Confindustria, the main employers' association in Italy. In this way, collective agreements signed by Confindustria were no more binding for Fiat, due to the non-*erga omnes* effects of Italian collective agreements. Then, Fiat established a new collective bargaining system in the firm, concluding on the 13th December 2011 a plant collective agreement (renewed on the 8th March 2013), defined as "first level specific collective agreement" (*contratto collettivo specifico di lavoro di primo livello*), which provided a second level collective bargaining on subjects fixed by the first level³⁵.

Anyway, it is excluded that the decentralisation of collective bargaining influences the minimum wage issue³⁶. Actually, Article 8 in some ways may affect wages, as «productive and wages increases»³⁷ are included among the "purposes" of the "proximity contract". Moreover, even the generic reference to the possibility for "proximity contracts" to rule the "workers participation" could have some effects on wages, if we consider this expression as connected to forms of risk participation. However, this hypothesis seems to be not practicable both because not included among the subjects of "proximity bargaining" and due to its difficulty to comply with Article

³³ SENATORI, I., "Multinationals and National..." cit., p. 476; see *amplius* DE LUCA TAMAJO, R., "Accordo di Pomigliano e criticità del sistema di relazioni industriali italiane", in *Rivista Italiana di Diritto del Lavoro*, 2011, n° 4, II, p. 800.

³⁴ SENATORI, I., "Multinationals and National..." cit., p. 481.

³⁵ *Ivi*, p. 481-482; VISCOMI, A., "Organizzazioni sindacali..." cit., p. 25.

³⁶ See for example CAMPANELLA, P., "Salari e contrattazione..." cit., p. 194, who points out that the Fiat case regarded the working time issue but not wages.

³⁷ See Article 8, paragraph 1, Legislative Decree 138/2011, converted in Law 148/2011.

36 Constitution³⁸. In fact, as we have seen, Article 8 gives to plant level collective bargaining much space, but always in compliance with the Italian constitutional principles. Further, the effects of the Fiat case on wages are still questioned³⁹.

Another issue concerning wages, collective bargaining and Trade Unions representativeness during the crisis age is important to underline.

The reference is to the diffusion of a relatively new practice in industrial relations linked to the weakness of the most representative Trade Union to negotiate working conditions. Indeed, employers begun to conclude, and apply, so-called “pirate collective agreements”⁴⁰. Basically, employers negotiate and sign national collective agreements with Trade Unions that have no representativeness, setting worse working conditions than those fixed in national collective agreements for the same sector or category by the most representative Trade Unions⁴¹. “Pirate collective agreements” can of course be legally applied by employers, due to the private law nature of Italian collective agreement. The issue is particularly sensitive because “pirate collective agreements” set wages lower than those agreed before, so that they are in competition with collective agreements concluded by the most representative Trade Unions⁴².

4. The Italian legal provisions on minimum wage

The lack of a minimum wage set by law has provoked not only the impossibility to build a universal concept of minimum wage for employees but also for workers in general. It should be observed that the cost of employment and the level of employees’ wages are influenced by the competition of atypical jobs which has increased during the last decades in the Italian labour market. However, jurisprudence has not faced this issue, excluding the non-subordination area from the scope of Article 36 Italian Constitution⁴³.

³⁸ DELFINO, M., *Salario legale...* cit., p. 98-99; BIASI, M., “Il salario minimo...” cit., p. 382-383.

³⁹ BIASI, M., “Il salario minimo...” cit., p. 383.

⁴⁰ CAMPANELLA, P., “Salari e contrattazione...” cit., p. 194.

⁴¹ PERA, G., “Note sui contratti collettivi « pirata »”, in *Rivista Italiana di Diritto del Lavoro*, 1997, n° 4, I, p. 381.

⁴² MENEGATTI, E., *Il salario minimo...* cit., p. 85-86; BELLAVISTA, A., “Il salario minimo legale...” cit., p. 745-746; MARESCA, A., “Accordi collettivi separati: tra libertà contrattuale e democrazia sindacale”, in *Rivista Italiana di Diritto del Lavoro*, 2010, n° 1, I, p. 31; SANTONI, F., “La revisione della disciplina dei rapporti di lavoro”, in CARINCI, F. (ed.), *La politica del lavoro del Governo Renzi. Atto II*, Adapt University Press, 2014, p. 137; TOMASSETTI, P., “Arginare la piaga dei contratti pirata”, available at: <http://www.bollettinoadapt.it/arginare-la-piaga-dei-contratti-pirata/> (Accessed 21 February 2018), 16 June 2014.

⁴³ MENEGATTI, E., *Il salario minimo...* cit., p. 89-90.

To cope with this phenomenon the legislator has intervened in some occasions, in order to avoid that the wages of non-standard workers could drop under the collective agreements' wage level.

A first disposition towards this direction is Article 36 Workers' Statute, concerning employees performing in the scope of public procurements. Indeed, if employers intend to keep benefits and contracts granted by public authorities, they have to insert in the procurement contract a social clause, which obliges the employer to apply to employees the working conditions set in collective agreements in force for the same category or geographical area. More recently⁴⁴, the legislator has established the same rule for entrepreneurs who conclude supply contracts with the public administration, but as a direct obligation, namely without the social clause mechanism⁴⁵.

A similar approach has been taken for cooperative societies. Here, the participation of these societies to tender procedure has led them to conclude different collective agreements with non-representative Trade Unions into the same enterprises, with the aim of reducing wages. Therefore, it has been set the rule according to which cooperative societies must apply wages conditions not less than those fixed in collective agreements signed by the most comparatively representative Trade Unions at national level⁴⁶.

Even for homeworkers there are rules regarding minimum wage. Their wages must be those fixed in collective agreements and, when there are no collective agreements' wages, by a regional commission composed of workers' and employers' representatives⁴⁷.

Another case of atypical job's minimum wage concerned "contract project work" (*contratto di lavoro a progetto*). This contract was introduced in 2003 through the Biagi Reform, with the aim of bringing out undeclared work hided in labour relationship placed in the so-called "grey-area" between subordination and self-employment. In general terms, "project work" provided a performance set previously in a project linked to the enterprise activity and for a fixed period. In 2012, the Monti-Fornero Reform introduced the rule according to which the remuneration of "project workers" must be

⁴⁴ See Article 118, paragraph 6, Legislative Decree 163/2006, 12 April 2006.

⁴⁵ MENEGATTI, E., *Il salario minimo...* cit., p. 95.

