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the European Social Charter

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THE GOVERNMENT OF ITALY

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for the period 01/01/2017 – 31/12/2020

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CYCLE 2022

ARTICLE 2

THE RIGHT TO JUST CONDITIONS OF WORK

Paragraph 1

Working hours

As defined in Decree-Law No. 66/2003, the reference legislative framework has not been changed in the interest period relevant for this report.

The European Committee of Social Rights restated the non conformity of the Italian legislation (Article 18 of Decree-Law No. 66/2003) to the provisions laid out in paragraph 1 of Article 2, as, in the fishing industry, the maximum working hours per week was set at 72 hours.
The Committee notes that, although the reference to the collective bargaining included in Article 18 above mentioned, concerning the working hours in the fishing industry should be always intended in conformity with the protection of the workers' safety and health, the Italian legislation which does not include suitable regulations meeting the parameters of the Charter, has not been amended.
In this regard, it is confirmed that the Italian regulation has not been amended in the period in question, as it is in line with the EU regulation and the international tools adopted by the International Labour Organisation (ILO).
We recall the **Decree-Law No. 39 of 11 May 2020** ratifying the **EU Directive 2017/159**, in implementation of the agreement related to the enforcement of the Convention 188 on work in the fishing industry issued in 2007 by the International Labour Organisation, and ratified on 21 May 2012, among the EU General Confederation of Agricultural Cooperatives (COGECA), the European Workers' Transport Federation (ETF) and the Association of National Organisations of Fishing Companies (FEDERPESCA) of the European Union.
With specific reference to the working hours and rest times, envisaged by Article 11 of Directive 2017/159/EU above, it should be noted that no amendment occurred to the current Italian regulation as it is already in line with the EU provisions (Article 3 of Decree-Law No. 108 of 27 May 2005; Article 11 of Decree-Law No. 271 of 27 July 1999; Article 18 of Decree-Law No.66 of 8 April 2003).
Article 11 of the European Directive provides for:

- An average threshold of 48 working hours per week over a reference period not exceeding twelve months;
- A maximum threshold of 14 working hours for every 24 hours and 72 working hours over seven days;
- A minimum rest time not less than 10 hours for every 24 hours and 77 hours for seven days;

The final provision quotes verbatim Article 14 of the ILO Convention 188, where a minimum rest time of 10 hours for every 24 hours and 77 hours for every seven days, without any indication of the maximum working hours.

The Committee requests to know which rules can be applied to the workers on call and if, in the specific case in which they are not called to work, this availability is considered as a rest time in part or a whole.
In this regard, it should be noted that this issue has been brought before the Court of Justice with the Simap/Jaeger ruling of 9 September 2003 (case C-151/02) in which – in relation to the medical staff - it was recognised that the shifts on call had to be calculated as working hours, both for payment purposes, and for their qualifications as night work.
In Italy, the ruling has been introduced in the case law and in collective bargaining according to the following terms: when the worker is not at the workplace but he is in the so-called regime of *passive stand-by* - so that he can carry out other activities, without being physically present in a specific place decided by the employer - the stand-by period is not considered such as working hours. In this case, just the duration of the work performance carried out after a possible call by the employer can be calculated such as working hours.

On the other side, the so-called *active stand-by* is fully recognised within the working hours, as it requires the physical presence of the worker at the workplace or another place established by the employer, thus, affecting the worker's free time in a relevant way.
In this regard it is important to recall the ruling C-518/15 (Ville de Nivelles/Matzak) issued by the Court of Justice on 21 February 2018, that orders that the hours of availability providing an obligation to be available at the employer's call and reach the workplace in a short time (equal to 8 minutes in this case), should be always calculated such as working hours, as this condition would actually prevent the worker from performing any other activity. The Court has, therefore, considered that given the strict time and geographical limitations, the time spent at home and not at the workplace should be considered as working hours.
The Italian case law has also recognised the limitations imposed to the worker's right to rest when he is on call (stand-by): *"The failure to fully enjoy the weekly rest time, caused by the need to be on call on a public holiday or day of rest and the failure to take compensatory rest, is in irremediable conflict with the constitutional principle of the irreducible right of the worker to weekly rest (Article 36 of the Constitution), to be taken as a rule on Sundays (Article 2109 of the Civil Code), for 24 consecutive hours. On the other hand, the worker is entitled to his psychological and physical integrity – a right guaranteed by the Constitution pursuant to Article 32 -, which is not limited only to the ability to produce wealth, but it is connected with the dimension of the person in the context in which he expresses his personality in all related aspects. Consequently, even 'stand-by', with the limitations it imposes on personal freedom and the psychophysical strain it produces, it is sufficient to establish the employer's obligation to compensate the damage suffered by an employee who is on stand-by on the day of weekly rest. This inalienable right is qualified by the employees'need to participate peacefully in the common forms of family and social life, without any special constrain, in addition to the restoration of his bio-psychic energies.* (Court of Appeal of Bari, Labour section, 2 February 2008).
As a rule, collective bargaining provides, in any case, a stand-by allowance for the worker to be paid by the employer.
Again, it is necessary to clarify that, by a request for further information No. 31 of 2007, the Ministry of Labour and Social Policies underlined that, in case of workers obliged to stand-by regime are called to work, the weekly and daily rest periods should start from the termination of the work performance, excluding the amount of hours previously enjoyed.
In conclusion, it is underlined that - according to our legal framework and with specific reference to the on call services in the maritime sector -, Article 3, paragraph 5 of Legislative Decree No. 108 of 2005, envisages that "*when maritime worker is on stand-by, he should benefit from an adequate compensatory rest time if his rest time is interrupted by a call to work*."

Concerning the <u>failure to comply with the maximum working hours</u> caused by the performance of an excessive number of overtime hours, we recall ruling No. 12540 of 10 May 2019 issued by the Court of Civil Cassation, labour section. In this case, an employee working as a security guard had taken action against the employer company to claim the payment of a sum equal to EUR 16,501 as a compensation for overtime hours worked from 2008 to 2012, for which he had never been paid. In the first instance, the Labour Courts rejected the 2008 request, considering that the overtime had been completed based on worker's specific requests, whereas the request for the following years was accepted. At the end of the second instance, the Court of Appeal of Turin accepted the employee's appeal also in relation to the overtime hours worked in 2008 and therefore condemned the company to pay the additional sum of EUR 10,559.94. According to judges, although the appellant had asked to work overtime, Article 81 of the CCNL (National Collective Labour Agreement) for the category did not allow overtime to be extended beyond the maximum allowable, and in thid case, all the ceilings were exceeded. Moreover, with regard to the quantification of those hours, the 30%

compensation awarded by the company must be considered inadequate. The Court of Cassation accepted the decision, stating that "excessive" work, far exceeding the limits provided for by law and collective bargaining (Legislative Decree No. 66 of 2003, Articles 2, paragraph 3, - as amended by Article 41 of Law No. 133/2008 - 4 and 6; Article 71 of the CCNL for employees of private security firms of 6 December 2006) and that lasts for several years, causes damage to the worker's physical and psychological strain of a non-pecuniary nature and distinct from biological damage. The damage of a non-pecuniary nature is presumed in the *an* as an infringement of the right guaranteed by Article 36 of the Italian Constitution, while for the purposes of the determination it is necessary to take into account the seriousness of the performance and the indications of the collective discipline intended to regulate the compensation "*de qua*" (in terms Cassation 14.7.2015 No. 14710; Cassation 23.5.2014 No. 11581). There was no lack of allegation and evidence in this case, since the appellant had stated both the number of worked overtime hours and the reference period at first instance. With regard to the latter elements, the territorial Court, with reasoned arguments, had found the “disproportion” of the performed service that can compromise the worker’s psychohysical integrity and social life.
Concerning the question of the worker’s "culpable participation”, who voluntary requested to perform services beyond the permitted limits, the judges of the Supreme Court found that "*in relation to the obligation laid down in Article 2087 of the Civil Code for the employer to protect the worker’s psychophysical integrity and moral personality, his voluntariness, which can be seen in the mere availability to perform overtime work, cannot be causally linked to the event, representing an exposure to risk not capable of determining a legally relevant contribution*" (Cassation 19.1.2017 No. 1295).
For all these reasons, the company's appeal has been rejected and it has been ordered to pay the legal fees.

With regard to the sanctions applicable in the event of non-compliance with the maximum working time, we recall Article 18 bis paragraphs 3) and 4) of Legislative Decree No 66/2003. Pursuant to Article 4 of the aforementioned decree, collective labour agreements establish the maximum weekly working hours, which cannot exceed 48 hours per seven day period, including overtime. If these limits are breached, an administrative sanction between EUR 200 and EUR 1,500 is imposed on the employer for each worker and each period to which the breach is related to. If the breach relates to more than five workers or it has occurred in at least three reference periods, the administrative sanction ranges from EUR 800 to EUR 3,000. If the breach refers to more than ten workers or it has occurred in at least five reference periods, the administrative sanction ranges from EUR 2,000 to EUR 10,000 and the payment of the reduced sanction is not allowed.
On this point, the Constitutional Court's ruling No. 153/2014 has declared unconstitutional Art. 18-bis, paragraphs 3 and 4 of Legislative Decree No. 66/2003 in relation to the penalties provided for in case of violation of the maximum working hours as they are higher than those laid down in the previous system. The grounds for the unconstitutionality found their reasons in Legislative Decree No 66/2003 which was based on the delegation contained in Law No 39 of 1 March 2002 (*Provisions for the fulfilment of obligations deriving from Italy’s membership of the European Community. Community Law 2001)*. This law provided, inter alia, in Article 2 paragraph 1, letter (c), the guiding criterion according to which administrative sanctions were to be regulated in compliance with the following provision: *" identical penalties identical to those that may already be imposed by the laws in force will be envisaged in case of violations that are homogeneous and of equal offensiveness respect to violations of the provisions of Legislative Decrees".*
Subsequently, the Ministry of Labour and Social Policies, by circular letter prot. 12552 of 10 July 2014, re-determined the sanctions in accordance with the discipline dictated by Article 1, paragraph 1, letter f) of Legislative Decree No. 213/2004 ("*Amendments and additions to Legislative Decree No. 66 of 8 April 2003, on the sanctioning apparatus of working hours*"). It provides that, in the event of violation of the provisions set out in Articles 4, paragraph 2, 3 and 4, and 10, paragraph 1, the administrative sanction ranges from EUR

130 to EUR 780 for each worker and each period to which the violation is related to. The aforementioned circular letter pointed out that the operating instructions contained therein were limited to the period from 1 September 2004 to 24 June 2008. In fact from 25 June 2008, Article 18 bis was amended by Article 41 of the Decree Law of 25 June 2008, subsequently converted into Law 133/2008, "*Conversion into law, with amendments, of the Decree Law of 25 June 2008, No 112, containing urgent provisions for the economic development, simplification, competitiveness, the stabilisation of public finance and tax equalisation*". Pursuant to paragraph 8 of Article 41 ("Amendments to the rules on working hours"), paragraph 3 of Article 18-bis of Legislative Decree No 66 of 8 April 2003 is replaced by the following: *"3. The violation of the provisions set forth in Article 4, paragraphs 2, 3, 4, Article 9, paragraph 1, and Article 10, paragraph 1, shall be punished with an administrative sanction which ranges from EUR 130 to EUR 780 for each worker, in relation to each reference period set forth in Article 4, paragraphs 3 or 4, to which the violation is related to".*
Starting from 1 January 2019, as a result of the 2019 Budget Law (Law No. 145/2018), the violation of the regulation on working hours and daily/weekly rest entails penalties for the employer increased by 20%.
In the case of violation of daily or weekly rest, the penalties are set at the following amounts respectively:

- EUR 120-360/EUR 240-1800 up to five workers
- EUR 480-1800/EUR 960-3600 up to 10 workers or it has occurred in at least three reference periods
- EUR 960-5400/EUR 2400-12000 for more than 10 workers or it has occurred in at least five reference periods.

Regarding the violations of working hours regulation, please find below the results of the supervisory activity contained in the National Labour Inspectorate's *Annual Report on protection and supervision activity concerning labour and social legislation, 2020.*
In 2020, controls on working hours were carried out by which 11,016 workers, broken down as follows: 2,987 in the Centre; 3,373 in the North East; 3134 in the North West and 1,522 in the South, were protected.
In absolute terms, this type of violation has been prevalent in the tertiary (8,413 workers protected) and in manufacturing (1,624 workers protected) sectors, while in agriculture and in the construction sector 516 and 463 workers respectively have been concerned.
In the road transport sector, 467 drivers'employers were charged with violations of Legislative Decree No 234/2007 implementing Directive 2002/15/EC on the organisation of the working hours of persons performing road transport mobile activities as well as 2,917 violations of the provisions of Regulation EC/561/2006 were related to driving, breaks and rest periods.
The percentage of working hours violation in respect to the total number of detected violations - on a territorial basis and in relation to ATECO sectors/sections - is shown in the tables below.

Working Hours Discipline			
Territorial Distribution	Workers to whom the detected violations are related to	Working hours (empl)	% of workers to whom the violations on working hours are related to / Workers to whom the detected violations are related to
Centre IIL	19,630	2,987	15%
North East IIL	15,461	3,373	22%
North West IIL	14,461	3,134	22%
South IIL	12,583	1,522	12%
TOTAL in ITALY	**62,135**	**11,016**	**18%**

Table 1: Incidence of working hours violations - territorial distribution IIL (Inter Regional Labour Inspectorates) Source: National Labour Inspectorate - Annual report on protection and supervision activity concerning labour and social legislation - 2020

Working Hours Discipline			
Production Sector	Workers to whom the detected violations are related to	Working hours (empl)	% of workers to whom the violations on working hours are related to / Workers to whom the detected violations are related to
Agriculture	4,590	516	11%
Manufacturing	7,645	1,624	21%
Construction	6,849	463	7%
Third Sector	43,051	8,413	20%
TOTAL in ITALY	**62,135**	**11,016**	**18%**

Table 2: Incidence of working hours violations - production sector distribution

Source: National Labour Inspectorate - Annual report on protection and supervision activity concerning labour and social legislation - 2020

Working Hours Discipline			
ATECO 2007 Section Code	Workers to whom the detected violations are related to	Working hours (empl)	% of workers to whom the violations on working hours are related to / Workers to whom the detected violations are related to
-A Agriculture, Forestry and Fishing	4590	516	11%
-B Minerals extraction from mines and quarries	48	41	85%
-C Manufacturing activities	7,295	1,402	19%
-D Electric power, gas, energy supply etc.	66	12	18%
-E Water supply; sewers, waste management etc.	236	169	72%
-F Construction	6,849	463	7%
-G Wholesale and Retail	5,589	1,146	21%
-H Transportation and Storage	8,834	4,079	46%
-I Accommodation and catering	10,472	1,284	12%
-J Information and communication services	394	28	7%
-K Financial and insurance activities	35	2	6%
-L Real Estate Activities	121	8	7%
-M Professional, scientific and technical activities	1,339	31	2%

-N Business support services etc.	9,352	796	9%
-O Public Administration and Defence, etc.	54	49	91%
-P Education	144	19	13%
-Q Healthcare and Social Assistance	2,050	548	27%
-R Artistic, sports and entertainment activities, etc.	1,149	80	7%
-S Other activities and services	3,376	336	10%
-T Activities households employers domestic staff, etc.	139	7	5%
-U Extra-territorial organisations and bodies	3	0	0%
TOTAL in ITALY	**62,135**	**11,016**	**18%**

Table 3: Incidence of working hours violations - ATECO 2007 section code distribution

Source: National Labour Inspectorate - Annual report on protection and supervision activity concerning labour and social legislation - 2020

Measures adopted on working hours to tackle the Covid-19 pandemic crisis

Healthcare staff of the National Healthcare Service (NHS) directly employed to tackle the Covid-19 pandemic crisis

Article 1, paragraphs 1 and 2, of Decree-Law No. 18 of 17 March 2020, converted into Law No. 27/2020 (*"Conversion into law, with amendments, of Decree-Law No. 18 of 17 March 2020, laying down strengthening measures for the National Healthcare Service and financial measures to support families, workers and undertakings related to the epidemiological emergency for COVID-19. Extension of the terms for the adoption of Legislative Decrees"*) envisaged an increase for 2020, aimed to implement the current healthcare financing, and addressed to the resources of the Fund for the remuneration of the healthcare managers' working conditions and the Fund for working conditions and contracts of the healthcare sector.