⁴⁶ See Article 7, paragraph 4, Law Decree 248/2007, 31 December 2007, converted in Law 31/2008, 28 February 2008; DELFINO, M., *Salario legale...* cit., p. 61; MENEGATTI, E., *Il salario minimo...* cit., p. 93; BELLAVISTA, A., "Il salario minimo legale..." cit., p. 746; MAGNANI, M., "Salario minimo..." cit., p. 553; EAD., "Il salario minimo legale..." cit., p. 790-791; ICHINO, P., "La nozione..." cit., p. 762.

⁴⁷ See Article 8 Law 877/1973; MAGNANI, M., "Il salario minimo legale..." cit., p. 789.

proportionate to the quality and quantity of the performance and in any case not less than minimum wages set in national and plant level collective agreements signed by the most comparatively representative Trade Unions at national level⁴⁸.

Other examples of minimum wage are those emerging from temporary agency work, job on call and casual work paid through voucher⁴⁹. In the first and second cases the worker receives a monthly compensation when she/he is not active, set by collective agreements or by the Ministry of Labour after a consultation of the most comparatively representative Trade Unions at national level⁵⁰. In the third case workers were remunerated with vouchers – to be exchanged with money at special offices - whose value was 10 Euros per hour, with the exception of rural workers whose minimum wage was decided by the most comparatively representative Trade Unions at national level⁵¹. After the proposal of referendum presented by CGIL, aimed to erase this figure because of its distorted use made by employers, the Government abolished vouchers' casual work⁵². However, in August 2017, the Gentiloni Government introduced a new casual work contract, so-called PrestO, similar to the previous but without vouchers as remuneration⁵³. It is worth noting that also PrestO has a sort of minimum wage. In fact, on the one hand, for some performances, as domestic jobs, elderly care or babysitting, the minimum wage is 10 Euros per hour⁵⁴, while, on the other hand, for the other performances⁵⁵, it is 9 Euros per hour, again excepting rural workers whose minimum wage is decided by the most comparatively representative Trade Unions at national level⁵⁶.

Even some special figures of professionals have rules on their remunerations.

On the one side, the legislator has provided that the “fair wage” of non-employee journalists must be set by a commission composed of members from the Social Partners

⁴⁸ See Article 63, paragraph 1, Legislative Decree 276/2003, 10 September 2003; DELFINO, M., *Salario legale...* cit., p. 62; MENEGATTI, E., *Il salario minimo...* cit., p. 90-91; MAGNANI, M., “*Salario minimo...*” cit., p. 542; BELLAVISTA, A., “*Il salario minimo legale...*” cit., p. 751.

⁴⁹ MAGNANI, M., “*Salario minimo...*” cit., p. 542; EAD., “*Il salario minimo legale...*” cit., p. 789-790.

⁵⁰ See Articles 16 and 34 Legislative Decree 81/2015, 15 June 2015.

⁵¹ See Article 49 Legislative Decree 81/2015.

⁵² See Article 1 Law Decree 25/2017, 17 March 2017, converted in Law 49/2017, 20 April 2017.

⁵³ See Article 54-*bis* Law Decree 50/2017, 24 April 2017, converted in Law 96/2017, 21 June 2017.

⁵⁴ See Article 54-*bis*, paragraphs 10-11, Law Decree 50/2017, converted in Law 96/2017.

⁵⁵ Some specific type of performances cannot be executed by means of PrestO as, for example, if the employer employs more than five employees, in rural activities, as well as in the building sector or in the scope of procurement contracts (Article 54-*bis*, paragraph 14, Law Decree 50/2017, converted in Law 96/2017).

⁵⁶ See Article 54-*bis*, paragraph 16, Law Decree 50/2017, converted in Law 96/2017.

and Public Authorities, taking into account the quality, the quantity and the characteristics of the performance, as well as the employee journalists collective wages⁵⁷. On the other side, a similar mechanism is provided for lawyers, who have specific parameters set by law for judicial and non-judicial activities carried out for their customers⁵⁸.

Finally, it is worth mentioning the Legislative Decree 136/2016, 17 July 2016, on transnational posting of workers which provides that the same working conditions, included wages, must be applied to workers posted in Italy⁵⁹. In particular, Article 2, paragraph 1, let. e), 1), Legislative Decree 136/2016, specifies that the concept of “working conditions” involves «the minimum rates of pay, included pay due to overtime» as set by legislation and collective agreements. In this sense, even foreign enterprises which post workers in Italy must apply the Italian collective agreements wages, according to the Article 36 Constitution doctrine, with the same limits of Italian employers. However, the disposition is not clear, because it is not said what parameters of remuneration are considered in the “minimum rates of pay” or if this expression is actually referred to national collective minimum wages⁶⁰. Indeed, the Ministry of Labour, through the Labour Inspectorate, has officially pointed out specific elements included in the minimum wage of Legislative Decree 136/2016⁶¹. But it has been observed that some of these elements are not deemed by jurisprudence as components of the “fair wage” and that, in the end, the notion of minimum wage is left, as seen above, to the judge’s discretion⁶². In the same direction, the Legislative Decree 136/2016 provides the principle of equal treatment (included wages) for foreign agency workers performing in Italy⁶³.

⁵⁷ See Articles 1-2 Law 233/2012, 31 December 2012; DELFINO, M., *Salario legale...* cit., p. 66 ff.; MENEGATTI, E., *Il salario minimo...* cit., p. 92; MAGNANI, M., “*Salario minimo...*” cit., p. 553; BELLAVISTA, A., “*Il salario minimo legale...*” cit., p. 752.

⁵⁸ See Article 13 Law 247/2012, 31 December 2012; MENEGATTI, E., *Il salario minimo...* cit., p. 92.

⁵⁹ See Article 4, paragraph 1, Legislative Decree 136/2016.

⁶⁰ ALLAMPRESE, A., ORLANDINI, G., “Decreto legislativo n. 136/2016 recante attuazione della direttiva n. 2014/67 di attuazione della direttiva n. 96/71 sul distacco transnazionale dei lavoratori. Un primo commento”, available at: http://www.cgil.it/admin_nv47t8g34/wp-content/uploads/2016/09/Nota_CGIL_decreto_legislativo_136_2016xdef.pdf (Accessed 20 February 2018), CGIL, Rome, 5 September 2016.

⁶¹ INL, Circolare n. 1/2017, available at: <https://www.cliclavoro.gov.it/Normative/circolare-9-gennaio-2017-n.1.pdf> (Accessed 21 February 2018).

⁶² ORLANDINI, G., “Distacco transnazionale e dumping salariale nell’Unione Europea”, available at: http://www.europeanrights.eu/public/commenti/Bronzini2-Relazione_Orlandini.pdf (Accessed 21 February 2018).

⁶³ See Article 4, paragraph 3, Legislative Decree 136/2016.

5. The EU wages' policies

The necessity of introducing a legal minimum wage has not just raised at national level but also supranational.

In particular, during the Eurozone crisis age, the European Union (EU) has adopted some policies related to the minimum wage issue. It is worth noting that the EU cannot legislate on wages, because the subject of “pay” is explicitly excluded from its competences by Article 153, paragraph 5, TFEU⁶⁴. Neither European Social Partners can negotiate on wages, as Article 155, paragraph 2, TFEU restricts Social Dialogue to the subjects of Article 153 TFEU⁶⁵. Nevertheless, EU has dealt with wages in many occasions. The most famous case is the interpretation of Directive 96/71, 16 December 1996, on posting of workers which provides that employers must guarantee posted workers “the minimum rates of pay” set by law, regulation or administrative provision, and/or by collective agreements or arbitration awards with *erga omnes* effects⁶⁶. It is known that this rule has been read in a “minimalist”⁶⁷ perspective by the European Court of Justice (ECJ), as emerged from the *Laval*⁶⁸ and *Rüffert*⁶⁹ cases⁷⁰. Here the ECJ excluded from the notion of “minimum rates of pay” the wages set by Social Partners through non-universally applicable collective agreements. As a consequence, collective autonomy is pretty downsized concerning the minimum wage in the EU scope⁷¹.

This trend has been confirmed in the wages policies of the EU. Indeed, during the economic crisis, the EU austerity measures, inspired by the Troika⁷² and expressed through ambiguous normative instrument⁷³, invited Member States to intervene on

⁶⁴ MENEGATTI, E., Il salario minimo... cit., p. 24; ID., “Challenging the EU Downward Pressure on National Wage Policy”, in *International Journal of Comparative Labour Law and Industrial Relations*, 2017, vol. 33, n° 2, p. 197; DELFINO, M., Salario legale... cit., p. 123 ff.

⁶⁵ MENEGATTI, E., Il salario minimo... cit., p. 24; ID., “Challenging the EU...” cit., p. 197.

⁶⁶ See in particular Article 3, paragraph 1, lett. c), and paragraph 8, Directive 96/71.

⁶⁷ ORLANDINI, G., “Autonomia collettiva e libertà economiche: alla ricerca dell’equilibrio perduto in un mercato aperto e in libera concorrenza”, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2008, n° 2, p. 249.

⁶⁸ C-341/05 *Laval* [2007] ECR I-11767.

⁶⁹ C-346/06 *Rüffert* [2008] ECR I-1989.

⁷⁰ See also C-319/06 *Commission v. Luxembourg* [2008] ECR I-4323.

⁷¹ ORLANDINI, G., “Autonomia collettiva...” cit., p. 248-249.

⁷² Composed of the International Monetary Fund, the European Commission and the European Central Bank.

⁷³ The reference is to the *Memoranda of understanding* directed to countries which received financial assistance by Troika (Cyprus; Greece; Ireland; Portugal; Romania; Spain) and to Country Specific Recommendations adopted during the European Semester (CAMPANELLA, P., “Salari e contrattazione...” cit., p. 185; GIUBBONI, S., “I diritti sociali alla prova della crisi: l’Italia nel quadro europeo”, in *Giornale*

wages in exchange for financial assistance⁷⁴. The same approach was taken through the Euro Plus Pact of 24th and 25th March 2011, where, with the aim of fostering competitiveness, the agreeing countries should have to «review the wage setting arrangements, and, where necessary, the degree of centralization in the bargaining process» and «ensure that wages settlements in the public sector support the competitiveness efforts in the private sector (bearing in mind the important signalling effect of public sector wages)»⁷⁵.

Strictly speaking, the European debate on the introduction of a legal minimum wage in each Member State is not unrelated to the EU. Indeed, during the crisis age, the issue found space in the discussion of the European Parliament⁷⁶, in documents of the European Commission⁷⁷, as well as in the public declarations of its President, Jean-Claude Juncker⁷⁸, also during the last year⁷⁹, and among the Social Partners⁸⁰. More recently the perspective of introducing a “European” minimum wage has been incorporated in the Social Pillar, where it is proclaimed that Member States shall ensure workers «Adequate minimum wages [...], in a way that provide for the satisfaction of the needs of the worker and his/her family in the light of national economic and social

di Diritto del Lavoro e di Relazioni Industriali, 2014, n° 2, p. 269, footnote 5; RICCI, G., “La retribuzione in tempi di crisi: diritto sociale fondamentale o variabile indipendente?”, in *WP CSDLE “Massimo D’Antona”*.INT – 113/2014, p. 9-10; MAROCCO, M., “Il salario minimo legale nel prisma europeo: prospettive per l’Italia”, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2017, n° 2, p. 342-343; MENEGATTI, E., *Il salario minimo...* cit., p. 31; GUARRIELLO, F., “Verso l’introduzione...” cit., p. 328-329).

⁷⁴ MAROCCO, M., “Il salario minimo...” cit., p. 342-343; MENEGATTI, E., *Il salario minimo...* cit., p. 20; ID., “Challenging the EU...” cit., p. 200-201.

⁷⁵ EUROPEAN COUNCIL, *The Euro Plus Pact. Stronger economic policy coordination for competitiveness and convergence*, Brussels, 24-25 March 2011.

⁷⁶ EUROPEAN PARLIAMENT, *Resolution of 15 November 2011 on the European Platform against poverty and social exclusion*, Strasbourg, 2011, points 46 and 49.

⁷⁷ EUROPEAN COMMISSION, *Employment and Social Developments in Europe 2011*, Publications Office of the European Union, Luxembourg, 2012; EAD., *Employment and Social Developments in Europe 2012*, Publications Office of the European Union, Luxembourg, 2012.

⁷⁸ CAMPANELLA, P., “Salari e contrattazione...” cit., p. 189; BALLISTRERI, M., “La nuova contrattazione...” cit., p. 195.