This increase, which is equal to EUR 250 million, is aimed to raise the resources allocated for the remuneration of overtime work of the healthcare staff (employed in the bodies and institutions of the National Healthcare Service) directly tackling the epidemiological emergency due to the spread of SARS-COV2.

Subsequently, Article 2, paragraph 6 of Decree-Law No. 34/2020 (converted into Law 77/2020)[1], has modified the purposes and amounts of the allocation, by prioritising these allocations to the remuneration of ordinary and overtime performances, connected to the specific working conditions of the above-mentioned staff.

Without prejudice to the regions and autonomous provinces economic balance, they could increase these amounts with an additional sum that could not be higher than twice the above mentioned amounts (as clarified under Article 30 of Decree-Law No. 104 of 2020, converted into Law No. 126 of 2020)[2]. Therefore, for 2020, the territorial bodies were be able to raise the national additional allocations - through their resources to be allocated to the staff of the National Healthcare Service's institutions and bodies, primarily employed in tackling the epidemiological emergency – in order to encourage it.

[1] *"Conversion into law, with amendments, of the Decree-Law No. 34 of 19 May 2020, laying down urgent measures for health, economic and work support, and social policies connected to the COVID-19 epidemiological emergency".*

[2] "*Conversion into law, with amendments, of Decree-Law No.104 of 14 August 2020, laying down urgent measures to support and relaunch the economy"*

Along with the above-mentioned measures and in derogation to the current regulation, to face the pandemic and reduce the workload of the healthcare staff, special recruitment procedures have been applied to recruit additional staff, more specifically, in order to implement the territorial healthcare network and hospital units of virology and pneumology. This has allowed the Healthcare Service to tackle the ongoing epidemiological crisis in the most affected regions until the end of the emergency (currently postponed to 31 December 2021), by also providing long-term actions, such as the recruitment of physicians and nurses, also from the military service.
Autonomous work assignments and incentives were set out. To ensure assistance in case of replacement of the general practitioner, the possibility to exercise the profession of surgeon-physician after obtaining the Degree in Medicine and Surgery and the approval (the so-called Qualifying Degree) has been also foreseen.

Teaching staff

Following the COVID-19 emergency, teaching activities for the 2019/2020 school year in kindergarten, primary and schools of all levels and degrees, as well as those related to the 2019/2020 academic year in universities and AFAM institutions (High Artistic, Musical and Dance Training), were suspended across all the national territory from 5 March 2020. In order to ensure the right to stuy, e-learning has been implemented to protect the health of university and school students and personnel.
Subsequently a number of provisions have been introduced to ensure the safe resumption of teaching activities carried out in attendance within schools and educational services during the 2020/2021 school year and universities and AFAM institutions during the 2020/2021 academic year.
However, starting from October 2020, given the strong infective nature of this pandemic and its increasing diffusion on the national territory, new provisions have been progressively introduced to limit the number of teaching activities carried out in attendance. According to several modalities, a resumption of these activities had been provided from January 2021 in case of universities and AFAM institutions, from 7 April 2021 in case of schools and kindergartens.
Therefore it was provided that kindergartens, educational services for children, primary and secondary schools of first and second degree activities were be carried out in attendance during the 2021/2022 school year. Until 31 December 2021, exceptions to teaching activities carried out in attendance are only possible in exceptional circumstances and in red areas. As for the 2021/2022 academic year, universities, AFAM institutions, and Technical High Schools (ITS) activities are primarily carried out in attendance.
Article 2, paragraph 3 of Decree-Law No. 22 of 22 April 2020, as amended and converted into Law No. 41[3], of 6 June 2020, states that: "*In consideration of the suspension of teaching activities carried out in attendance due to the epidemiological emergency, the teaching staff should ensure the performance of educational activities in e-learning, by using the available IT or technological devices, or the connection services purchasable through the Electronic Teacher's Card for update and training. The work performances and relevant commitments of headmaster and staff, as defined under the applicable contract and regulations, can be carried out with new remote methodologies (the so-called smart working in Italian) also through IT devices, telephone and IT connections, to limit the spread of the pandemic*".
The Ministry of Education, with the Ministerial Decree No. 89 of 7 August 2020, has introduced the Digital Integrated Learning Guidelines providing indications to draft the School Plan for digital integrated learning (DDI) to be adopted by secondary schools of second degree along with regular activities carried out in attendance as well as by schools of all levels and degrees, if teaching activities carried out in attendance should be suspended once again due to the current epidemiological conditions. In case of any suspension of teaching activities carried out in attendance due to the ongoing health emergency and the recourse to e-learning, the teaching staff must respect its working hours, providing e-learning services, using the available IT or technological devices.

[3] *"Conversion into law, with amendments, of Law Decree of 8 April 2020, laying down urgent measures for the regular start and completion of the school year and the performance of the final State Examination"*

Without prejudice to the weekly working hours of teachers established by the CCNL, the headmaster, on the basis of the criteria identified by the Teachers' Board in the School Plan for Integrated Learning (PSDDI), prepares the weekly work plan of educational and teaching activities in order to achieve the planned learning objectives through e-learning, ensuring adequate weekly timetable to all disciplines.

Remote Work

The health emergency due to COVID-19 required the production system the development of strategies to guarantee the safety of workers and consumers from the risks of contagion. To reduce the movement of people and their exposure to the virus, the use of remote work on a large scale has been experimented for the first time. Until the early 2020s, it was very little used, even though technological devices, legal framework (Law No. 81/2017, laying down "*Measures for the protection of non-entrepreneurial self-employment and measures aimed at favouring flexible articulation in times and places of subordinate employment*", Chapter II – remote work-, National Collective Labour Agreements) and fairly widespread professional skills were already available.

Remote work - governed by Articles 18 to 22 of the aforementioned Law 81/2017 - is defined as a mode of execution of the subordinate employment relationship established by agreement between the parties and the possible use of technological devices. The service is performed partly within the company's premises and partly outside without a fixed location, up to the maximum daily and weekly working hours limit (established by law and collective bargaining).

The above rules also apply to employment relationships with public administrations, where compatible and without prejudice of different provisions provided explicitly for them, in accordance with the directives also issued for the promotion of work-life balance in public administrations, adopted on the basis of the provisions laid out under Article 14 of Law 124/2015 (in implementation of which Directive No. 3 of 2017 and Circular No. 1 of 2020 were issued).

The performance of remote work activities must be regulated by a specific agreement, containing:

- the discipline of the work performed outside the company's premises, also with regard to the forms of exercise of the employer's managerial power and the devices used by the worker;
- the discipline governing the exercise of the employer's control power, pursuant to the provisions of Article 4 of Law 300/1970, as well as the identification of conduct giving rise to the application of disciplinary sanctions, in case of work performed outside the company's premises;
- the discipline of the **worker's rest periods** as well as the (technical and organisational) necessary measures to ensure worker's **disconnection** from technological devices.

With specific regard to the implementation of remote work in the **public sector** due to the epidemiological emergency caused by COVID-19, pursuant to Article 87 of Decree-Law No. 18 of 2020, it is possible to use remote work even in the absence of individual agreements provided for by current legislation and to fulfill information obligations by electronic means.

In addition, the above mentioned article initially provided that, during the state of emergency, remote work could be applied to any kind of subordinate employment relationship, constituting the working ordinary modality adopted by public administrations, which were called upon to limit employees' presence at the workplace exclusively to these activities that could not be postponed and could not otherwise be performed (see Directive No 2 of 2020 and Circular Letter No 2 of 2020 of the Department of the Civil Service).

This latter provision was subsequently supplemented and partially amended by the aforementioned Decree-Law No. 34/2020 (the so-called Relaunch Decree), in order to adapt the measures limiting the presence of public administration staff at the workplace to the needs of the gradual full reopening of all public offices and those of citizens and undertakings related to the gradual restart of production and commercial activities. In particular, Article 263 of the aforementioned Relaunch Decree provides that public administrations, until the definition of the discipline on remote work by collective agreements, if any, and, in any case, no later

than 31 December 2021 (the deadline thus extended, most recently, by Art. 11-bis of Decree-Law 52/2021), remote work can be used even in the absence of individual agreements.
As regards the **private sector**, Article 90, paragraph 4 of the aforementioned Decree-Law No. 34/2020 provides that, until 31 July 2021 - as envisaged, most recently, by Decree-Law No. 52/2021, laying down"*Urgent measures for the gradual recovery of economic and social activities in compliance with the containment needs of the spread of the COVID-19 pandemic*", converted and amended by Law No. 87[4], of 17 June 2021 - private employers can apply this modality of carrying out the work activity to any subordinate employment relationship even in the absence of individual agreements provided for by the current discipline. In addition, the same article introduced the right to perform, in the private sector, remote work in favour of workers who are parents of children under 14 years of age, as well as workers who are most exposed to the risk of COVID-19, even in the absence of individual agreements provided for by the current discipline and without prejudice to the information obligations.

According to ISTAT's *Labour Force Survey* data, on average, in the first three quarters of 2020, workers employed in 'potentially' remote-workable occupations amounted to 36.1% of the total (just under 8.2 million workers), concentrated mainly in services, especially in the information and communication sectors, financial and insurance activities, public administration general services, and business services sectors. Compared to the same period in 2019, the decline in employment was significantly smaller among occupations that were "potentially" remote-workable (-0.4%) than among those that were not (-3.0% overall, -5.5%, in particular, those involving contact with people).
In the first three quarters of 2020, the incidence of remote work reported an explosive growth, reaching 18.6% among employees and 21.9% among the self-employed workers (they were 1.6 and 14.7% respectively in the same quarter of 2019), totalling just over 3 million on average over the three quarters (and peaking at 4.4 million in the second quarter of 2020). In the second quarter of 2020 people working from home were mainly women (23.6% compared to 16.3% of men), aged over 35 years old (20.5% compared to 14.8% of younger people), Italians (21.0 compared to 4.0% of foreigners), people residing in the Centre and in the North (21.9 and 20.6 compared to 15.0% in the South). The differences by level of education are very significant: in the second quarter of 2020, 42.5% of university graduates worked from home as well as 17.6% of high school graduates, and just 3.4% of people with a secondary school certificate. These data are closely related to the performed profession: skilled professions, among which those remote-workable are concentrated, are characterised by a higher incidence of employees who worked from home (41.1% with a peak of 54.8% among highly specialised intellectual professions).

Paragraph 2

Holidays

The Committee asks to specify whether, in the event of work on a public holiday (which does not coincide with the weekly rest period), the pay increase provided for by collective bargaining is due in addition to the normal pay and whether, in addition to the pay increase, compensatory rest is also provided.

[4] *"Conversion into law, with amendments, of Decree-Law No. 52 of 22 April 2021, laying down urgent measures for the gradual recovery of economic and social activities in compliance with the containment needs of the spread of the COVID-19 pandemic."*

The Italian legal framework does not consider the right to rest on a public holiday as an absolute and inalienable one since it is not expressly provided for by the Constitution, unlike the weekly rest period and holidays as envisaged in Article 36.
However, the principle recognised by the italian case law is that the worker is entitled to refrain from work during a public holiday without losing his pay.
Even if the right to rest during a holiday is not considered as absolute as the weekly rest period, the worker can legitimately refuse to work, retaining his normal fixed global pay (Court of Cassation, 15 September 1997, No. 9176).
Again, the Court of Cassation, in its ruling No. 16952 of 7 August 2015, reconfirmed that the worker can only work during midweek holidays celebrating religious or civil festivities if there is an agreement with the employer, as he cannot be obliged to perform the service. It also stated that midweek holiday rest is not intended to restore and replenish psychophysical energy, but as the enjoyment of qualified leisure time, considering its religious and social function.
This means that, even in the event of a refusal to work, the worker does not lose his right to receive normal pay, which must therefore be paid regularly by the employer. In the same way he cannot be accused of unjustified absence, since presence at work on public holidays is a worker's free choice, who cannot be required to work.
This protection is expressly and unanimously recognised by jurisprudence (Court of Cassation 8.08.05 No. 16634; Court of Cassation 15.09.97 No. 9176) and by doctrine.
Therefore, the right to a public holiday is available: the worker can refuse it and decide to work on these occasions. The employer can therefore request the performance that can only be performed if there is a specific agreement between the parties.
The exceptions to the prohibition on working on the day of weekly rest (generally Sunday) are also not applicable by analogy.
If, however, collective bargaining provides for shift work that also includes the obligation to work on holidays, the worker cannot escape that obligation.
Article 5 of Law No 260 of 27 May 1949 provides that to workers who work on public holidays '*an extra increase for holiday work (for the hours really worked) shall be paid, in addition to the normal global daily pay, including all additional elements* '.
It follows that, when the worker works on a holiday, he is entitled, in addition to the daily pay, to the icrease for holiday work quantified by the collective agreement and applied in addition to the ordinary pay.
With reference to compensatory rest, it should be noted that - in the silence of the law - it can be provided for by collective bargaining in addition to the increased pay. This is the case, for example, in the CCNL for *workers employed in the private metalworking and installation industry*, signed on 26 November 2016, which in Article 7 (not amended by the subsequent renewal of the CCNL on 5 February 2021) provides a 50% increase or the cumulation of compensatory rest with an increase in pay of 10%, in the event of work on a public holiday.

Paragraph 4

Elimination of risks in the case of dangerous or unhealthy work

The European Committee of Social Rights considered that the Italian situation did not comply with the provisions of the Charter on this paragraph due to the alleged absence of a policy to prevent the risks associated with dangerous or unhealthy works and, consequently, the insufficient protection of workers exposed to such risks. This judgement was reiterated in the 2014 Conclusions of the ECSR regarding the Italian Government's 13th Report on Article 2 of the European Social Charter.