⁷⁹ KOSTAKI, I., “Juncker urged companies to adopt a minimum wage to help counter “social dumping”, available at: <https://www.neweurope.eu/article/juncker-minimum-salary-country-european-union/> (Accessed 21 February 2018), 24 January 2017.

⁸⁰ ETUC, *Solidarity in the crisis and beyond: Towards a coordinated European trade union approach to tackling social dumping*, Brussels, 2012, p. 5; LEONARDI, S., “Salario minimo...” cit., p. 185.

conditions, whilst safeguarding access to employment and incentives to seek work» but «according to national practices and respecting the autonomy of the social partners»⁸¹.

Closely connected with the minimum wage issue is the concept of “minimum income”.

This expression is referred to a cash benefit granted to those who are in poverty to guarantee them a dignified existence and it is different, on the one hand, from the idea of “basic income”, which is given all the citizens of a political community and, on the other hand, from the minimum wage⁸². The European Union for a long time debates on the necessity of introducing a minimum income in the Member States. For our purposes, it is important to remember that during the crisis the EU has reiterated the necessity above mentioned through a Recommendation and two Resolutions⁸³. More recently, in 2017, the President Juncker encouraged again the adoption of a minimum income in the EU⁸⁴ and the European Parliament approved a Resolution on the same issue⁸⁵.

6. The minimum wage beyond the crisis

After the crisis, the issue of minimum wage has been raised again by the Renzi Government. In particular, the Jobs Act provides the introduction of an hourly minimum wage set by law⁸⁶. However, this disposition, which should have been enacted through a specific law, was not implemented by the legislator, due apparently to the opposition of Trade Unions⁸⁷. In fact, also Small and Medium Enterprises (SMEs) did not agree with the introduction of a legal minimum wage, claiming to not be able to afford it⁸⁸.

⁸¹ EUROPEAN COMMISSION, Commission Recommendation of 26.4.2017 the European Pillar of Social Rights, Brussels, 2017, point 6, lett. b).

⁸² MENEGATTI, E., Il salario minimo... cit., p. 1; BAVARO, V., “Reddito di cittadinanza, salario minimo legale e diritto sindacale”, in *Rivista del Diritto della Sicurezza Sociale*, 2014, n° 2, p. 169-187; BRONZINI, G., “voce Reddito minimo garantito”, available at: http://www.treccani.it/enciclopedia/reddito-minimo-garantito_%28Diritto-on-line%29/ (Accessed 21 February 2018).

⁸³ BRONZINI, G., “voce Reddito minimo garantito...” cit.

⁸⁴ KOSTAKI, I., “Juncker urged...” cit.

⁸⁵ EUROPEAN PARLIAMENT, European Parliament Resolution on minimum income policies as a tool for fighting poverty, Brussels, 24 October 2017.

⁸⁶ See Article 1, paragraph 7, lett. g), Law 183/2014, 10 December 2014.

⁸⁷ MAROCCO, M., “Il salario minimo...” cit., p. 355; MENEGATTI, E., Il salario minimo... cit., p. 97.

⁸⁸ R.E T.E. Imprese Italia, A.S. 1428. “Delega al Governo in materia di riforma degli ammortizzatori sociali, dei servizi per il lavoro e delle politiche attive, nonché in materia di riordino dei rapporti di lavoro e di sostegno alla maternità e alla conciliazione dei tempi di vita e di lavoro”, Audizione. 27 maggio 2014, Rome; MAROCCO, M., “Il salario minimo...” cit., p. 336; MENEGATTI, E., Il salario minimo... cit., p. 115. While Confindustria is more open towards the introduction of a legal minimum wage (MAROCCO, M., “Il salario minimo...” cit., p. 356).

Actually, it is worth noting that this disposition neither seems to concern a universal minimum wage nor to adversely affect the role of collective bargaining. Indeed, this minimum wage would not cover the sectors regulated through collective agreements concluded by the most comparatively representative Trade Unions at national level. Thus, Article 1, paragraph 7, lett. g), Law 183/2014 would introduce a legal minimum wage only for those workers (and enterprises) not covered by a national collective agreement⁸⁹. Neither the legal minimum wage could affect the jurisprudence on Article 36 Constitution, because such salary could not be considered a sufficient wage, not being universally applicable⁹⁰. However, the minimum wage mentioned would be set after the consultation of Social Partners at national level, therefore it is excluded a real collective negotiation⁹¹. Further, the minimum wage projected in the Italian Jobs Act would regard also the so-called “continuous and coordinated collaborations” (*collaborazioni coordinate e continuative*), which are “quasi-subordinate” jobs. Even here it has to be taken into account that some of those relationships are already regulated by collective agreements⁹², so that the disposition would regard only those not covered by collective sources⁹³. Anyway, the indecision of the Italian legislator seems to be evident simply reading the text of the law concerned. In fact, the introduction of the legal minimum wage would be “experimental”, with the aim of assessing the effects of this measure on Italian industrial relations and jurisprudence⁹⁴. In any case, it has to be noted that Article 1, paragraph 7, lett. g), Law 183/2014 cannot be more enacted, as the term for its implementation has expired by now⁹⁵.

After the described attempt of Italian Jobs Act, the debate on legal minimum wage flourished again in Italy. At this regard, two are the main trends.

The first agree on the introduction of a minimum wage set by law, as it would guarantee more equality among workers. A legal minimum wage, extended to all workers, would

⁸⁹ MENEGATTI, E., *Il salario minimo...* cit., p. 96-97; SPEZIALE, V., “Il salario minimo legale...” cit., p. 6; BIASI, M., “Il salario minimo...” cit., p. 384; GUARRIELLO, F., “Verso l’introduzione...” cit., p. 330.

⁹⁰ DELFINO, M., *Salario legale...* cit., p. 73; SPEZIALE, V., “Il salario minimo legale...” cit., p. 6; *contra* CAMPANELLA, P., “Salari e contrattazione...” cit., p. 195.

⁹¹ SPEZIALE, V., “Il salario minimo legale...” cit., p. 12; BAVARO, V., “Il salario minimo legale e le relazioni industriali”, available at: <http://www.ildiariodellavoro.it/adon.pl?act=doc&doc=53073#.WkFLGgX77g> (Accessed 21 February 2018); GUARRIELLO, F., “Verso l’introduzione...” cit., p. 333.

⁹² For instance trading agents.

⁹³ SPEZIALE, V., “Il salario minimo legale...” cit., p. 13; GUARRIELLO, F., “Verso l’introduzione...” cit., p. 331.

⁹⁴ SPEZIALE, V., “Il salario minimo legale...” cit., p. 14.

⁹⁵ See DELFINO, M., *Salario legale...* cit., p. 17, who notes also that, according to Article 1, paragraph 1, Law 183/2014, the disposition had to be implemented by 15 June 2015.

reduce the gap of protections among employees and atypical workers, but also with respect to marginal and non-unionised employees⁹⁶. In particular, it has been called for a “decent wage floor” for all workers, namely high enough to allow a decent existence but low enough to be a basis for social security measures⁹⁷. Moreover, a similar solution would allow the incomes under the poverty line to increase, reducing the distance between high income and low income workers, as well as the differences in minimum wages due to geographical or sectoral reasons⁹⁸.

The second trend is against the introduction of a legal minimum wage and it is rooted on the idea that a similar solution would be dangerous for Italian industrial relations, as collective bargaining would lose its traditional function in setting wages. Because of that, Trade Unions would have less authority and consequently there would be a reduction in their membership’s rates⁹⁹. After all, the legal minimum wage hardly would be able to incorporate collective agreements’ wages, which are among the highest in Europe¹⁰⁰. Additionally, if the legal minimum wage was handled by the Government, the public power would freeze it at its discretion, depending on the political direction¹⁰¹. Moreover, it has been underlined a paradoxical effect of the legal minimum wage. Of course, the legal minimum wage would be lower than that set in collective agreements, so that employers could decide to do not apply any collective agreement with the aim of exploit the lower level of legal minimum wage¹⁰². Yet, taking into account all of this, Trade Unions would be obliged to negotiate downward wages to avoid that employers do not conclude collective agreements¹⁰³.

Finally, it is argued that the best solution could be a mixed system. In other words, the minimum wage should be decided through the negotiation of Social Partners and then transposed in law. Specifically, it has been proposed to form a commission composed of

⁹⁶ LEONARDI, S., “Salario minimo...” cit., p. 208; BOERI, T., LUCIFORA, C., “Salario minimo...” cit.; BELLAVISTA, A., “Il salario minimo legale...” cit., p. 746-747; BALLISTRERI, M., “La nuova contrattazione...” cit., p. 204; RICCI, G., “La retribuzione...” cit., p. 656.

⁹⁷ MENEGATTI, E., *Il salario minimo...* cit., p. 116; ILO, ACADEMIC FOUNDATION, *Global Wage Report 2008/09. Minimum wages and collective bargaining: Towards policy coherence*, International Labour Office, Academic Foundation, Geneva, New Delhi, 2008, p. 47.

⁹⁸ RICCI, G., “La retribuzione...” cit., p. 656.

⁹⁹ MENEGATTI, E., *Il salario minimo...* cit., p. 101-102.

¹⁰⁰ SPEZIALE, V., “Il salario minimo legale...” cit., p. 4-5; LEONARDI, S., “Salario minimo...” cit., p. 194.

¹⁰¹ DELFINO, M., *Salario legale...* cit., p. 72; LEONARDI, S., “Salario minimo...” cit., p. 209.

¹⁰² DELFINO, M., *Salario legale...* cit., p. 72; SPEZIALE, V., “Il salario minimo legale...” cit., p. 6; BIASI, M., “Il salario minimo...” cit., p. 386; BAVARO, V., “Il salario minimo legale...” cit.; ID., “Reddito di cittadinanza...” cit., p. 177; BALLISTRERI, M., “La nuova contrattazione...” cit., p. 203; RICCI, G., “La retribuzione...” cit., p. 656.

¹⁰³ BAVARO, V., “Il salario minimo legale...” cit.; ID., “Reddito di cittadinanza...” cit., p. 177-178.

members from Trade Unions, employers' associations and the Government, which should suggest the Government itself the minimum wage level¹⁰⁴.

Regardless the positions above on the legal minimum wage which we intend to assume, it is important to underline some situations of the Italian labour market that cope strictly with the minimum wage issue.

A case in point is the wage freeze imposed from 2008 to 2015 in the public sector to contain the public spending. In particular, in 2010, the legislator decided to forbid the collective negotiation of public employees' wages until 2014, maintaining the level of wages set in 2010¹⁰⁵. Actually, these measures were considered unconstitutional by some judges, especially because of the violation of the "fair wage" principle expressed by Article 36 Constitution. But the Constitutional Court sentenced that, even if it was not possible to reiterate the provision, due to the contrast with the freedom of association and collective bargaining, the wage freeze was lawful for the past, because of the serious Italian economic and financial situation during the crisis¹⁰⁶. Nevertheless, still today the Government has not compensated many of those public workers who suffered the wage freeze, so that Trade Unions and associations have taken actions before courts¹⁰⁷.

But the issue of minimum wage has led also to some collective actions.

This is the case of the gig-economy, the phenomenon according to which formally self-employed workers perform through the mediation of an online platform. These performances can be carried out online, on the platform itself¹⁰⁸, or can consist in traditional jobs, such as delivery or transports¹⁰⁹, that are coordinated by apps¹¹⁰. One of

¹⁰⁴ MENEGATTI, E., *Il salario minimo...* cit., p. 170 ff.

¹⁰⁵ See Article 9, paragraphs 1 and 17, Law Decree 78/2010, 31 May 2010, converted in Law 122/2010, 30 July 2010 and Article 16, paragraph 1, Law 98/2011, 6 July 2011; DELFINO, M., *Salario legale...* cit., p. 44 ff.; RICCI, G., "La retribuzione in tempi di crisi..." cit., p. 13-14; ID., "La retribuzione..." cit., p. 640-641.

¹⁰⁶ See Italian Constitutional Court 23 July 2015 No. 178, in <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2015&numero=178#> (Accessed 21 February 2018).

¹⁰⁷ For example, a class action has been proposed by the consumers' association Codacons (see <http://bloccostipendi.codacons.it/>, accessed 21 February 2018).

¹⁰⁸ For example Amazon Mechanical Turk (see <https://www.mturk.com/>, accessed 21 February 2018).

¹⁰⁹ Such as Uber (see <https://www.uber.com/en-IT/>, accessed 21 February 2018).