In this regard, the following is noted.
The Italian Government had already pointed out that the national system of prevention in the field of health and safety at work is governed by Legislative Decree of 9 April 2008 No. 81.
It seems appropriate to point out that the aforementioned legislative decree outlines an articulated and complete prevention system consistent with the EU legislation on this matter.
The prevention system provides for the adoption of measures to promote prevention and safety at work through training and information, cooperation between undertakings and workers, in a context with precisely defined competencies of public administrations, and attention to emerging risks.
The general protection measures provided for in Article 15 of Legislative Decree No. 81 of 9 April 2008 appear to be of primary importance. They include the assessment of all health and safety risks as well as their elimination and, where this is not possible, their reduction to a minimum in relation to the knowledge acquired on the basis of technical progress. In addition, there is provision for reducing risks at source, replacing what is dangerous by what is not or is less dangerous, and limiting to a minimum the number of workers who are or can be exposed to risk.
Risks assessment is the tool provided by the legislator to ensure that the employer can identify the most suitable prevention and protection measures for the specific work context and implement them.
Article 28 of the cited legislative decree states that: "*The assessment referred to in Article 17, paragraph 1), a), also in the choice of work equipment and of the chemical substances or mixtures used, as well as in the arrangement of workplaces, must cover all risks to the safety and health of workers, including those concerning groups of workers exposed to particular risks, including those related to work-related stress, in accordance with the contents of the European agreement of 8 October 2004, and those concerning pregnant workers, in accordance with the provisions of Legislative Decree No. 151 of 26 March 2001*".
The legislative decree also pays particular attention to unhealthy activities.
Point 1.1.7 of Annex IV, which regulates '*workplace requirements*', states that: "[..] *Next to workplaces and their outbuildings, the employer cannot keep stores of rubbish or waste or other solid or liquid materials which give off unhealthy fumes, unless effective means are taken to prevent damage to workers and their neighbours."* Point 2 of the same annex, entitled "Protection against harmful agents" states that "*Without prejudice to the rules laid down in Royal Decree no. 147 of 9 January 1927 and subsequent amendments, raw materials not being processed, products and waste, with toxic or caustic properties, especially if they are in a liquid state or if they are easily soluble or volatile, must be stored in tightly sealed containers. 2.1.2. Materials being processed which are fermentable or could be injurious to health or to give off unpleasant odours must not be stored in the work premises in quantities greater than is strictly necessary. 2.1.3. Containers and equipment used for processing or transporting putrescible materials or materials likely to give off unpleasant odours must be washed frequently and, where necessary, disinfected. 2.1.4. The employer shall wherever possible, carry out dangerous or unhealthy work in separate places so as not to expose unnecessarily workers engaged in other works. 2.1.4-bis. In works where unbreathable or toxic or flammable gases or vapours are present, and in works where odours or fumes of any kind normally develop, the employer must take measures to prevent or reduce, as far as possible, their development and spread. 2.1.5. Gases, vapours, odours or fumes must be aspired as near as practicable to the place where they are occurred. 2.1.6.1. At the entrance to any establishment or place where, in relation to the manufacture, handling, use or storage of materials or products, there are specific dangers, a summary of the safety rules contained in this decree and in the special laws and regulations relating to the performed work must be displayed. 2.1.6.2. In departments and near machines and equipment where operations characterized by particular hazards are carried out, provisions and instructions concerning the safety of the specific processes must be displayed. 2.1.7. Operations presenting danger of explosion, fire, development of asphyxiating or toxic gases and harmful radiation must be carried out in isolated premises or places which are adequately protected against the spread of the harmful element. 2.1.8.1. Dangerous or noxious concentrations of explosive, flammable, asphyxiating or toxic gases, vapours or dust shall be prevented or minimised as far as is technically possible in premises or places of work*

or transit areas; where necessary, adequate ventilation must be provided to prevent such concentrations. 2.1.8.2. In workplaces or transit areas, where vapours and gases which may develop constitute a danger, warning devices and automatic alarms shall be installed to signal that dangerous concentrations or conditions have been reached. Where this is not possible, frequent checks or measurements must be carried out. 2.*1.9. Scrap and waste of flammable, explosive, corrosive, toxic, infectious or otherwise noxious matter must be collected during processing and removed frequently by suitable means and stored where they are not dangerous. 2.1.10.1. Corrosive substances and products or those having harmful temperatures must be transported and handled by means or systems which prevent workers being in direct contact. 2.1.10.2. Where technical or manufacturing requirements do not permit application of the rule in the preceding paragraph, personal protective equipments must be provided for workers in accordance with the provisions of Title III, Chapter II. 2.1.11.1. In establishments or places where corrosive liquids are produced or handled, adequate running water outlets or containers containing suitable neutralising solutions must be provided by an easy reach for workers. 2.1.11.2. Where there is a risk of being hit by corrosive liquids, baths or showers with water at the appropriate temperature must be provided in the work area or next to it. 2.1.12. Where corrosive liquids are spilled, they must not be absorbed by rags, sawdust or other organic matter but they must be removed by washing with water or neutralised by suitable materials. 2.1.13. The provisions and precautions laid down in points 3.2.1 and 3.2.2 must be observed, in so far as applicable, for access to premises or places, especially underground premises, tunnels, sewers, wells, and attics, where toxic or asphyxiating gases or vapours may exist or be detected*".

Finally, point 2.1.1 of Annex XV on the "Minimum contents of safety plans for temporary or mobile sites" states that "*The PSC (site safety plan) is specific to each temporary or mobile site and of concrete feasibility; its contents are the result of design and organisational choices that comply with the requirements of Article 15 of this decree*". Point 2.2.3 further provides that "*With reference to the works, the design coordinator subdivides works into phases and, when its complexity requires it, into sub-phases, and carries out an analysis of the risks, with reference to the area and organisation of the site, the works and their interference, excluding those specific to the undertaking's activity, paying particular attention to the following [...]:*
d) the risk of air pollution in tunnel works".

As highlighted above, national legislation gives priority to contrast risks at source or, where this is not possible, to minimising them. Nevertheless, there are still special compensation measures for workers exposed to particular risks to their health.

This is the case of medical radiologists and medical radiology technicians, in both the public and private sectors, for whom an additional 15 days of ordinary leave are provided to prevent pathologies arising from exposure to ionising radiation. This measure, contained in Presidential Decree No. 130 of 27 March 1969 (the legal status of hospital employees), in regulating ordinary leave, provides, in the last paragraph of Article 36, that: *"the period of leave is increased by 15 days for staff exposed in any event to the risk of ionising radiation'.*

As a measure designed to prevent the onset of pathologies related to exposure to harmful agents, the benefit in question cannot be waived by the employee either. Moreover, again with regard to radiological risk, the 2016-2018 National Collective Labour Agreement (CCNL) for staff in the health sector has confirmed the specific professional indemnity provided for in Article 5 of the National Collective Labour Agreement of 20 September 2001, for the two-year economic period 2000-2001, due to medical radiology technicians in the amount provided for in points 15(b) and 16(b) of table C of the CCNL of 5 June 2006.

In addition to radiologists and medical radiology technicians, medical anaesthesia and resuscitation staff are also entitled to an additional 8 days off per year for anaesthesiology risk (Presidential Decree No. 384/90, *"Regulation for the implementation of the rules resulting from the discipline set out in the agreement of 6 April 1990 concerning staff in the national health service sector, as per Article 6 of Presidential Decree No. 68*

of 5 March 1968", Article 120, paragraph 10). Rest days must be taken continuously, including public holidays and non-working days.

In the previous report, it was also represented that the workers in the asbestos sector had taken advantage of the benefits provided both by Law No. 271/1993 (*"Urgent provisions for workers in the asbestos sector"*) and by the Financial Law for 2008 (Law No. 244 of 24 December 2007, Article 1, paragraph 241 et seq.). The aforementioned Financial Law had established, at INAIL (National Institute for Insurance of Accidents at Work), a Fund for asbestos victims, which, in addition to pensions, provided economic benefits in favour of workers who had contracted asbestos-related diseases due to exposure to asbestos or their heirs. Law 244/2007 provided that three quarters of the financing of the Fund would be charged to the State budget and one quarter to undertakinga through a surcharge on insurance premiums relating to the sectors of activity that led to a greater exposure to asbestos. Article 1, paragraphs 356 to 359 of the Budget Law for 2021 (Law No. 178 of 30 December 2020) amended the discipline by providing that, from 1 January 2021, the additional benefit to pension would be 'stabilised' at a total of 15% of the pension enjoyed. The additional benefit is paid monthly together with the pension. From the same date, the one-off benefit for mesothelioma patients and their heirs was also "stabilised", as well as its amount, fixed at EUR 10,000. The same law, in Article 1, paragraph 358, definitively abolished the surcharge to be charged to the undertakings and, therefore, the benefits are entirely financed by resources from the State budget.

Paragraph 5

Weekly rest periods

The Committee, noting that under Italian law workers are entitled to 24 consecutive hours of weekly rest, normally coinciding with Sunday, asks whether there are circumstances in which workers are required to work more than 12 consecutive days before taking the two days' rest.

In this regard, it should be recalled that the worker, pursuant to Article 7 of Legislative Decree No. 66 of 2003, is entitled to 11 consecutive rest hours every 24 hours (daily rest) and to a rest period of at least 24 consecutive hours every 7 days (weekly rest period), normally coinciding with Sunday, to be added to the daily rest hours defined under Article 7; the aforementioned consecutive weekly rest period is calculated on average in a period not exceeding 14 days (Article 9, paragraph 1 of the quoted Legislative Decree).

Moreover, pursuant to paragraph 2, Article 9, the following activities are to be considered as exceptions to the provision set forth under paragraph 1:

a) work activities on shift, each time the worker changes shift or team and cannot enjoy a daily or weekly rest period between the end of a shift and the beginning of the following one;
b) activities characterised by working periods split over the day;
c) limited to staff working in the railway transport sector: discontinuous activities; service on board; activities connected with railway transport timetables that ensure the continuity and regularity of railway traffic;
d) collective agreements can provide otherwise, under the conditions laid down in Article 17 paragraph 4 of Legislative Decree No 66/2003, i.e.. Equivalent periods of compensatory rest shall be granted to workers or - in exceptional cases where the granting of such equivalent periods is not possible for objective reasons – as long as the workers concerned are granted appropriate protection.

Paragraph 7

Night work

The Committee has requested further clarification on Article 12 of Legislative Decree No 66 of 2003, which states that "*In accordance with the criteria and procedures laid down by collective agreements, the introduction of night work shall be preceded by consultation with the company trade union representatives, if any, which are members of the trade unions which have signed the collective agreement applied by the undertaking. Failing that, such consultation shall be carried out with the territorial workers' organisations defined above through the trade union to which the company belongs to or to which has given a mandate. The consultation must be carried out and concluded within a period of seven days.*"

In particular, clarification is requested as to whether these company trade union representatives can also be regularly consulted on any issues that may arise in connection with night work.

In this regard, it should be noted that Article 14, paragraph 2, of Legislative Decree 66/2003 provides for information to be given to company trade union representatives on the level of services or means of protection that the employer is required to provide during night work, which must be equivalent to that provided for day work. Moreover, under the third paragraph of the above-mentioned Article 14, '*The employer, after consultation with the trade union representatives referred to in Article 12, shall provide, pursuant to Articles 40 et seq. of Legislative Decree No 626 of 19 September 1994, for night workers who carry out work involving special risks referred to in the list defined in Article 13, paragraph 3 appropriate personal and collective protection measures*.

ARTICLE 4

THE RIGHT TO A FAIR REMUNERATION

In response to the European Committee of Social Rights (ECSR) observations related to the application of Article 4 of the European Social Charter, concerning the "Right to a fair remuneration", we hereby represent the following.

➢ ARTICLE 4, PARAGRAPH 1

Regarding **Article 4§1 of the Charter, concerning "a decent remuneration",** the Committee stresses that, in order to guarantee a decent standard of living in accordance to the spirit of Article 4§1 of the Charter, the wage must not be lower than the minimum threshold fixed at 50% of the average net remuneration.

We remind that in Italy there is still no a national law regulating the minimum wage, only provisions contained in national collective labour agreements (CCNL). According to an estimate of the CNEL (National Council for Economy and Labour), there are currently about 888 national collective labour agreements in force; however, collective agreements are not compulsory and do not have *erga omnes* effect, but only for the parties who signed them, so there are undertakings or types of individual employment contracts to which no collective agreement is applicable.

Given this situation, the problem of the **working poor** has also arisen in Italy: workers whose income is below the relative poverty line, perhaps because they work part-time, even though they are regularly employed. According to the latest Report on *"In-work poverty in the EU",* 11.7% of employees in Italy are paid less than the minimum contractual wage. For these reasons, even before the European proposal on this matter, some political forces suggested the introduction of the national minimum wage to overcome the scheme of national collective agreements and regulate the minimum threshold by national law.

The minimum wage had been envisaged in the Jobs Act (Legislative Decree No. 81/2015), but it then remained excluded from the implementing decrees. Article 1, paragraph 7, letter g) of Law No. 183 of 10 December 2014 provided for the introduction of a "minimum hourly wage" to be applied in sectors not covered by collective bargaining.

Currently, in Italy there is no form of social protection *sine die* for social groups living below the poverty line. After a certain period of coverage through social safety nets, these individuals and families have no support, except for the **citizenship income**, a measure introduced in 2019 throughout the country and amended by the Budget Law for 2022.

Please, find below the data provided by INPS (National Institute of Social Security) in the 2021 annual report, analysed by the Senate Labour Commission, relating to some sectoral CCNLs with the relevant wages:

- **tourism**: minimum hourly wage is EUR 7.48;
- **cooperatives in social-welfare services**: minimum hourly wage is EUR 7.18;
- **undertakings in the sectors of public establishments, collective and commercial catering and tourism**: minimum hourly contractual wage is EUR 7.28;
- **textile and clothing sector**: minimum wage is EUR 7.09;
- **social-welfare services**: minimum hourly wage is EUR 6.68;
- **cleaning and integrated services or multiservice companies**: minimum hourly wage is EUR 6.52. This CCNL has not been renewed for more than seven years;
- **security and trust services,** not renewed since 2015: minimum wage is EUR 4.60 per hour for the trust services sector and just over EUR 6 for private security services.

The **draft law No. 2187 on the minimum wage** is currently being considered by the Senate. This rule, that is currently being discussed, enhances the value of 'leading' collective agreements, i.e., those signed by the most representative bodies at the national level. Moreover, as a further guarantee of the recognition of

a fair wage, it introduces a minimum threshold of EUR 9 per hour, in line with the adequacy parameters indicated by the European Commission. In addition, Italy also must deal with the National Recovery and Resilience Plan (NRRP), which puts pay equality and adequacy at the forefront, providing many funds for this area of legislative action.

The Ministry of Labour has identified 11 projects to be funded under Italy's National Recovery and Resilience Plan. Among them there is the guarantee of adequate income levels by establishing a minimum hourly wage. According to the NRRP, this limit should be modulated by collective bargaining and anchored to a de-taxation of CCNL renewals. Benefits and tax incentives for new hires should accompany this mechanism for workers based on the results achieved. The 2022 Budget Law has already intervened on this issue.

At the same time, the Ministry is planning a review of the social safety nets discipline, as already envisaged in part in the Budget Law.

➢ ARTICLE 4, PARAGRAPH 2

About **Article 4§2, concerning pay increases for overtime work** - on which the ECSR considers the Italian legal framework to be in conformity with the European Social Charter - there are no regulatory changes since the last Report in 2013, which is attached (ANNEX 1).

The source of legislation governing overtime work is Legislative Decree No. 66/2003. Article 1 of the aforementioned Decree defines 'overtime' work as that performed beyond the regular working hours of 40 hours per week. Collective agreements can regulate the performance of overtime work and the maximum limits.

In the absence of **collective agreement** provisions, overtime work is permitted:

- only by agreement between the employer and the employee.
- within 250 hours per year.

Unless otherwise provided for in the collective agreement, overtime work is also permitted in connection with:

- cases of **exceptional technical and production needs**, which cannot be faced by employing other workers;
- cases of **force majeure** or cases in which the non-performance of overtime work could give rise to serious and immediate danger or **damage** to persons or production;
- **special events**, such as exhibitions, trade fairs, and events related to production activities, as well as the preparation of prototypes, models or similar, provided for them. In the latter case, the company trade union representatives (*Rappresentanze Sindacali Aziendali*, RSA) must be notified of the events in good time.

Overtime work is remunerated with an increase that varies according to collective bargaining and the timing of the work (overtime night work, holidays, over 48 hours per week, etc.).

Jurisprudence has identified the following as the basis for calculating this increase: basic pay; contingency pay and seniority increments; an increase for shift work; supplementary prepayments (Court of Cassation, Joint Sections, No. 1889/1982); production benefits (Court of Cassation, No. 3110/1984). On the other hand, the Sunday work benefit and the EDR (separate element of remuneration) cannot be used as a basis for calculation.

By way of example, the CCNL Commercio (trade national collective labour agreement), which is one of the most widely used, provides for the following increases:

- 15% for overtime work from the 41st to the 48th hour per week;
- 20% for overtime work over 48 hours per week;
- 50% for overtime night work;
- 30% for holiday overtime work.

The individual contract may provide for ordinary working hours that are lower than the legal limit of 40 hours or any lower limit provided for by the collective agreement: in this case, if the worker works beyond the hours agreed in the individual contract, although he does not exceed the legal or CCNL limits, he must be paid the overtime increase.

An exception can only be considered if there is an agreement between the parties to extend regular contractual working hours, up to the maximum limit set by law or agreed by collective bargaining.

Overtime increase is not due in the case of piecework pay, for work exceeding the production rate, but performed within normal working hours.

Overtime work can be performed regularly and continuously (so-called continuous overtime work); however, the exceptionality of the performance remains, so that the increase is always due. If overtime work is performed continuously, the increase may be paid as a lump sum, but the amount cannot be less than ~~the~~ the increase due for overtime work. In addition, when the parties agree on lump-sum payment, the maximum number of hours which the employee can require to work must be indicated since the lump-sum payment cannot be independent from the hours worked.

Some collective agreements allow compensatory leave for overtime work performed, as an alternative or in addition to the payment of increases. In many cases, national collective labour agreements provide for the establishment of a 'bank of hours', which consists of setting aside in an individual account the hours worked over regular working hours, that can be used for compensatory leave.