¹¹⁰ See DE STEFANO, V., "The rise of the just-in-time workforce: on-demand work, crowdwork, and labor protection in the gig-economy", in *Comparative Labor Law & Policy Journal*, 2016, vol. 37, n° 3, 471-504.

most notable cases, which involved also the theme of wages, is Foodora, an app which coordinates food delivery men. In 2016 those workers organised collective actions in Turin and Milan, claiming for better working conditions and higher pay rates¹¹¹. However, those actions were unsuccessful, as at the beginning of 2017 the accounts of around fifteen delivery men were cancelled, so that they could not work for Foodora anymore¹¹². But, in October 2017, six of those workers took Foodora before the Employment Tribunal of Turin, asking for the employees' qualification of the labour relationship as well as the rehiring in Foodora due to the unlawfulness of the dismissals¹¹³.

In the same direction are oriented the protests put in action by the Fast Food workers. On the 4th of September 2017, in occasion of the International Fast Food Workers' Day, they went on strike to claim better working conditions and higher salaries and to ask for collective bargaining, as their collective agreement has not been negotiated since 2013¹¹⁴.

Lastly, it is worth noting that some signals towards the defence of the wages emerged again from jurisprudence. In 2016 Almaviva, a call center enterprise, dismissed 1666 employees of its firm set in Rome because they refused a reduction of wages. 153 workers took the employer before the Rome local Court, which declared the dismissals unlawful and ordered the reintegration of the applicants in the firm¹¹⁵.

These phenomena show how pivotal the issue of minimum wage is today but also that the legal minimum wage cannot be a sufficient tool to cope with the precarisation of the

¹¹¹ Indeed, the pay per delivery is 2,70 Euros, while before September 2016 was 5,60 Euros per hour. See MOSCA, G., "Lo sciopero contro Foodora è il sogno infranto della sharing economy", available at: <https://www.wired.it/economia/lavoro/2016/10/11/sciopero-contro-foodora-sogno-infranto-sharing-economy/> (Accessed 21 February 2018), 10 October 2016.

¹¹² CICCARELLI, R., "I rider di Foodora «disconnessi» dopo la protesta per i diritti", available at: <https://ilmanifesto.it/i-rider-di-foodora-disconnessi-dopo-la-protesta-per-i-diritti/> (Accessed 21 February 2018), 21 February 2017.

¹¹³ LORENZETTI, S., "Iniziato a Torino il primo processo in Italia nei confronti di Foodora", available at: <http://www.lastampa.it/2017/10/18/cronaca/iniziato-a-torino-il-primo-processo-in-italia-nei-confronti-di-foodora-cfrKKb5VadCb3uDqkmdzH/pagina.html> (Accessed 21 February 2018), 18 October 2017.

¹¹⁴ FILCAMS-CGIL, "Il Fatto Quotidiano – McDonald's, Burger King e gli altri fast food: lavoratori in piazza per protestare contro salari bassi e mancanza di diritti", available at: <http://www.filcams.cgil.it/il-fatto-quotidiano-mcdonalds-burger-king-gli-altri-fast-food-lavoratori-piazza-protestare-salari-bassi-mancanza-diritti/>, 4 September 2017.

¹¹⁵ PRIOSCHI, M., "Almaviva bocciata perché ha licenziato solo a Roma", available at: <http://www.ilsole24ore.com/art/norme-e-tributi/2017-11-16/almaviva-bocciata-perche-ha-licenziato-solo-roma-192738.shtml?uuid=AEeAfCDD> (Accessed 21 February 2018), 17 November 2017.

labour market. Therefore, it is required a holistic approach, which takes into account the problems of workers as persons, namely the whole issue of poverty in a social security perspective.

In this direction may be oriented the introduction of a minimum income. Actually, on the 13th of October 2017 the Italian Government introduced a sort of minimum income for families with a low income and poor assets, also due to unemployment, in exchange of being involved in social inclusion programmes, such as vocational training. However, this measure seems to be not a sufficient answer to the poverty issue not only for its low amount but also because of the long list of conditions required to access to the benefit, as well as due to the fact that, according to the Government provisions, only 660.000 families will receive this help, when poor families in Italy are one million and 619.000. Indeed, the first approach to this benefit has not been encouraging, as public offices have not received indications from the Ministry of Labour on the procedures to follow to satisfy the large number of applications presented. Therefore, such bureaucratisation risks to make very difficult the access to this measure¹¹⁶.

7. Conclusions

To conclude, the central issue, which emerges relating to the minimum wage from the Italian framework is the relationship between the minimum wage and the effectiveness of collective agreements. As we have seen, the non-*erga omnes* effects of collective agreements make difficult to respect the collective agreements' minimum wages. This is evident for employees, both due to the limited coverage of Italian collective agreements and because wages can be affected by "pirate collective agreements". In this sense, a reasonable solution could be simply to carry out a law on Trade Unions representation, which gives Italian collective agreements *erga omnes* effects¹¹⁷, as the most representative Trade Unions agreed in 2016¹¹⁸. This solution would be able to end the

¹¹⁶ REVELLI, M., "Povertà, la beffa del potere", available at: <https://ilmanifesto.it/poverta-la-beffa-del-potere/> (Accessed 21 February 2018), 5 December 2017.

¹¹⁷ BAVARO, V., "Reddito di cittadinanza..." cit., p. 178.

¹¹⁸ CGIL, CISL and UIL, "Un moderno sistema di relazioni industriali. Per un modello di sviluppo fondato sull'innovazione e la qualità del lavoro", 14 January 2016. Indeed, CGIL has confirmed the present Italian minimum wage system in its proposal for a new Workers' Statute, whose Article 5 claims that the individual contract cannot set a wage lower than that fixed by national collective agreements, both for employees and self-employed people. The same proposal adds that self-employed people can always ask the judge to apply the collective minimum wage, when there are no applicable collective agreements. Moreover, Articles 27 ff. provide a system for the implementation of Article 39 Constitution, to give collective agreements *erga omnes* effects (CGIL, Carta dei diritti universali del lavoro. Nuovo statuto di tutte le lavoratrici e di tutti i lavoratori, 2016).

“jurisprudential minimum wage”, with its discretion and uncertainty¹¹⁹, and to preserve the traditional role of Trade Unions in setting the minimum wage, following the will of the Italian founding fathers.

However, going down this path requires overcoming two hurdles. First, it urges to be discussed a law on Trade Unions representation. But if we take into account the behaviour of the last Italian Governments towards Trade Unions and the weakness of industrial relations in Italy, it is very difficult to think that a similar solution will be taken shortly. Secondly, even if a law on Trade Unions representation was approved, atypical and precarious workers would not be completely benefited from such solution, as the majority of those are not covered by collective agreements. In this sense, only a more decisive action towards their unionisation could extend the effects of collective agreements and their minimum wages to the marginal areas of the labour market¹²⁰.

8. References

ALLAMPRESE, A., ORLANDINI, G., “Decreto legislativo n. 136/2016 recante attuazione della direttiva n. 2014/67 di attuazione della direttiva n. 96/71 sul distacco transnazionale dei lavoratori. Un primo commento”, available at: http://www.cgil.it/admin_nv47t8g34/wp-content/uploads/2016/09/Nota_CGIL_decreto_legislativo_136_2016xdef.pdf (Accessed 20 February 2018), CGIL, Rome, 5 September 2016.

ANGIELLO, L., La retribuzione. Artt. 2099 – 2102, in *Il Codice Civile. Commentario*, in SCHLESINGER P. (ed.), Giuffrè, Milan, 1990.

BALLISTRERI, M., “La nuova contrattazione collettiva e il salario minimo legale in Italia”, in *Revista de Estudios Económicos y Empresariales*, 2013, n° 25, p. 193-204.

BAVARO, V., “Il salario minimo legale e le relazioni industriali”, available at: <http://www.ildiaridellavoro.it/adon.pl?act=doc&doc=53073#.WkFLGGcX77g> (Accessed 21 February 2018).

BAVARO, V., “Reddito di cittadinanza, salario minimo legale e diritto sindacale”, in *Rivista del Diritto della Sicurezza Sociale*, 2014, n° 2, p. 169-187.

¹¹⁹ BIASI, M., “Il salario minimo...” cit., p. 389-390.

¹²⁰ MAGNANI, M., “Il salario minimo legale...” cit., p. 783.

BELLAVISTA, A., “Il salario minimo legale”, in *Diritto delle Relazioni Industriali*, 2014, n° 3, p. 741-753.

BIASI, M., “Il salario minimo legale nel jobs act: promozione o svuotamento dell’azione contrattuale collettiva?”, in *Argomenti di Diritto del Lavoro*, 2015, n° 2, p. 371-391.

BOERI, T., LUCIFORA C., “Salario minimo e legge delega”, available at: <http://www.lavoce.info/archives/30187/salario-minimo-e-legge-delega/> (Accessed 21 February 2018).

BRONZINI, G., “voce Reddito minimo garantito”, available at: http://www.treccani.it/enciclopedia/reddito-minimo-garantito_%28Diritto-on-line%29/ (Accessed 21 February 2018).

CAMPANELLA, P., “Salari e contrattazione collettiva nel governo della crisi europea”, in *Cultura giuridica e diritto vivente, Special issue*, 2015, p. 183-202.

CECCHI, D., BRATTI, M., FILIPPIN, A., “Diseguaglianza e sindacalizzazione”, in DOSI, G. AND MARCUZZO, C. (eds.), *L’economia e la politica. Saggi in onore di Michele Salvati*, Il Mulino, Bologna, 2007, p. 189-205.

CGIL, *Carta dei diritti universali del lavoro. Nuovo statuto di tutte le lavoratrici e di tutti i lavoratori*, 2016.

CGIL, CISL and UIL, “Un moderno sistema di relazioni industriali. Per un modello di sviluppo fondato sull’innovazione e la qualità del lavoro”, 14 January 2016.

CICCARELLI, R., “I rider di Foodora «disconnessi» dopo la protesta per i diritti”, available at: <https://ilmanifesto.it/i-rider-di-foodora-disconnessi-dopo-la-protesta-per-i-diritti/> (Accessed 21 February 2018), 21 February 2017.

DE LUCA TAMAJO, R., “Accordo di Pomigliano e criticità del sistema di relazioni industriali italiane”, in *Rivista Italiana di Diritto del Lavoro*, 2011, n° 4, II, p. 797-814.

DE MARTINO, V., “Poverty in Italy (2016)”, available at: https://www.istat.it/en/files/2017/07/Poverty-in-Italy_2016.pdf?title=Poverty+in+Italy++13+Jul+2017++Full+text.pdf (Accessed 20 February 2018), 13 July 2017.

DE STEFANO, V., “The rise of the just-in-time workforce: on-demand work, crowdwork, and labor protection in the gig-economy”, in *Comparative Labor Law & Policy Journal*, 2016, vol. 37, n° 3, 471-504.

DELFINO, M., *Salario legale contrattazione collettiva e concorrenza*, ES, Naples, 2017.

ETUC, *Solidarity in the crisis and beyond: Towards a coordinated European trade union approach to tackling social dumping*, Brussels, 2012.

EUROFOUND, *Living and working in Italy*, available at: <https://www.eurofound.europa.eu/country/italy#collective-bargaining> (Accessed 22 February 2018), 18 October 2017.

EUROPEAN COMMISSION, *Employment and Social Developments in Europe 2011*, Publications Office of the European Union, Luxembourg, 2012.

EUROPEAN COMMISSION, *Employment and Social Developments in Europe 2012*, Publications Office of the European Union, Luxembourg, 2012.

EUROPEAN COMMISSION, *Commission Recommendation of 26.4.2017 the European Pillar of Social Rights*, Brussels, 2017.

EUROPEAN COUNCIL, *The Euro Plus Pact. Stronger economic policy coordination for competitiveness and convergence*, Brussels, 24-25 March 2011.

EUROPEAN PARLIAMENT, *Resolution of 15 November 2011 on the European Platform against poverty and social exclusion*, Strasbourg, 2011.

EUROPEAN PARLIAMENT, *European Parliament Resolution on minimum income policies as a tool for fighting poverty*, Brussels, 24 October 2017.

FALERI, C., “Le origini ideologiche e culturali del principio della giusta retribuzione”, in GAETA, L. (ed.), *Prima di tutto il lavoro. La costruzione di un diritto all’Assemblea Costituente*, Ediesse, Rome, 2014, p. 166-181.

FILCAMS-CGIL, “Il Fatto Quotidiano – McDonald’s, Burger King e gli altri fast food: lavoratori in piazza per protestare contro salari bassi e mancanza di diritti”, available at: <http://www.filcams.cgil.it/il-fatto-quotidiano-mcdonalds-burger-king-gli-altri-fast-food-lavoratori-piazza-protestare-salari-bassi-mancanza-diritti/>, 4 September 2017.

GAETA, L., *Il lavoro e il diritto. Un percorso storico*, Cacucci, Bari, 2013.