Overtime work increases decay after five years (Court of Cassation Nos. 947/2010 and 40925/2010).

- **ARTICLE 4, PARAGRAPH 3**

Regarding **Article 4§3 on non-discrimination in pay between men and women**, the Committee points out that equal treatment between women and men under Article 20 of the Social Charter also includes equal pay for work of equal value. Usually, pay comparisons are made between male and female workers of the same company/undertaking; however, there are situations where pay comparison should be made between workers of different companies/undertakings, particularly when: statutory rules apply to working and pay conditions in more than one company; where more than one company is subject to the same collective labour agreement; and where working conditions are set centrally for more than one company within a holding company or corporate group.

The ECSR considers that this interpretation of the principle of equality beyond company boundaries also applies, *mutatis mutandis*, to Article 4§3 and that, therefore, in disputes on equal pay, it is possible to make comparisons of pay and jobs outside the company directly concerned.

In this regard, it is first recalled that Article 28, paragraph 1, of the Equal Opportunities Code (Legislative Decree 198/06) prohibits "*any discrimination, direct or indirect, concerning any aspect or condition of remuneration, with regard to the same job or to a job to which an equal value is attributed*". Paragraph 2 of the same article adds that *"occupational classification systems in order to determine remuneration must adopt standard criteria for men and women and be drawn up in such a way as to eliminate discrimination"*.

Regarding disputes, Article 40 of the above-mentioned Code stipulates that a person acting to declare gender discrimination must provide factual elements "*also inferred from statistical data*" relating to pay schemes. The general principle of the judge's free conviction applies to assessing the evidence, which could also refer to workers from different companies/undertakings that are interrelated or subject to the same collective labour agreement.

On this point, it is worth mentioning the recent judgement of the European Court of Justice (C-624/2019 - Tesco stores Ltd), which, in order to define the concept of "*work of equal value*" pursuant Article 157 TFEU, has allowed the possibility of a comparison between the remuneration of workers employed in

different undertakings, when the pay conditions are attributable to "*a single source*" such as, for example, the same employer or the same collective agreement (see, in particular, paragraph 36: *"(...) a situation in which the pay conditions of workers of different sexes performing the same work or a work of equal value that can be traced to a single source falls within the scope of Article 157 TFEU (...) the work and pay of those workers may be compared on the basis of that article, even if they perform their work in different undertakings").*

Regarding evidence, the Italian legal framework provides a useful tool for obtaining statistics in the company context: the Report about the male and female staff (Art. 46, Legislative Decree No. 198/2006), which public and private companies with more than 100 employees are required to draw up every two years also containing dpassed oata on salaries paid, broken down by gender and by professional qualification. Decre-Law 152/2021 stipulates that all companies with more than 50 employees must comply with this requirement. Lowering the reference employment threshold means enlarging the number of companies concerned.

Among other things, Article 47 of Law Decree 77/2021, converted with amendments into Law 108 of 2021, has further strengthened these transparency mechanisms, providing that also companies that employ at least 15 employees - if they intend to enter into public contracts financed with the resources provided by the *National Recovery and Resilience Plan*, referred to in Regulation (EU) 2021/241 - are required to submit a similar report on the gender situation.

Still, on the subject of gender equality, it should be noted that for the first time, Italy, in complete agreement with the European guidelines, has prepared the first National Strategy for Gender Equality (2021-2026) in order to systematise a transversal and integrated approach aimed at promoting equal opportunities and gender equality. The Strategy was presented to the Unified Conference and the Council of Ministers on 5 August 2021 for collegial sharing at the institutional level of the strategic document.

The Strategy is based on several priority axes, which define indications of directionality and provide a reading of the country's current state, setting step-by-step objectives. It is inserted as a reference strategy for implementing the National Recovery and Resilience Plan (NRRP), thus being a valuable and important tool to enhance and frame the system and verify and monitor the plan itself, which sets very significant objectives in terms of equality. For the adoption of the Strategy, the Department for Equal Opportunities has activated a broad and participated process, which has allowed to acquire and integrate, enhancing them, the contributions of central Administrations, Regions, Territorial Bodies, as well as social partners and the leading associations active in the promotion of gender equality.

The necessary first step was a complete understanding of the Italian situation, which has been analysed in comparison with other European Union countries, to ensure comparability between countries with similar cultural contexts and legislative approaches and, at the same time, with situations in countries that are more deserving in terms of gender equality, and which have already made some changes in order to reach the desidered aim . The data taken as a reference for the analysis come mainly from the Gender Equality Index, constructed by the European Institute for Gender Equality (EIGE).

As is well known, the Index gives each country an overall score summarising its performance in the main domains studied by EIGE. The analysis and the Strategy focus on the five domains where Italy's gap compared to other countries and/or progress in recent years is most significant:

1. Labour (concerning working conditions),
2. Income (concerning the economic and income conditions),
3. Skills (concerning education and training),
4. Time (concerning extra-work engagement),
5. Power (concerning leadership positions).

The data presented by the Index have been collected before the CoViD-19 pandemic, whose overall impact on the condition of women and the potential opportunities that have emerged are still being developed and measured.

Italy currently ranks 14th in Europe for gender equality, with a Gender Equality Index score below the European average and well behind the top three countries in the ranking (Sweden, Denmark, and France), despite having made the most significant progress of all European Union countries in recent years, with an increase of more than 10 points in seven years. This significant advancement is mainly due to the improvement in the dimension of Power, i.e., 'leadership positions', which translates into the presence of women in leading positions, thanks to several factors, the main one of which is undoubtedly the application of the 2011 Golfo-Mosca Law.

1. WORK

In terms of female participation in the labour market, quality and segregation of work in different sectors, Italy ranks 28th (and last) in Europe: female employment is significantly lower than male employment (more than 20 percentage points), especially for working mothers. The situation of women in the world of entrepreneurship is particularly critical: in Italy there are just over one million businesses run by women, equal to 22% of the total. These measures aim to:

- create a fairer world of work in terms of equal career opportunities, competitiveness, and flexibility, through support for female participation, also due to the dramatic impact of the pandemic, in particular by helping parents to reconcile life and career as well as by stimulating female entrepreneurship, especially in the innovative sphere;

- supporting the increase of female employment, also through the enhancement of collective bargaining, emphasising quality of work, and removing sectoral segregation by promoting the presence of women in typically male sectors and the presence of men in typically female sectors.

2. INCOME

Considering women's income and financial condition, Italy ranks 15th, showing a significant pay gap between women and men and a higher risk of poverty for the female population than for male. During the Strategy's implementation, this phenomenon will also be monitored through specific tools and potential indicators, such as Equal Pay.

These objectives are aimed at reducing the gender pay gap, facilitating the participation and permanence of women in the labour market through the support of care responsibilities, enhancing skills, ensuring fair remuneration for jobs and occupations with equivalent socio-economic value, and promoting a condition of economic independence.

3. SKILLS

Regarding participation in education, results achieved, and segregation in the academic paths taken (especially for university education), Italy is below the European average and ranks 12th among the other Member States. While women are by far the most represented gender among graduates in the teaching, psychology, and law disciplines, the gender gap is reversed in STEM studies, with the female component standing at only 27%. In Italy the gender gap is also evident in academic careers, with only 11% of female full professors. These objectives aim to:

- ensure equal opportunities to develop skills and apply individual talents in all disciplines of knowledge and in mathematics and technical-scientific disciplines by removing cultural barriers and gender stereotypes in order to guarantee fair gender representation in academia;

- at the same time, promote an approach that aims to desegregate women's and men's competencies in all gender-sensitive fields.

4. TIME

The dimension describing the use of time, especially unpaid time devoted to care activities at home or to family/others as well as to social and recreational activities, ranks Italy 17th, with a significant imbalance in the time devoted by women to family and home compared to men (Italy is last in Europe in this category)

and an opposite situation for leisure activities. These objectives aim to promote equal sharing of unpaid care and assistance activities (childcare, parenting, and elderly care) between men and women and ensure quality, affordable, and widespread early childhood care throughout the territory.

5. POWER

The Italian framework of women's representation in leading positions and political, economic, and social governing bodies has improved significantly, mainly thanks to initiatives such as the Golfo-Mosca Law. However, there is still a significant disparity in companies not subject to the law as well as discrepancies in other leading positions remain significant. The aim is to support an equal gender distribution in leading management and economic, political, social, and cultural roles, in terms of both representation and accountability, and to encourage the training and development of talents with equal gender representation.

Starting from the strategic priorities, a set of indicators has been defined to measure the main aspects of gender inequality. For these indicators, in addition to the current value, a target value is also identified, i.e., the specific and measurable objective to be achieved. Both tools are aimed at guiding government action and ultimately monitoring the effectiveness of all these initiatives.

In order to achieve the abovementioned objectives, the Strategy defines the specific measures to be taken, identifying some of a cross-cutting nature and then those concerning the five strategic priorities.

In some cases, these measures refer to and enhance parliamentary and governmental activities, which, together with the NRRP and cohesion policy, contribute to the achievement of the targets set by this Strategy. This is the case, for example, of the enabling act on the so-called Family Act, and the opinions rendered by Parliament on the proposal for a European directive. This proposal is aimed at strengthening equal pay between men and women, as well as the draft law laying down *'Amendments to the code referred to in Legislative Decree No. 198 of 11 April 2006, and other provisions on equal opportunities between men and women in the workplace'*, finally approved by Parliament on 26 October 2021, aimed at promoting equal pay between men and women and supporting women's participation in the labour market.

The Gender Equality Strategy acts in a time horizon ending in 2026 and aims to bring about structural and lasting changes. The Strategy's five-years ambition outlines a clear target to be pursued: to gain 5 points in the ranking of the EIGE Gender Equality Index in the next 5 years, to achieve a better position compared to the European average by 2026 in order to be included among the top 10 European countries in 10 years.

The central Administrations, Regions, and local authorities will implement the measures envisaged by the Strategy based on their institutional competencies, considering the reference sector and the nature of the intervention.

As already highlighted, pursuant to Article 4 of the European Social Charter and with specific reference to the issue of pay non-discrimination between men and women, the National Strategy for Gender Equality 2021 - 2026 has given considerable importance to the issue of promoting equal pay (for work of equal value) as part of the great commitment dedicated to reducing the gender gap in terms of access, conditions and pay in the workplace.

As well as providing for the calculation of gender pay gap for some sectors where the it is exceptionally high, the Strategy foresees the development of specific indicators which take into account the different factors influencing the gender pay gap. These indicators will be instrumental in implementing equal pay measurement systems at the company level.

For this purpose, preliminary studies will be necessary, firstly, to identify the most suitable indicators for measuring equal pay, broken down according to the different characteristics that affect workers' pay (position, qualification, seniority). These preliminary studies will also define a single summary measure of the indicators identified. Private companies should calculate and share this measure (e.g., through publication on the website).

Finally, the Strategy foresees that companies will be provided with technical reference tools for the calculation of indicators and of the summary index.

In the framework of actions and studies focused on the promotion of equal pay, it will be possible to find methodologies that will widen the measurements outside the company, allowing comparisons between situations of different companies, in the direction of the priorities expressed by the ECSR.

- **ARTICLE 4, PRAGRAPH 4**

Regarding **Art. 4§4, relating to reasonable notice of termination of employment**, the ECSR considers that the Italian legal framework was not in conformity with the European Social Charter on the ground that in some branches of activity - particularly the textile, private metalworking and mechanical, and food-processing industries - notice period was not reasonable for certain length of service. Therefore, the Committee asks for information in this report on any compensation provided for by the law or by collective agreements in the event of dismissal. It also asks for clarification on the compensation provided for by sections 8 and 9 of the Rules Applicable to Individual Dismissal Act of 15 July 1966 (No.604/1966).

The ECSR reiterates that the protection of notice of termination of employment and the related financial compensation are due to all workers, regardless of whether they have a fixed-term or permanent contract and regardless of the reason for the termination of employment.

Finally, the Committee also asks for clarification on the concept of serious misconduct as the sole cause of immediate termination of employment.

The following is noted with reference to the **notice period governed by some CCNLs**.

The determination of the notice period of termination of employment is left to the social partners, which fix it by exercising their contractual autonomy, pursuant to Article 2118, paragraph 1 of the Civil Code.

This provision also provides that in the absence of notice, the employee is due a severance pay equivalent to the amount of wage that would have been due for the period of notice and that this severance pay is also due in the event of the death of the employee (paragraphs 2 and 3).

In accordance with the principle of trade union freedom pursuant to Article 39 of the Constitutional Charter, the parties are free to regulate the various labour institutions in respect of which there are no express legal limits. CCNLs are renewed, as a rule, every three years for both the regulatory and the economic part.

As regards the length of the notice period, since there are no changes in the new CCNLs for the sectors in question (textile, private metalworking and mechanical, and food-processing industries), it is to be considered that the stipulating social partners have deemed the periods already established to be adequate in relation to the various contractual classification levels and have not identified any critical application issues in this regard.

In case of voided or unlawful dismissal, the employee must be paid compensations whose amount varies according to the type of defect found in the dismissal and the discipline applicable to the employment relationship, which can be inferred from the date of recruitment. For the quantification of this compensation, reference is made to the provisions of Article 8 of Law No. 604/1966 and Article 18 of Law No. 300/1970 for employees hired before 7 March 2015 (applicable, respectively, to employers with fewer or more than 15 employees), as well as Legislative Decree No. 23/2015 for those hired at a later date.

In some cases (e.g., discriminatory dismissal), the compensation is accompanied by the right for the unlawfully dismissed employee to obtain reinstatement in the workplace.

As for the information requested by the Committee on Article 9 of Law No. 604/1966, the provision under review states that: *"**The length-of-service allowance** is due to the employee in any case of termination of employment".*

This allowance is now replaced by the **severance pay**, governed by **Article 2120 of the Civil Code** (as amended by Law No. 297/1982), which is payable to the employee in all cases of termination of employment. The calculation criterion consists in the sum, for each year of service, of a rate equal to the amount of the wage due for the same year divided by 13.5. The annual wage includes all sums, including the equivalent of benefits in kind, paid in connection with the employment relationship, on a non-occasional basis (see

paragraphs 1 and 2 of Article 2120). Moreover, an annual revaluation mechanism of the severance pay is provided for (paragraph 4).

In the Italian legal framework, the only hypothesis that allows termination of employment without notice is the lawful dismissal for **misconduct**. According to the provisions of Article 2119 of the Civil Code, it occurs whenever conduct is so serious as not to allow the relationship to continue, even temporarily, because the employee's conduct is such as to cause serious damage to the employer or his company, thus irreparably damaging the fiduciary relationship underlying the employment relationship. Such conduct may be intentional on the part of the employee or may depend on his profound inexperience, imprudence, or negligence: in the first case, the conduct will be qualified as **intentional** - found, for example, if the employee attacks the employer or his colleagues, voluntarily causes damage to the company or divulges an office secret - while in the second case it is characterised by the element of **serious negligence**.

According to the Court of Cassation (judgment No. 13512/2016), in order to consider integrated the lawful dismissal for misconduct, the subjective element of the employee's conduct do not need to be presented as intentional or negligent, since even conduct of a negligent nature may be suitable to determine a serious and irreparable breach in the fiduciary relation that cannot allow the further continuation of the employment relationship. In this case, the Supreme Court has found integrated the lawful dismissal in the conduct of a bank employee who had made transactions without authorisation, without appropriating the sums.

Based on the Court of Cassation's decision No. 19305/2019, the dismissal for serious negligence is lawful related to an employee assigned to security functions who has recurrently left the service car in front of a bank branch, interrupting the security service without asking for authorisation from the operations centre.

- **ARTICLE 4, PARAGRAPH 5**

With reference to **Article 4§5 of the Charter, concerning limits to deduction from wages**, the European Committee of Social Rights noted that the Italian legislation does not provide that adequate measures related to the lowest deducted wages, could ensure workers and their dependents the minimum subsistence income: it therefore requests clarification on this point.

In this respect, compared to the previous Report of 2013, the following changes in the Italian legal framework of reference are noted.

Decree-Law No. 83 of 27 June 2015 "*Urgent measures on bankruptcy, civil and civil procedure and on the organisation and functioning of the judicial administration*" - converted into Law No. 132 of 6 August 2015 – has introduced essential changes on the attachment of pensions, wages, and other sums assimilated to them (severance pay, compensation for damages for unlawful dismissal, retirement allowances, wages, other indemnities related to the employment relationship).

Article 13, paragraph 1, letters l) and (m) has revised Articles 545 and 546 of the Code of Civil Procedure, modifying the limits of attachment of wages and pensions to consider a minimum subsistence income based on the social allowance (the so-called unattachable minimum subsistence income).

The attachment that violates the new legal limits is ineffective for the part exceeding these values. Ineffectiveness may also be detected ex officio by the enforcement court.

ARTICLE 5

THE RIGHT TO ORGANISE

The reference regulatory framework has remained unchanged.

It is therefore confirmed, what is illustrated in the previous reports, especially, in the last one submitted in 2013.

ARTICLE 6

THE RIGHT TO BARGAIN COLLECTIVELY

Paragraphs 1 and 2

Following the requests of the European Committee of Social Rights (ECSR), it should be noted that:

Regulatory Framework

Considering that the current COVID-19 pandemic has led to implementing a series of regulatory emergency measures, also connected to special forms of agile work, such as **Legislative Decree No. 19 of 25 March 2020** "*Urgent measures for tackling the COVID-19 epidemiological emergency*", **Legislative Decree No. 34 of 19 May 2019** "*Urgent measures concerning health, support to labour and economy, and social policies connected to the COVID-19 epidemiological emergency*", **Legislative Decree No. 104 of 14 August 2020** "*Urgent measures for supporting and relaunching the economy*" as converted into **Law No. 126 of 13 October 2020**, and **Legislative Decree No. 30 of 13 March 2021** "*Urgent measures against the spread of COVID-19*",

Relevant provisions in this regard should be primarily noted:

- **Legislative Decree No. 165 of 30 March 2001**, updated since 2009 with the following amendments:

o **Law No. 56 of 19 June 2019**, "*Actions for public administration concreteness and absenteeism prevention*" which provided for the establishment of the "*Concreteness Unit*" (Article 60-*bis* of Legislative Decree No. 165/2001) to support Public Administrations and disseminate the best organisational models;

O **Legislative Decree No. 74 of 25 May 2017** concerning the optimisation of public offices productivity, effectiveness, and transparency implementing the enabling Law No. 124 of 7 August 2015 amending the Legislative Decree No. 150 of 27 October 2009, by acting on performance assessment, productivity incentives, and internal assessment bodies;

O **Legislative Decree No. 75 of 25 May 2017** concerning the general reform and reorganisation of public administrations, implementing the enabling Law No. 124 of 7 August 2015, which includes new definitions for matters including the sources for public-law employment relationships, relationships between law and collective bargaining, the scope and funding of collective agreements, staff requirements and recruiting procedures, liability and disciplinary proceedings, flexible work, career advancement, stabilisation of precarious jobs, measures to provide support to disabled persons, reintegration of public employees after unlawful dismissal.

- **Legislative Decree No. 80 of 15 June 2015**, on life-work balance, affecting the Consolidated Law on Maternity and Paternity (Legislative Decree No. 151 of 2001), also applies to employees working in public administrations. This Decree implements Law No. 183 of 10 December 2014 while the Legislative Decree introducing the EU Directive 2019/1158 concerning personal life-work balance is currently being drafted.

- **Legislative Decree No. 81 of 15 June 2015** concerning the reorganisation of contract types, including provisions related to the employees working in public offices. This Decree implements Law No. 183 of 10 December 2014.

Inter confederation agreements.

An inter-confederation agreement within the scope of collective bargaining defines the general regulations applying to workers regardless of their commodities sector.

An inter confederation agreement can be:

- **bilateral** when it is exclusively signed by Workers' Confederations and Employers' Confederations.

A bilateral inter confederation agreement defines the framework regulations and the guidelines ruling the relationships between the parties belonging to different categories and/or the general regulations applying to the said relationships.

- **trilateral** when the Government also signs it.

A trilateral agreement results from the mediation between the above-mentioned subjects, obtained through the 'social cooperation method' applying to the decision-making process adopted by the parties for specific relevant topics. This method for industrial relationships is characterised by confrontation and Agreement and allows trade unions to support specifically sensitive governmental policies through negotiation.

The engagement of social parties, in turn, allows the Government to reach relevant objectives, on the one hand, and the trade unions to participate in the drafting of significant social reforms.

Regulations of representation agreement ratified on 10 January 2014

The inter confederation agreement between CGIL, CISL, UIL, and Confindustria on the **Consolidated Law on Representation** was ratified on 10 January 2014. This law resulted from implementing the agreements ratified between Confindustria and the Confederal Trade Unions CGIL, CISL, and UIL on 28 June 2011 and 31 May 2013.

The Agreement introduces and implements the contents laid out in Agreement of 28/6/2011, and Protocol of 31/5/2013. It also updates the contents of the Agreement on RSU of 20/12/1993.

"The Agreement constitutes an effective Consolidated law on union representation, and it consists of four parts regulating: the scope of Union representation at a national and corporate level; the titles and effectiveness of the national and corporate collective Agreement; the methods intended to ensure the effective implementation of the agreements ratified in compliance with the agreed regulations. The assessment of the parties and the possibility to ensure full implementation of the agreements reached provide more clarity and transparency across industrial relationships and improve the reference framework for those who intend to invest in our country".

The Consolidated Law on Representation divides into five main chapters:
The first chapter sets the conditions to assess and validate the representation concerning the national collective Agreement for each category of workers; the second chapter provides regulations concerning corporate representation; the third chapter focuses on the titles and effectiveness of the national and corporate collective bargaining for each category; the last section includes provisional and final clauses.

Inter confederation agreement on representation ratified between Trade Unions and Cooperatives on 28 July 2015

On 28 July 2015, CGIL, CISL, UIL, AGCI, Confcooperative, and Legacop ratified an agreement regulating the methods used to measure and certify the representation and the degree of representativeness within the Italian cooperative sector. The said Agreement aims at facilitating the ratification of national, corporate, and local agreements by identifying relevant parties, implementation methods, and the agreement enforceability requirements.

The Agreement is intended to assess the degree of representativeness of the trade unions who ratified it or those included under the Consolidated Law. The assessment is made by measuring the number of registered workers and the votes collected by each organisation during RSU elections. The percentage of people

registered to each organisation is added to the collected votes and divided by two. The obtained value is the degree of representativeness of each organisation for each contractual scope. This value is required to calculate the 5% to be entitled to participate in the contractual negotiation. The National Collective Agreement (CCNL) is deemed valid only when ratified by those representing at least 50% + 1 worker and approved by the latter according to the methods laid out for each category.

The **Agreement** governs:

- the measurement

- the certification

- the regulations concerning corporate representation.

To measure and certify the **representativeness of the Confederations** entitled to join the national or local second-level bargaining procedures, as laid out by the CCNL, data of the association and data related to the election of RSU (Trade Union Delegations) should be collected.

The employer communicates the number of mandates of the union members to Inps through Unemens or Dmag, and finally transmits it to CNEL - National Council for Economy and Labour, for data weighting; as far as the bargaining unit (RSU) election is concerned, a copy of the scrutiny minutes with the number of votes should be submitted to the Regional Committee of Guarantors, which, in turn, submits it to CNEL. In April each year, the **CNEL** weighs the electoral data against the associative data with *50% weighting for both types of vote.* This procedure is required to assess the *majority (50% + 1)* for all the **contractual renewals** that is ratified following CNEL's communication and measure the renewal platforms for the agreements.

The trade unions having obtained representativeness not lower than 5% are therefore entitled to participate in the National Collective Labour Agreement **(CCNL)**. In the absence of single platforms, the negotiations are launched based on the contract identified by the **trade unions** with total representativeness equal to 50% + 1 at least.

As for second-level bargaining, and, more specifically, in the case of critical situations or relevant investments to support employment and economic development for businesses, further agreements amending the contents of the CCNL can be ratified on specific matters such as work performance, working hours, and work organisation. Said agreements can be ratified by:

- *corporate union representatives* with an agreement with local sectoral trade unions acting in representation of the Union Confederations that ratified this Agreement or of the Union Confederations that subscribed to the same Agreement;

- *local sectoral trade unions* that act in representation of the **Union Confederations** that ratified this Agreement. Said agreements do not affect the business's bargaining units operating within the company.

Inter confederation agreement on representation ratified between Trade Unions and Confcommercio on 26 November 2015

The inter confederation agreement on representation for trade matters was ratified on 26 November 2015. This Agreement encompasses the contents of the Agreement ratified by Trade Unions and Confindustria on 10 January 2014. At that time, an agreement was also reached for cooperatives and public companies

adhering to Confservizi. Confcommercio and CGIL, CISL, and UIL agreed on stating the representativeness according to four indicators:

- Number of union members, calculated according to their mandates deducted from their payrolls;
- Votes obtained during RSU elections;
- Number of individual, multiple, and collective litigations handled over the last three years;
- Unemployment procedure certifiable by Inps.

Agreement on violence and harassment in the workplace ratified by CGIL,CISL,UIL, and Confindustria on 13 July 2016

Rome, 25 January. So far, CGIL, CISL, UIL, and Confindustria have ratified an agreement introducing the Framework Agreement on harassment and violence in the workplace reached on 26 April 2007 by the following European union representatives: Business Europe, CEEP, UEAPME, and ETUC. In line with the principles laid out under the Framework Agreement, the Agreement restates that harassment or violence in the workplace is not acceptable and should be reported, and underlines that the companies and the workers should undertake to maintain a work environment where the dignity of individuals is respected, and interpersonal relationships are favoured. CGIL, CISL, UIL, and Confindustria undertake to disseminate the Agreement by entrusting social partners across the territory with the duty to detect the structures that may provide adequate support to those who have been the victims of harassment or violence in the workplace. Without prejudice to the possibility for each company to adopt further specific measures. The said Agreement restates the importance of social dialogue at a European level and the role of social partners in tackling the phenomena of violence and harassment in the workplace.

Agreement on sectors of 13 July 2016

ARAN,CGIL,CISL, UIL, CIDA, CGU-CISAL, CONFEDIR-MIT, CONFSAL,COSMED,CSE,UGL,

USAE, USB.

Aran and Trade Unions ratified the national framework agreement redefining the new bargaining sectors and areas for public employment.

The Agreement, ratified on 13 July 2016, following delicate negotiations started at the end of 2015, defines the new scope for renewal collective agreements for the 2016-2016 three-year period.

This important Agreement allows reopening the negotiations, following several years of stalemate, and introduces significant changes in public contracts.

The sectors included in the collective bargaining shift from 11 to 4, in line with the law limiting the maximum number of sectors to four (Article 40, par. 2 of Legislative Decree No. 165 of 2001). The immediate effect of this Agreement is a relevant streamlining in the negotiations. While in the past, 38 agreements had to be reached for the 11 sectors and 8 management areas for four years, from yesterday on, only 8 agreements are to be ratified for each three-year contractual period.

The Agreement was intended to streamline the Italian administrative system without zeroing its differences (functions, professionalism). In this regard, the distinction between central Public Administration and regional and local Public Administration remains. The new administrative organisation profile, designed

within the reform on public administration recently issued by the Government was taken into account, especially for the managerial areas.

The new sectors identified are the following:

- Central offices, including the previous Ministries, Tax Agencies, non-economic Public Entities, and other entities;

- Local offices, covering the current scope of the Regions - Local Authorities sector;

- Education and Research, gathering the existing sectors School, Academies and conservatories, Universities, Public Research entities, and other entities;

- Healthcare remains as before and includes the entities and units included under the current Health sector.

The Central Offices Sector accounts for about 247,000 workers; the Local Offices Sector, 457,000 workers; the Education and Research Sector, 1,111,000 workers; the Health Sector, 531,000 workers.

Strictly linked to the four sectors, the Agreement also redefined the managerial areas, namely the scopes of specific negotiations for public managing offices.

The new managerial areas identified are:

- Central Offices area, that includes the managers of the administrations belonging to the Central Offices, the professionals and the physicians of non-economic public entities;

- Local Offices area, including the managers belonging to the Local Offices sector; administrative, technical, and professional managers belonging to the entities and companies of the Health sector; municipal and province secretary officers;

- Education and Research area, including the directors of the Education and Research sector;

- Health area, that includes the managers appointed by the entities and companies of the Health sector, excluding administrative, technical and professional managers;

The new managerial areas account for the following: around 6,800 employed people in the Central Office area; 15,300 employed in Local Offices; 7,700 for the Education and Research area; 126,800 employed in the Health area.

To ease the transition towards the new bargaining structure, the parties defined a short period in which the trade unions implement aggregation and merging processes. This provision facilitates the introduction of new representativeness of trade unions within public offices.

Inter confederation agreement on representativeness ratified with Confapi on 26 July 2016

With this Agreement, the parties intend to complete the regulations concerning representativeness, representation, and the validation of collective bargaining at any levels, to establish a regulated system of union and contractual relationships that can provide certainties in terms of interested parties, levels, times, and contents of the collective bargaining, in addition to liability and compliance with the rules.

To measure and certify the representation power of the trade unions that signed this Agreement, the association data (mandates given to the employees for the union contributions) and the electoral data (expressed votes) gathered during the election of trade union delegations are collected for the national collective bargaining for the category.

Inter confederation agreement on representation between Confartigianato imprese, CNA Casartigiani CLAAI e CGIL, CISL and UIL of 23 November 2016

Concerning the representation, the Parties have acknowledged the importance of complying with the rules and providing certainty in choices to agree on criteria for assessing representativeness. In this regard, the parties decided to take the following information as a reference: association data, namely the mandates provided to workers for trade union contributions; election data, expressed in votes, as reported during the elections of the Trade Unions Delegations; additional indicators concerning the national and regional bilateral system, and defined within 6 months. Among the most relevant matters, the function of the bilateral system emerges: this system, providing valuable protection for companies and workers, inspires additional assessment and measurement criteria.

By April, the CNEL, or another entity, carries out data weighting and communicates the results. The data obtained in this way are used to assess whether or not the 5% threshold was reached, verify the presence of absolute majority upon the contractual renewals, and measure the relative majorities upon the submission of typical demands.

Agreement between CGIL, CISL, UIL and Confcommercio of 24 November 2016.

The Agreement between CGIL, CISL, UIL and Confcommercio for "A new system of union relationships and contractual model" was signed. This Agreement restates the role and value of the national Agreement as the primary legal and wage source and regulating centre of employment relationships. Moreover, it reaffirms the willingness of the Parties to provide a quantitative and qualitative extension of second-level bargaining. More generally, it underlines the importance of intermediates as representatives and interest holders and their social, political and economic function for the country. After the unified document signed by CGIL, CISL, and UIL on 14 January 2016, this is the third ratified inter confederation agreement, following Confapi and the artisans, proving the common intention to renew union relationships and the contractual model to make it more suitable to the current changes in the market labour, as to ensure more protection to workers and companies.

Framework agreement on contracts in the public sector of 30 November 2016

This contract should rebalance the relationship between law and bargaining by promoting functional recovery of union relationships and improving the services provided to citizens, thus raising the productivity levels as in the private sector. The Public Administration Reform requires the active, responsible, and reasoned participation of public workers, and, in this perspective, the Government commits to implementing the content of this Agreement within the legislation, public finance, and Regional recommendations and agreements. The Agreement divides into four fundamental aspects: union relationships, regulations, economics, monitoring of the implementation of the Public Administration reform.

Union relationships

The Government commits to defining a legislative action in favour of bargaining to rebalance the relationship between the sources ruling on public employment among the matters falling within the scope of applicable law and the matters ruled by the contract as the natural tool to govern the employment relationship, rights and guarantees of workers and relevant organisational aspects. The parties commit to identifying additional areas to exercise the union participation as defined under the collective agreements (with specific reference to the amendment of Article 40 of Legislative Decree 165/2001).