GIUBBONI, S., “I diritti sociali alla prova della crisi: l’Italia nel quadro europeo”, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2014, n° 2, p. 269-277.

GIUGNI, G., *Diritto sindacale*, Cacucci, Bari, 2012.

GUARRIELLO, F., “Verso l’introduzione del salario minimo legale?”, in CARINCI, F. (ed.), *La politica del lavoro del Governo Renzi. Atti del X Seminario di Bertinoro-Bologna del 23-24 ottobre 2014*, Adapt University Press, 2014, p. 327-337.

ICHINO, P., “La nozione di giusta retribuzione nell’articolo 36 della Costituzione”, in *Rivista Italiana di Diritto del Lavoro*, 2010, n° 4, I, p. 719-767.

ILO, ACADEMIC FOUNDATION, *Global Wage Report 2008/09. Minimum wages and collective bargaining: Towards policy coherence*, International Labour Office, Academic Foundation, Geneva, New Delhi, 2008.

INL, Circolare n. 1/2017, available at: <https://www.cliclavoro.gov.it/Normative/circolare-9-gennaio-2017-n.1.pdf> (Accessed 21 February 2018).

KOSTAKI, I., “Juncker urged companies to adopt a minimum wage to help counter “social dumping”, available at: <https://www.neweurope.eu/article/juncker-minimum-salary-country-european-union/> (Accessed 21 February 2018), 24 January 2017.

LEONARDI, S., “Salario minimo e ruolo del sindacato: il quadro europea fra legge e contrattazione”, in *Lavoro e Diritto*, 2014, n° 1, p. 185-211.

LORENZETTI, S., “Iniziato a Torino il primo processo in Italia nei confronti di Foodora”, available at: <http://www.lastampa.it/2017/10/18/cronaca/iniziato-a-torino-il-primo-processo-in-italia-nei-confronti-di-foodora-cfrKKb5VadCb3uDqkmfdzH/pagina.html> (Accessed 21 February 2018), 18 October 2017.

MAGNANI, M., “Il salario minimo legale”, in *Rivista Italiana di Diritto del Lavoro*, 2010, n° 4, I, p. 769-795.

MAGNANI, M., “Salario minimo”, in CARINCI, F. (ed.), *La politica del lavoro del Governo Renzi. Atti del X Seminario di Bertinoro-Bologna del 23-24 ottobre 2014*, Adapt University Press, 2014, p. 537-552.

MARESCA, A., “Accordi collettivi separati: tra libertà contrattuale e democrazia sindacale”, in *Rivista Italiana di Diritto del Lavoro*, 2010, n° 1, I, p. 29-63.

MAROCCO, M., “Il salario minimo legale nel prisma europeo: prospettive per l’Italia”, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2017, n° 2, p. 337-363.

MENEGATTI, E., *Il salario minimo legale. Aspettative e prospettive*, Giappichelli, Turin, 2017.

MENEGATTI, E., “Challenging the EU Downward Pressure on National Wage Policy”, in *International Journal of Comparative Labour Law and Industrial Relations*, 2017, vol. 33, n° 2, p. 195–220.

MOSCA, G., “Lo sciopero contro Foodora è il sogno infranto della sharing economy”, available at: <https://www.wired.it/economia/lavoro/2016/10/11/sciopero-contro-foodora-sogno-infranto-sharing-economy/> (Accessed 21 February 2018), 10 October 2016.

ORLANDINI, G., “Autonomia collettiva e libertà economiche: alla ricerca dell’equilibrio perduto in un mercato aperto e in libera concorrenza”, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2008, n° 2, p. 237-289.

ORLANDINI, G., “Distacco transnazionale e dumping salariale nell’Unione Europea”, available at: http://www.europeanrights.eu/public/commenti/Bronzini2-Relazione_Orlandini.pdf (Accessed 21 February 2018).

PERA, G., “Note sui contratti collettivi « pirata »”, in *Rivista Italiana di Diritto del Lavoro*, 1997, n° 4, I, p. 381-389.

PRIOSCHI, M., “Almaviva bocciata perché ha licenziato solo a Roma”, available at: <http://www.ilsole24ore.com/art/norme-e-tributi/2017-11-16/almaviva-bocciata-perche-ha-licenziato-solo-roma-192738.shtml?uuid=AEeAfCDD> (Accessed 21 February 2018), 17 November 2017.

R.E T.E. IMPRESE ITALIA, *A.S. 1428*. “Delega al Governo in materia di riforma degli ammortizzatori sociali, dei servizi per il lavoro e delle politiche attive, nonché in materia di riordino dei rapporti di lavoro e di sostegno alla maternità e alla conciliazione dei tempi di vita e di lavoro”, Audizione. 27 maggio 2014, Rome.

REVELLI, M., “Povertà, la beffa del potere”, available at: <https://ilmanifesto.it/poverta-la-beffa-del-potere/> (Accessed 21 February 2018), 5 December 2017.

RICCI, G., “La retribuzione costituzionalmente adeguata e il dibattito sul diritto al salario minimo”, in *Lavoro e Diritto*, 2011, n° 4, p. 635-662.

RICCI, G., “La retribuzione in tempi di crisi: diritto sociale fondamentale o variabile indipendente?”, in *WP CSDLE “Massimo D’Antona”.INT – 113/2014*.

SANTONI, F., “La revisione della disciplina dei rapporti di lavoro”, in CARINCI, F. (ed.), *La politica del lavoro del Governo Renzi. Atto II*, Adapt University Press, 2014, p. 116-144.

SENATORI, I., “Multinationals and National Industrial Relations in Times of Crisis: The Case of FIAT”, in *International Journal of Comparative Labour Law and Industrial Relations*, 2012, vol. 28, n° 4, p. 469-488.

SPEZIALE, V., “Il salario minimo legale”, in *WP CSDLE “Massimo D’Antona”.IT – 244/2015*.

TOMASSETTI, P., “Arginare la piaga dei contratti pirata”, available at: <http://www.bollettinoadapt.it/arginare-la-piaga-dei-contratti-pirata/> (Accessed 21 February 2018), 16 June 2014.

VISCOMI, A., “Organizzazioni sindacali, relazioni industriali e contrattazione collettiva”, in GAETA, L., VISCOMI, A., ZOPPOLI, A. (eds.), *Istituzioni di diritto del lavoro e sindacale*, Giappichelli, Turin, 2015, p. 1-32.

Fecha recepción: 22.2.2018

Fecha aceptación: 3.5.2018