Regulations

The Parties commit to detecting new assessment systems that ensure adequate enhancement of professional roles and individual contributions to the work organisation related to productivity objectives and the fulfillment of citizens' needs. The Government commits to simplifying the current system to finance second-level contracts to allow the use of available instruments and tools at the fullest. The Parties commit to regularly identifying criteria and indicators to measure collective effectiveness and productivity. To ensure the best resource management, the Parties commit to cutting unproductive expenditure, overcoming insecure employment, promoting a better work-life balance, flexible working time, and lifelong learning. The Parties commit to reviewing the framework agreement on sick, general, and special leaves. The Government intends to gradually introduce integrating welfare and financial schemes to increase wages in connection to productivity and develop supplementary occupational pension schemes.

Economics

By confirming the existence of a contract for the 2016-2018 period, the Government guarantees that financial resources are allocated through the budget laws that help define contractual increases, not lower than 85 Euro per month, to ensure a homogeneous increase also deriving from the renewal of the collective agreement that enhances the wage levels for those who have been affected by the economic crisis and the blocking of collective bargaining. For this reason, the signatories of this agreement agree on the need to verify the effects produced by the contractual renewal against other current income supporting measures, to reduce the income range and increase the support to the weaker levels.

Monitoring of the implementation of the Public Administration reform

The Union Organisations commit to identifying actions to promote adequate measures favouring the application of the provisions stated under Law 124/205 across each administrative authority, specifically in terms of streamlining and transparency, by activating an Observatory to monitor the Public Administration reform. Following the recruiting reform in the PA, the Parties commit to opening a dialogue on the measurement and monitoring of staff needs and eliminating uncertain employment across Public Administrations. The Government commits to guaranteeing the renewal of PA contracts - both existing and those about to expire - for uncertain employees to adopt a final set of regulations with the Consolidated Law on Public Employment reform.

“Patto della Fabbrica” of 9 March 2018.

The inter confederation agreement signed on 9 March 2018 between **Confindustria and CGIL, CISL, UIL** (the so-called "Patto della Fabbrica" - Factory Pact) defines the conditions to create a more effective and participatory system of industrial relationships, able to support transformation and digitalisation processes in the manufacturing sector and provide innovative, technological and support services to this sector.

Thanks to industrial and collective bargaining relationships, the "Pact" aims to effectively contribute to Country development, improve competitiveness by increasing the business productivity wages, and create skilled jobs.

Central stages of this process are the definition of rules on democracy and the measurement of representation, and the principles ruling bargaining assets and contents. The Agreement also establishes action guidelines on welfare, skill training, work safety, labour market, and participation.

Agreement of 30 January 2020 between CGIL, CISL, UIL, ACGI, Confcooperative, Legacoop concerning the fight against discrimination, harassment, and gender violence at the workplace

It tackles discrimination, harassment, and gender violence at the workplace. To raise and strengthen awareness among cooperatives, workers, and their representatives on the **prevention, contrast, and intolerability of diversity-based discriminatory behaviours,** and, more specifically, **gender violence or harassment**, on 30 January 2020 CGIL, CISL, UIL, AGCI, Confcooperative, and Legacoop signed the "*Inter confederation agreement concerning the fight of discrimination, harassment and gender violence at the workplace*".

Again, the Agreement aimed to promote and consolidate the development of an organisational culture that tackles any form of discrimination, harassment, and gender violence within the cooperative system. The Parties commit to introducing new provisions to prevent and protect workers from forms of discrimination, harassment, and gender violence at the workplace by drafting conduct codes or guidelines to be included in individual national contracts.

Inter confederation agreement on the craft of 26 November 2020.

Agreement signed between CONFARTIGIANATO IMPRESE, CNA, CASARTIGIANI, CLAAI e CGIL, CISL, UIL, the inter-confederation agreement to reform contractual stipulations and union relationships.

By signing this Agreement, the Parties intend to fully implement the inter-confederation agreement of 23/11/2016 containing guidelines to reform contractual stipulations and union relationships.

Rationalisation of contracts

Starting from the 2019-2022 contract round, the rationalisation process for contractual stipulations, in line with the provisions of the inter-confederation agreement of 23/11/2016, is further implemented, and the current national collective agreements are collected under the following four new contractual areas:

MANUFACTURING CONTRACTS AREA

- Mechanics

- Wood-Stone

- Textile-Fashion - Chemical and Ceramic

- Food - Bakery

CONTRACTS FOR SERVICES TO PEOPLE AND BUSINESSES AREA

- Communication

- Cleaning services

- Hairstyling and Beauty

- Cinema and Audio-visual

ROAD HAULAGE CONTRACTS AREA

- Logistics, Freight, Delivery

- Bus rental

CONSTRUCTION CONTRACTS AREA

- Construction

Within the above-mentioned contractual areas, individual CCNL remains for all businesses and workers falling under the scope of specific application domains, with the confirmation of contractual ownership for each category, without prejudice to statutory regulations on the matters defined by each signatory Confederation.

Structure of the National Collective Labour Agreement

Each National Collective Labour Agreement divided by Area includes the following:

- Common Section - Contractual Area

- Specific Section

Period of contract enforcement

Each national collective Agreement of a specific Area is in force for four years for the regulatory and economic part. The Parties commit to aligning the CCNL expiration dates during the next contract renewals.

The CCNL continues producing their effects following the deadline provided herein, up to the commencement date of the subsequent renewal agreements.

Procedures and timing for the performance of negotiations

National level

– each of the Parties can submit a request to terminate the national contract no more than 6 months before the contract expiry date; however, the CCNL remains in force up to the date of renewal;
– the demand for contract renewal should be submitted at least 5 and a half months before the expected expiry date;

- by 15 days from the submission of the demand, a disclosure meeting to decide a date for the launch of the negotiations related to the demand, which should take place within 1 month from the demand disclosure meeting;

- starting from the launch of the negotiations, the Parties have 7 months to find an arrangement to replace the previous one;

- after the said period, should the Parties fail to agree mutually, they have 30 additional days to complete the negotiation or request support from the national Confederations;

- after 30 days from submitting a request of intervention to the national Confederations, and provided that the intervention had not taken place, or that the intervention concluded without reaching an agreement, the Parties can be considered free from "any procedural constraints".

The Parties agree that the terms mentioned above are suspended from 1 August to 31st.

Regional Level

The commencement date of CCRL (Regional Collective Labour Agreements) occurs typically in the middle of the validity of the reference CCNL.

The definition of the CCRL is done in compliance with the following procedures:

- the demand for contract renewal should be submitted at least 4 months before the expiry date;

- by 15 days from the submission of the demand, a disclosure meeting to decide a date for the launch of the negotiations related to the demand, which should take place within 1 month from the demand disclosure meeting;

- starting from the launch of the negotiations, the Parties have 3 months to find an arrangement;

- after the said period, should the Parties fail to agree mutually, they have 15 additional days to complete the negotiation or request support from the regional entities;

- after 30 days from submitting a request of intervention to regional entities, and provided that the intervention failed to reach an agreement, each of the Parties can request the intervention of National entities;

- after 30 days from submitting a request of intervention to the national entities, and provided that the intervention had not taken place, or that the intervention concluded without reaching an agreement, the Parties can be considered free from any procedural constraints.

The Parties agree that the terms mentioned above are suspended from 1 August to 31st.

Emolument

As for the emoluments of national collective Labour agreements divided by category, the Parties agree to increase contractual minimum levels by adopting the Harmonised Indices of Consumer Prices (HICP) excluding energy products, as communicated by ISTAT in May each year.

During the enforcement of each CCNL, it is decided that, upon the contract renewal, the segment trend is also taken as a reference to define the salary increases of contractual minimum levels for the entire four-year period.

Contractual Representation

To ensure the system homogeneity for all the sectors represented by the signatory Parties of this Agreement, in the framework of the modernisation of sectoral industrial relationships, the Parties provide a solution in terms of representation, including contractual one, for SME's and associate companies, starting from the contract in force.

Collective Bargaining for Public Employment.

In this regard, a brief update of public employment regulations and some integrations and clarifications to the above are provided.

As far as the legislation is concerned, the matter of union relationships was further extended by **Legislative Decree No. 75 of 25 May 2017**, while the most recent **Legislative Decree No. 80/2021 "Strengthening of administrative capacity of PAs"** (As converted by **Law No. 113/2021**) assigns additional tasks to collective bargaining in terms of career guidance (Article 3).

However, an essential element to recover social dialogue within the public sector is the **Protocol on Public Employment and Social Cohesion** ratified **11.3.2021** between the Italian Government and Trade Unions. The protocol defined a joint approach on several themes such as recruiting new staff, staff training, development, *and strengthening of union relationships.*

Following its ratification, further stimulus and acceleration was given to the renewal of national collective agreements of public workers: tense negotiations are still ongoing.

The current key regulation of the employment of public employees is **Legislative Decree 165/2001** (subject to continuous updates), enhancing the collective bargaining procedure in the sector by recognising the relevance of a collective agreement in governing the employment contracts of public employees, including by providing for the obligation of PAs of adopting the conditions defined under collective contracts to all staff (thus making the collective contract effective *erga omnes*, even if it is a unilateral obligation).

Article 2 of Legislative Decree 165/2001 states that collective bargaining is exclusively entitled to modify workers' salaries. The article also provides the possibility for collective agreements to render the application of laws ruling on routine matters related to the employment relationship of public employees ineffective. Collective bargaining also transformed the traditional Italian hierarchy of the sources of law.

Specific rules in terms of representativeness were defined obliging Aran (public agency acting in representation of public administrations for collective bargaining - excluding police officers, army officials, magistrates, diplomatic corps, and a few others) and PAs to admit the trade unions accounting for at least **5% representation** (ratio calculated between the mandates of employees and the vote obtained during the elections) at the negotiation table.

Entrusted to Aran, this obligation to admit any trade union with at least 5% consensus among workers to the negotiations represents an assurance not always guaranteed in other systems similar to the Italian one. In this case, the employers' association (Aran) is not entitled to choose the trade unions participating in the bargaining (and sit at the table). However, it MUST allow the participation of all representative unions (or else the bargaining becomes void) and can stipulate a valid contract only if the unions signing up to the collective Agreement represent **at least 51% of the possible consensus.**

In other words, a contract stipulated with big unions that do not represent the majority of workers is not valid. This acts as a guarantee also for small but representative unions active in different sectors.

Moreover, it should be recalled that the level of dialogue and union relationships is high, but the local system in place is advanced too.

Trade Union Delegations (RSU) are legitimised to bargain in a decentralised and integrated way (mostly as in almost all public administrations), and public administrations should guarantee to carry out the said elections at their workplaces.

The elections are open to all unions, including those without representation, given that they comply with the election procedures defined under the national framework agreement.

The representatives elected from the workers, including those not belonging to unions having national representativeness, are granted full rights to carry out trade union action.

This mechanism is widely recognised among workers, as the high percentage of voter participation shows it (**consistently above 70%**, often higher than the voter percentage for political elections).

All national contracts (including those stipulated in the **2018 contract round**) envisage rules (to be complied with in a decentralised/integrative office) concerning union relationships and trade union prerogatives (bill posting rights, meeting rights, permits to carry out union activities, or workers posted to focus on trade union activities).

The statutory provisions and the national bargaining define several different levels of involvement and engagement with trade unions and worker organisations.

The first granted level concerns **information** on issues related to public employment relationships.

The second level of union relationships is the **confrontation** level. It includes discussing relevant matters related to the work organisation. The trade union may request to meet the administration before each implementation. The employers' proposals and the union counterproposals were presented during these meetings. Confrontation should be completed in a given time, after which the parties regain their freedom of initiative.

The third and most relevant level is the bargaining level governing workers' wages and employment conditions.

In this regard, the above should be recalled: the collective bargaining in the local offices and the levels of engagement described above exist over almost all public administrations (around 25,000 decentralised offices).

If necessary, it is possible to attach copies of the CCNL available on the Aran website divided into sectors, https://www.aranagenzia.it/contrattazione/comparti.html;

managerial areas, https://www.aranagenzia.it/contrattazione/aree-dirigenziali.html

As for bargaining in local offices, Aran and CNEL manage a database, accessible by all citizens, which includes all local bargaining for the public sector from 2015 to the present date: https://www.contrattintegrativipa.it/ci/

The table of second-level registered contracts is attached.

Paragraph 3 - Conciliation and arbitration procedures.

The reference legal framework remained unchanged.

Law No.183/2010 introduced new extra-judicial tools to solve work litigations within the Italian legal framework and related to conciliation and arbitration.

First, the reformulation of Article 410 of the Civil Procedure Rules unified the conciliation procedure for public and private work litigations. Therefore, those who want to solve litigation outside of court can decide to submit a specific request to the Conciliation Board established within the competent **Territorial Labour Inspectorate** (and not the Territorial Labour Directorate).

The Territorial Labour Inspectorate (INL) is an Italian governmental Agency established by **Legislative Decree No. 149 of 14 September 2015** and deals with work safety and protection. The Ministry of Labour monitors it.

In case the litigation concerns a dismissal on substantiated grounds, as defined under the so-called **Fornero Law No. 92/2012, the conciliation is mandatory and not optional.**

Paragraph 4 - Collective actions.

Preamble.

In its Conclusions, issued in 2010, the European Economic and Social Committee considered that the Italian situation, and, more specifically, Law No. 146 of 1990 (as amended by law No. 83 of 2000) regulating the right to strike within essential public services, was not in line with Article 6, § 4 of the Charter recognising the right of workers to take collective actions, including the right to strike. Article 6, entitled "*Right to collective bargaining*" is included under Section II of the Charter; therefore, its application is subject to Article G, according to which the rights or principles contained therein: *"cannot be subject to restrictions or limitations that are not specified under Sections I and II, except for those provided for by law which need to be adopted, in a democratic society, to ensure compliance with the rights and freedoms of others, the maintenance of public order, national security, public health and the principles of morality"*.

The Italian legal system recognises the right to strike as a constitutional right that should be exercised "*within the scope of the laws governing it*" (Article 40 of the Constitution based on the *Préambule* of the French Constitution - 1946). The right to strike is an individual right recognised by the Constitution that can and must be balanced against other similar rights, such as the right to life, health, freedom, security, freedom of circulation, social security, education, and freedom of communication. Law No. 146 of 1990, fully complying with the legislative provision of Article 40 of the Constitution, is intended to achieve "*balance*" between the said constitutional rights. The term balance wants to underline how the purpose of this balance is to *protect the essential meaning* of both rights (Article 1, par. 2) and not to *sacrifice* one right in favour of the other.

This ambitious objective can be achieved through essential services, namely minimum services that should be ensured during the strike to comply with the essential meaning of the constitutional right recognised to the person who wants to engage in a strike. They can also be obtained through other measures set out by the law, such as early notice, informing the users about the strike duration and modalities, the rule of ensuring an interval between two strikes affecting the same users, etc.

The Italian law's innovation and most distinctive feature lie in not assigning *essential services and other measures* intended to achieve the above balance **to an administrative authority or a magistrate** (as in France, Spain, or the Netherlands, for example). Conversely, the said services are obtained **through collective bargaining and directly assigned to the social partners by fully exercising the logical basis of social consultation.**

Given that the strike cannot undermine individual constitutional rights and that the citizens do not participate directly in the negotiation - they are called to express their opinions through their representative unions. For this reason, an independent guarantee institution was established, **the Guarantee Board**. This Board evaluates the adequacy of the Agreement reached in the negotiations. In other words, it assesses that the

Agreement complies with the legal purposes and can take supplementary action by issuing temporary Regulations, in case the Agreement is not adequate or cannot be reached.

The Guarantee Board is an independent Authority composed of five experts appointed by the President of the Republic upon the proposal of the President of the Chamber and the Senate, having a six-year mandate. The Guarantee Board should assess and monitor the correct implementation of the law.

The limitations introduced by the law, fully comply with Article G of the Charter, as they are a) set out under the law; b) governed by regulations in place to ensure the respect of the rights and freedoms of others. Moreover, it should be noted that the preventive resolutions adopted by the Board have a response rate of around 90%, proving that the system established by Law No. 146 of 1990 (and subsequent amendments) has a solid and spread social consensus.

Labour Injunction

The Committee's first point concerns labour injunction: in this case it complains that Italy has not been able to explain how the power conferred on a government body to restrict the right to strike through an injunction is compatible with Article G.

In this regard, it should be noted that Law No. 83 of 2000 intended to amend the rules on injunctions to make them more democratic by reducing and formalising the role played by the executive power in issuing the authoritative measure.

Firstly, the order to issue an injunction may be adopted by the President of the Council of Ministers or a Minister delegated by him, if the strike is of national interest, and by the Prefect, in other cases, upon the recommendation of the Guarantee Board "*when there is a well-founded danger of serious and imminent harm to the personal rights referred to in Article 1 and protected by the Constitution*"(Art. 8). The competent body can adopt the order without issuing a report to the Board only in "*cases of necessity and urgency*" (Article 8).

Secondly, a compulsory attempt at conciliation with the Administrative Authority is envisaged, thus allowing all interested parties to represent their interests and points of view.

The order may constantly be challenged before the competent court, and its content is predetermined by law: in particular, it may order the postponement of the strike, the reduction of its duration, or prescribe the observance of appropriate measures to ensure the operation of the service, also taking into account any proposal made by the Board.

Overall, the substantial and procedural limitations set out by the law are in line with Article G. The executive power can adopt the injunction order only in case there is a *well-founded danger of serious and imminent harm to the personal rights protected* by the Constitution, in a close dialogue with the Guarantee Board. The role of the executive power is thus considerably reduced and 'democratised'.

Obligation to give prior notice

The second remark made by the Committee concerns the obligation to give prior notice, which, admittedly without any argument or explanation, is considered "*excessive*". According to Article 2 paragraph 5 of Law No. 146 of 1990 (as amended by Law No. 83 of 2000), persons wishing to launch a strike must give at least 10 days' notice to the administrations and companies providing the service and to the Guarantee Board.

According to Article 2, paragraph 1, the proclaiming parties must, in particular, indicate in writing the duration of the strike, how it is to be carried out, and the reasons for it.

First, it should be noted that the obligation to give advance notice - which exists in many European countries - does not constitute a limit to the exercise of the right to strike but merely affects the modalities of its implementation. It is a formal and procedural requirement, not a substantive limitation.

The purpose, clearly indicated under Article 2, is to allow:

1) authorities and companies affected by the strike to take measures provided by law, such as, first and foremost, the indispensable services and the quota of staff exempt from the strike (to the extent, however, of no more than 1/3);

2) companies and administrations concerned to inform users, which must be done at least 5 days before the strike. Communication to users is crucial because it allows them to know, at least to a certain extent, whether and what services are provided on the day of the strike, limiting the problem of the so-called announcement effect. In this regard, it is essential to underline that, in the Italian legal system, the right to strike knows no subjective limits (as is the case, for example, in France); anyone can call a strike, even non-union organisations or unrepresentative trade unions. Statistical data show that small, unrepresentative trade unions specifically call strikes, which are sometimes used as an 'accreditation tool' in the industrial relations system (see the Board's annual reports for 2017, 2018, 2019, 2020). Hence, a fortiori, the importance of adequate communication to users, who must be put in a position to understand, albeit hypothetically, what the possible impact of a strike are;

3) the verification by the Guarantee Board of the conformity of the strike with the law, indicating, if necessary, in advance, any violations (e.g., failure to respect the minimum interval or notice);

4) the implementation of the cooling-off and conciliation procedures before the competent body, aimed at verifying the possibility of a possible settlement of the conflict.

In the light of the objectives pursued and the nature of the obligation to give notice, it, therefore, appears to be fully in conformity with Article G of the Social Charter.

It should also be pointed out that Article 2 paragraph 7 of Law No. 146 of 1990 (as amended by Law No. 83 of 2000) provides for an exception to the obligation to give notice "*in cases of abstention from work in defence of the constitutional order, or in protest against serious events damaging the safety and security of workers*".

The new sanctioning powers of the Guarantee Board

Finally, the Committee requests information on the new sanctioning powers granted to the Guarantee Board by Law No. 83 of 2000.

First, it should be noted that the partial rewriting of Law No. 146 of 1990 is due, on the one hand, to the first 10 years of experience of the Guarantee Board and, on the other hand, to the interventions of the Constitutional Court. The completion of the sanctioning apparatus was considered essential to give effect to the whole discipline.

Within the framework of the law, the Board has the power to initiate proceedings to assess the conduct of trade unions or companies in violation of the law, collective agreements on vital services, cooling and conciliation procedures, and other measures to reconcile (Article 13 letter i)). The assessment procedure is governed by Article 4 paragraph 4 and is carried out in full respect to the adversarial debate principle and the right of defense.

According to Article 4, if the procedure ends with a negative conduct assessment, the Board may impose an administrative penalty within the law's minimum and maximum limit.

Therefore, the Board is entrusted with both the assessment of conduct and the imposition of a sanction within limits set by law.

The law also lays down the criteria for the classification of the sanction. Thus, under Article 4 paragraph 2, with reference to trade unions, the sanction consists in the suspension of paid trade union permits or trade union contributions for an amount of no less than EUR 2,500 and no more than EUR 50,000, taking into account "*the size of the membership, the seriousness of the violation and any repeat offence, as well as the seriousness of the effects of the strike on the public service*". With regard to administrations or companies, the administrative sanctions are between the minimum limit of EUR 2,500 and the maximum limit of EUR 50,000, taking into account, also in this case, "*the seriousness of the violation, any recidivism, its incidence on the emergence or aggravation of conflicts and any damage caused to users*". Pursuant to Article 4 paragraph 4, the penalties are doubled if the collective abstention was carried out, *although* the Board had previously indicated the infringement of the law by means of an invitation resolution issued pursuant to Article 13 paragraph 1 letter c, d, e, h.

In the resolution of negative assessment and imposition of the sanction, the Board of Commissioners is subject to a strict duty to state reasons: it is required to indicate analytically both the reasons underlying the negative assessment and the criteria applied in determining the sanction.

Specific provisions govern the case in which the infringement is committed by workers. In this case, the legislator has chosen to leave disciplinary power and disciplinary sanctions in the domain of the employer and Article 7 of the Workers' Statute. However, the Guarantee Board still prescribes their application when it is ascertained that the strike was carried out in violation of the law and that this violation is attributable to the workers.

Finally, it is essential to emphasise that the sanctioning resolutions adopted by the Board can constantly be challenged before the competent court.

Conclusions

It is worth highlighting, in conclusion, how the intervention of the law, in the sector of essential public services, took place with the consent of the actors directly concerned, in full awareness of the importance that conflict has assumed, and continues to assume, in the Italian tradition of industrial relations. The objective of the law was fundamentally (as Aris Accornero stated) to civilise conflict, not by limiting the possibility to strike but by regulating it. It is clear that Italy remains the western country with the most remarkable propensity to conflict, the volume of which, also in terms of the number of strikes, following the entry into force of Law No. 146, has not decreased, but rather remains at critical levels (as can be seen from the attached data).

Attached are the data regarding strikes taken from the Periodic Reports on the activity issued by the Guarantee Board concerning implementing the law on strikes in essential public services, covering the years 2019 and 2020.

Information on deliberations, preventive actions, and invitations to defer are available on the website www.commissionedigaranziasciopero.it.

ARTICLE 21

THE RIGHT TO INFORMATION AND CONSULTATION

As for Article 21 – *the right to information and consultation* - the legal framework previously rendered is confirmed.

However, it is important to recall the main provisions of Law No. 300 of 20 May 1970, laying down: "*Regulations on the protection of the freedom and dignity of workers, trade union freedom and trade union activity in the workplace and employment regulations*", better known as *Workers' Statute*. This Statute is a collection of basic national labour regulations which still now includes the main legal framework governing the relationship between the worker and the undertaking as well as trade union rights.

The right to information and consultation is applied to to the following trade union bodies: Company Trade Union Representatives (RSA) and Unitary Workplace Trade Union Representatives (RSU).

The provisions concerning the right to information and consultation are included explicitly under Title III - *Trade Union Activity* - of the Workers' Statute, applying undertakings employing more than 15 workers under Article 35 – *Scope of Application*

Title III mainly focuses on the performance of trade union activities and their expression in the workplace. Among the provisions contained in this Title, those defined under Article 20 (Assembly), Article 23 (Paid Leaves), and Article 26 (Contributions to Trade Unions) oblige the employer to cooperate with trade unions, even to the detriment of technical and productive reasons of the undertaking.

Concerning the rights granted to representative bodies as a whole, Article 20 states that: «*the workers are entitled to call assemblies in the production unit in which they work both outside and during working hours, up to a limit of ten hours per year which will be regularly paid*». All workers are entitled to this right in the abstract. However, the power of initiative for organising the said meetings is individually or jointly entrusted to each RSA, which, in turn, defines the agenda just concerning the matters of trade union interest and the work organisation. In this way, the workers not belonging to trade unions can participate to meetings and play an active - although limited - role in drafting union and contractual policies.

Other relevant provisions stated under Title III include the regulations to ensure the exercise of the right to information and consultation. These norms grant trade unions the opportunity to actively participate in corporate management processes, also during sensitive stages. These rights are mainly governed through traditional procedures. In fact, in many sectors, the mandatory section provided under the collective bargaining contains an organic framework with common elements for information and trade union consultation on matters of corporate organisation and corporate employment trends.

The definition of the procedure to protect the rights in question already appeared under the 2013 report related to Article 22 of the European Social Charter.

In this regard, Article 28 (*Repression of anti-union behaviour*) of the *Workers' Statute* should be recalled. The text defines as anti-union any employer's behaviour aimed at limiting or hindering the exercise of freedom and unions activity as well as the right to strike.

Anti-union behaviour can be identified on its ability to undermine the workers' collective freedom and, therefore, it can be detected in case of breach of a mandatory contractual provision, such as the right to information and/or consultation for trade unions and/or company representatives. Article 28 also provides local unions bodies of national trade unions with the opportunity to refer to the Court of the place where the behaviour was reported to obtain the removal of the illicit conduct.

To conclude, some relevant rulings will be mentioned below by way of example.

The ruling of Busto Arsizio Court issued on 4 June 2019. The final decision states as follows: "*the conduct of an employer who fails to reply to the information and collaboration requests advanced by the trade unions, or the conduct of an employer who decides to liaise exclusively with some unions starting from a given moment are deemed illicit, as they breach the principles of good faith and fairness that require, at least, to summon all requesting trade unions to verify the conditions to start negotiations*".

Court of Salerno, ruling of 8 March 2007, states the following: *"The conduct of a public employer who infringed the right to information and consultation of the trade union is anti-union, as it affects the financial asset of the trade union itself, intended as its right to image and respect of its function. (...) Moreover, in this case, the enforcement of the provisions adopted in violation of the information obligations*

lasts until the removing of the breaches claimed, which imply enforcing the provisions adopted in breach of information obligations, namely depriving trade unions of their faculty to control the exercise of power".

The Court of Florence issued an up-to-date ruling on 20 September 2021 defining as anti-union the conduct adopted by an undertaking that failed to comply with the consultation and comparison procedures provided by the CCNL (National Collective Labour Agreement) for metalworking undertakings as well as with specific union agreements signed with the claimant trade union. Basically, "*the agreements provide for what the best doctrine defines as a real proceduralization of decisions regarding employment and redundancies, and state the clear commitment of the defendant (expressed voluntarily and freely) to take decisions exclusively after the trade union has been adequately informed*".

ARTICLE 22

THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

As shown in the previous reports on this article, the participation of workers in the undertaking is part of a poor codified discipline both at regulatory and constitutional level. It was amended over time in terms of doctrine and legislation.
Actually, as for the management, various strategies to enhance human resources have been put in place to get more commitment, fully sharing the missions and objectives and establish a trust relationship between the staff of the undertaking.
Greater involvement of workers in the undertaking management is set forth in Legislative Decree No.112 of 3 July 2017 concerning *"Review of the discipline on social undertakings, according to Article 2, paragraph 2, lett. C) of Law No. 106 of 6 June 2016"*. Article 11 (*Involvement of workers, users and other stakeholders involved in the activities*) of the previous decree defines "involvement" as a *"consultation or participation mechanism through which workers, users and other stakeholders involved in the activities can an influence on the decisions of the social undertaking, specifically concerning issues directly affecting the working conditions and the quality of goods and services".* In fact, the social undertaking is characterised by a multi stakeholdership as well as all the bodies of the Third Sector. The involvement of workers, and, more in general, of the stakeholders induces the undertakings to consider the needs of different stakeholders and allows the worker involved in promoting the growth of the undertaking to collaborate actively.

In order to ensutr Italy an organic discipline in this matter, a draft law envisaging elements to involve workers' participation in the undertaking management is currently under review. The introduction of these elements by legislation would play a relevant stabilising social function and make some of the procedures already envisaged by collective bargaining, among others, objective and mandatory *erga omnes* by extending them to all productive sectors. More specifically, there are some regulations governing both workers' participation in the undertaking management and the shareholding.

Over the last decade, Italy increased its interest in experimenting different and new forms of workers' participation in the undertaking management compared to the past. The main innovation lies in the fact that these experiments have been implemented using a bottom-up approach, without any organic program, and through some informal paths. This new bottom-up participation has adopted different forms, mostly direct ones, over the last decade,.
The two emerging forms are ascribable to direct participation, namely those forms which aim to influence management and the undertaking in handling the operations of the productive flow through the workers' direct involvement or the mediation of local representatives elected by the workers, in an exclusive operational dimension. The two emerging forms are described as follows.
Workers' involvement and direct participation. This purpose was achieved by groups for continuous improvement, targeted consultation or training campaigns for technical and organisational innovation projects, formalised working groups, suggestions, informal social networks, communities of practices.

All these modalities, which are sometimes formalised, such as in the case of working groups, communities of practices and suggestions, but more often informal, provide for a management initiative to directly involve people in organisational and workplace innovation in connection with technological innovation. High-level company management is directed in this sense, mostly in innovative medium-size undertakings. Similarly, in many big-size undertakings, the direct involvement of workers adopted these forms and was pivotal to allow a substantial change in the productive model (i.w., WMC in FCA, Lamborghini, Luxottica, Pirelli, Ferrero etc.). In many cases, these forms of direct involvement have been also favoured and supported by company trade-union agreements, mostly where mass training programs for workers have paved the way to innovation (i.e., Arneg in 2010, Polti in 2014, Luxottica, Lamborghini, etc.);

Contractual corporate participation connected to both result and financial bonus. In many cases, the workers' direct participation has been connected to trade union agreements on result bonus, which entrusted to mixed Committees, composed by the undertaking and the RSU (Unitary Workplace Trade Union Representatives), the function to monitor and adress the innovation processes to increase productivity and result bonus. In the case of medium-size companies, the Committees focused on single technological or organisational projects (i.e., C.B. Ferrari 2017, Gefran 2018, Siat 2019, Rold 2019, Hera agreements etc.). As for big-size companies, the Joint Committees usually provide for a global improvement being involved in different topics (i.e., Luxottica, Ducati, Lamborghini, Bonfiglioli agreements). This formula has been called "corporate participation", as it combines the workers' direct involvement, which is fundamental to ensure successful improvement projects, with Joint Committees' modalities. Joint Committes monitor the trend of result bonus and, in some way, and they address the project for the renewal.

Undoubtedly, the 2015 and 2016 financial laws (confirmed over the following years) and the financial benefits envisaged therein supported the above mentioned solutions. Article 1, paragraphs 182-190 of Law No. 208 of 28 December 2015 (2016 Stability Law) provided for tax measures facilitating result bonus. They are also connected to the workers' participation in work organisation as well as in the development of corporate welfare, basically consisting in the attribution of works, services, and, in some cases, in substitute funds (hereinafter referred to as *benefits*), characterized by a specific social relevance. These formulas show an economic participation for their relationship to the result bonus. Usually, they concern undertakings whose industrial relationships have been characterized by a cooperative approache since a long time.

Many agreements on corporate welfare, which define joint welfare schemes between undertakings and trade unions based on the methodologies provided by the law, can be connected to these schemes. In many cases, these agreements also provide workers' consultation through meetings and surveys or by an individual worker decision.

In 2013 report was underlined the historic and unique nature of Italian trade unions, which consider the RSAs (Company Trade Union Representatives) and RSUs as subjects entitled to "participation" right. In case of breach of the right to take part in the definition and improvement of working conditions and the workplace, the workers' representatives can refer to the judicial authority the anti-union conduct of the employer, pursuant to Article 28 of Law 300/70 (the so-called Workers' Statute).

Article 28 also provides local unions bodies of national trade unions with the opportunity to refer to the Court of the place in which the behaviour was reported to obtain the removal of the illicit conduct. There is no mandatory limit to activate this recourse, but it is only required the actuality of the damaging conduct.

With regard to the request to provide information on the measures adopted during the pandemic to ensure compliance with the right to take part in the definition and improvement of working conditions and

workplace, it should be noted that the COVID-19 pandemic had no impact on the enjoyment of this right by workers and/or their representatives.

It should also be noted that the Government and the social partners have signed, following in-depth discussions, several shared protocols on measures to tackle and contain the spread of the COVID-19 pandemic in public and private workplaces:

- "Shared protocol for the regulation of measures to tackle and contain the spread of the Covid-19 virus in workplaces" of 14 March 2020;

- "Shared protocol for the regulation of measures to tackle and contain the spread of the Covid-19 virus in workplaces" of 24 April 2020;

- "Framework protocol "Safe Re-entry" for the prevention and safety of public employees in the workplace with regard to the Covid-19 health emergency - Minister for Public Administration- Trade Unions" of 24 July 2020;

- "Shared protocol for updating measures to tackle and contain the spread of the SARS-CoV-2/COVID-19 virus in workplaces" of 6 April 2021;

- Order of 21 May 2021 ("Shared protocol for updating measures to tackle and contain the spread of the SARS-CoV-2/COVID-19 virus workplaces").

Regarding the measures taken to encourage remote working to reduce the spread of infection, please refer to the report on Article 2 of this control cycle.

ARTICLE 26

THE RIGHT TO DIGNITY AT WORK

§.1

The following is a preliminary outline of the European and international regulatory framework, consisting of the fundamental provisions that have formed the basis of Italian legislation, which has thus begun to consider harassment and violence, including sexual violence, among the new risks in the world of work.
However, given the time that has passed since the last report was sent out (2013), it is appropriate to include the most recent updates - in addition to the legal framework of reference previously illustrated - the fundamental provisions of the national legislation on the subject, which is now in continuous evolution, also following the ratification procedure of ILO Convention No. 190 - on the elimination of harassment and violence in the workplace - which took place in Italy with Law No. 4 of 15 January 2021 and with the deposit of the Convention with the Director-General of ILO on 29 October 2021, which will be mentioned later.

European and international provisions.

At the social level, as is well known, the sensitive issue of gender-based violence in the world of work has drawn the attention of international public opinion thanks to the #MeeToo campaign, launched by actress Alyssa Milano in October 2017, extending it from the Hollywood film environment, from which it started, to European institutional work environments and even the journalism, sports, cooperative and international humanitarian aid sectors.
The campaign has collected millions of testimonials in some 85 countries worldwide, some of which have echoed similar campaigns in different languages[1]. In its traditional end-of-year cover story, TIME magazine named these women and the many men who have joined their voices to the chorus of denunciations 'people of the year', calling them 'silence breakers'.
It is precisely the speed with which these campaigns have spread and the number of testimonies they have collected that call for reflection on the need to identify and combat gender-based violence in the world of work in all its complexity and breadth. The long-term effects of gender-based violence can affect the entire working life, psychological and physical health, and the social and economic status of those affected. For this reason, an integrated approach of prevention, response and counteraction policies is needed.

The primary reference provisions of European and international origin are outlined below.

- **Directive 2002/73/EC of the European Parliament and the Council, 23 September 2002 -** Amendment of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training, and promotion, and working conditions - from which the concepts of:
"***harassmen***t": *where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;*
"***sexual harassment***": *where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment*.

[1] e.g. *#BalanceTonPorc* in French, *#YoTambien* in Spanish, *#Quellavoltache* in Italian, *#Ana_kaman* in Arabic.

- **ILO Convention No. 155 of 22 June 1981 on the health and safety of workers.**

- Recommendation 92/131/EEC of 27 November 1991 on the protection of the dignity of women and men at work, which urges the Member States to take steps to promote awareness that any conduct of a sexual nature which offends against the dignity of men and women at work is unacceptable; then urges them to review and, where necessary, supplement existing legislation on combating bullying and harassment at work; urges the social partners to develop strategies to combat bullying and violence at work.

- European Framework Agreement on stress in the workplace of 8 October 2004 referred to in Article 28(1) of Legislative Decree No. 81 of 9 April 2008, according to which 'bullying and violence at work are "*potential stressors*", and as clarified by the Code of Conduct annexed to Recommendation 92/131/EEC mentioned above "*sexual harassment spoils the working environment and can have devastating effects on the health, confidence, morale and performance of those who suffer it. The anxiety and stress caused by such abuse results in sick leave, reduced efficiency or removal from the workplace and the search for new employment*".

- **ILO Convention No. 187 of 15 June 2006 on a promotional framework for health and safety at work.**

- European Framework Agreement on harassment and violence in the workplace of 26 April 2007, also implemented in Italy by inter-confederal agreements, aimed at preventing and managing harassment and physical violence in the workplace and condemning all forms of harassment and violence, confirming the employer's duty to protect workers against such risks. This Agreement shows that different forms of harassment and violence can occur in the workplace: *they can be physical, psychological and/or sexual; they can be isolated incidents or more systematic; they can occur between colleagues, between superiors and subordinates, or by third parties (e.g., users, patients); they can range from minor cases of disrespect to more severe acts that constitute a criminal offence*.

To this end, the Agreement aims, among other things, to provide employers, workers, and their representatives with a framework of concrete actions to identify, prevent and manage situations of harassment and violence in the workplace.

- Istanbul Council of Europe Convention of 11 May 2011 on preventing and combating violence against women and domestic violence - is the first international instrument that legally binds the Member States. Italy was the first country to ratify it with Law No. 77 of 27 June 2013. Today, the Convention is in force thanks to the ratification by 28 member countries of the Council of Europe. This Convention, in addition to recognising violence against women as a violation of human rights and a form of discrimination, as already indicated in the Beijing Declaration and its 1995 Platform for Action - in line with the *United Nations Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979) and its Optional Protocol (1999), and CEDAW General Recommendation No. 19 on Violence against Women - establishes a clear link between the goal of gender equality and the goal of eliminating violence against women. The Convention has established a comprehensive and specific legal framework within the European framework, which commits countries that have ratified it to take all necessary measures to remove all forms of violence against women. To this end, the Convention indicates, within the exercise of public policies, the need to intervene at the level of prevention, protection and support for victims of violence against women and domestic violence, as well as the protection of children who witness violence and the rehabilitation of those who perpetrate violent conduct.

In addition, Article 46 of the Istanbul Convention mentions as an aggravating circumstance the Commission of the offence by a person who has abused his or her authority, a category which may include employers or colleagues in a hierarchical position.

- ILO Convention No. 190 of 21 June 2019 on the elimination of violence and harassment in the workplace, in force since 25 June 2021, constitutes a strengthening of instruments, including legal ones, aimed at changing the socio-cultural behaviour of both men and women to eliminate prejudices, customs, and practices based on stereotyped gender models.

In Italy, the ratification process began with the adoption of Law No. 4 of 15 January 2021 - in force since 27 January 2021 - which authorises the President of the Republic to fully implement Convention No. 190 in Italian law.
The procedure was finally concluded, with the delivery 'by hand' of the instrument of ratification by the Minister of Labour of Social Policies, Andrea Orlando, to the Director-General of the ILO, Guy Ryder, on 29 October 2021, at the headquarters of the Ministry of Labour.
The ratification, signed by Minister Orlando, places Italy in ninth place in the world and second in Europe among the countries that have ratified the Convention, which has as its main objective the protection of every worker of every type and sector and the fight against violence occurring ***'on the occasion of work, in connection with work or arising out of work'***.
More specifically, the Convention provides a broad definition of 'violence and harassment', including any unacceptable conduct, or threat of such conduct, that causes, or is intended to cause, physical, psychological, sexual, or economic harm, as well as 'gender-based violence and harassment', i.e., occurring because of the sex or gender of the persons affected and including sexual harassment.
The scope of application is just as broad: from a subjective point of view, it includes all workers regardless of their contractual status, including trainees, volunteers, and jobseekers, as well as all employers, both public and private; from an objective point of view, it covers violence and harassment, including gender-based violence and harassment, occurring on the occasion of, in connection with or because of work, even in places other than the workplace and connected to it, or as a result of communications at work, including by electronic means.
Specifically, the Convention requires Member States to adopt provisions defining violence and harassment, to include them in occupational health and safety legislation, to put in place appropriate measures to prevent them, and to put in place systems that allow victims easy access to redress, complaints and dispute resolution mechanisms, ensuring workers' right to leave hazardous work situations.
- **ILO Recommendation No. 206 of 21 June 2019,** which is legally non-binding, provides proposals, training programmes, public campaigns, adoption of codes of ethics and conduct, etc., aimed at preventing situations of violence, harassment, and discrimination in the workplace, as well as guidelines on the application of the Convention mentioned above.
Both - Convention and Recommendation - thus enrich the International Labour Code and promote the strengthening of national legislation, policies, and institutions to make the right to a workplace free from violence and harassment a reality.
It is thus recognised that violence and harassment in work are unacceptable and incompatible with decent work.
In this context, the celebration of the **International Day for the Elimination of Violence against Women** on 25 November each year is vital. It was established by the United Nations, which institutionalised it on 17 December 1999 with a resolution defining this violence as "*one of the most widespread, persistent and devastating violations of human rights that goes unreported to date because of the impunity, silence, stigmatisation and shame that characterise it"*. In Italy, it has also been commemorated by illuminating numerous buildings and monuments in red or orange.

The national picture in terms of legislation and case law.

In Italy, 1.404 million women, aged between 15 and 65, have experienced physical harassment or sexual blackmail in the workplace during their working life, representing 8.9% of current or former female workers, including women seeking employment.
The Covid-19 pandemic, which has forced many workers to work from home, has increased the risk of gender-based violence in the home, which adds to workplace violence, not cancelled by the lockdown, during which the risk of psychological harassment can be increased.

In the Italian legal system, as already represented in the previous reports, there is not only criminal law but also a very incisive labour law in force for a long time, derived from the European Union, which focuses on the victim of harassment with strict protection instruments and which also strongly contrasts retaliation and so-called *'victimisation'*.
The key national provisions in this area are as follows.

- **Article 2087 of the Civil Code** - 1942 code - provides *"a general obligation of safety at work, requiring the employer to take all necessary measures to protect not only the physical integrity but also the psychological wellbeing of the worker*".
The provision places responsibility for the safety of male and female workers on the employer, in this case the entrepreneur, who must protect the physical integrity and moral personality of the employees and to prevent the risks inherent in the working environment, whether arising from internal or external factors, since he must put the safety of the worker, which is a good of constitutional importance (Articles 37 and 41 of the Constitution), before his profit. The employer's liability offers, as is well known, the advantage *of reversing the burden of proof*, since it is up to the employer to ensure that it has taken all the necessary measures to prevent the risk to the physical and psychological health and safety of the workers, who, on the other hand, must prove the damage.
- **Legislative Decree No. 165 of 30 March 2001** - *General rules on the organisation of work in public administrations* - Article 30 paragraph 1 *bis* provides protection routes for workers who are victims of violence.
- **Legislative Decree No. 198 of 11 April 2006** (the so-called code of equal opportunities between men and women): Article 26 establishes the equivalence between sexual harassment and gender discrimination (Civil cassation, Labour section, Judgment No. 23286of 15 November 2016). Sexual harassment is identified as "*discrimination or unwanted conduct of a sexual nature, expressed in physical, verbal or non-verbal form, with the purpose or effect of violating the dignity of a worker and creating an intimidating, hostile, degrading humiliating or offensive atmosphere*". This equalisation allows the discipline and protection provided for discrimination to be extended to harassment, particularly regarding procedural, sanctioning, and evidential matters. **Article 40** of the equal opportunities code provides that if the plaintiff provides factual evidence (including statistical data) to support the presumption of the existence of discriminatory acts, agreements, or conduct, the burden of proof is on the defendant, who must prove that such evidence does not exist. And according to the above-mentioned case law (judgment No. 23286), *"to prove sexual harassment by the employer, the judge may also rely on the confirmations of other female workers who have suffered the same 'treatment', in which case he considers that the proof has been achieved".*
According to the doctrine, *"harassment is any activity that painfully or annoyingly alters the normal psychophysical balance*". This doctrinal definition of the concept of harassment has also been taken up in some legal guidelines, according to which "*harassment is anything that wilfully, annoyingly and annoyingly alters the psychological state of a person, with lasting or momentary action; such conduct does not need to integrate (also) a serious attack on the good of the moral integrity of the offended person".*
- Legislative Decree No. 81 of 9 April 2008 - Consolidated text on health and safety in the workplace: Article **28** absorbs and enhances the general obligation under Article 2087 of the Civil Code as it places, among the work risks subject to the assessment that each employer is obliged to carry out, those "*concerning groups of workers exposed to particular risks, including those related to work-related stress, according to the contents of the European Agreement of 8 October 2004 (...), as well as those related to gender differences*."
The employer must assess the risks based on those 'potentially present'. Above all, the risk assessment cannot be generic, just as the related prevention measures identified cannot be generic. It follows, therefore, that, when compiling the Risk Assessment Document (*Documento di Valutazione dei Rischi*, DVR), the employer is required to consider also all those elements that, although unrelated to work in the strict sense of the term, may affect the health and safety of the worker; if he does not carry out

this evaluation and contrast activity, he is in default and directly liable if the risk becomes a reality and, therefore, damage to the worker. The same Article 28 paragraph 2 provides that the Risk Assessment Document (DVR), in addition to the analysis of the same, must also contain the identification of prevention and protection measures adopted against such risks (e.g., the company code - code of conduct or ethics - similar to that envisaged by the European Agreement of 26 April 2007).
This duty imposed on the employer has also been strengthened by Law No. 205 of 27 December 2017 (the so-called 2018 Finance Act), which will be mentioned later.

- **Law No. 38 of 23 April 2009** "Conversion into law, with amendments, of Decree-Law No. 11 of 23 February 2009, containing urgent **measures on public security and combating sexual violence, as well as on persecutory acts**". With this law introduced in Article 612 *bis* of the Criminal Code, the offence of 'acts of persecution', 'stalking', as previously highlighted, became part of the Italian legal system. In order for the offence to exist, the behaviour of threats and harassment must cause the offended person *"a persistent and serious state of anxiety or fear"*, i.e., a well-founded fear for their own safety or that of persons close to them or force them to alter their life habits.
In addition to the phenomenon defined as *stalking*, other cases have emerged over time, which have as their common denominator the adoption of harassing behaviour towards another person.
This is referred to as '*bossing*', which indicates authoritarian and tyrannical behaviour perpetrated on persons in a subordinate hierarchical position and characterised by psychological intimidation and harassment and may even include the threat or use of disciplinary measures as a form of control. *Bossing* is often used as a synonym for mobbing, whereas it is a variant of the latter and is generally carried out by a superior or by a person on whom the victim depends for the definition of the times and organisation of work, rhythms, objectives, and the evaluation of results. The term is associated with a form of strategic mobbing, coldly planned and implemented by the company's management to rationalise human resources by getting rid of redundant or undesirable employees, causing their spontaneous dismissal. This technique is also used in the presence of objections to company policies and participation in a trade union or political activities not appreciated by the company.
Other terms referring to harassing and violent behaviour in the workplace are '*straining*' (occupational stress) and *'occupational stalking*'.
Occupational stress manifests itself in a situation of severe stress deliberately caused to the detriment of workers, to discriminate against them through harassment and create a hostile working climate around them. This form of violence is carried out in the presence of changes in the business and organisational context of the work, to control the employee with regard to business choices. It is manifested in changes in duties, giving more or less workload without specific reasons, sudden and unjustified changes in the level of duties and if there is at least one hostile action of a lasting and intentional nature.
Occupational stalking is defined as persecutory acts in the workplace aimed at exerting psychological pressure on the employee to obtain their sexual attention, resulting in the private sphere. This is the case when the typical elements of stalking, i.e., obsessive behaviour towards a person, often of a relational nature with a sexual background, which is manifested by control implemented through means of communication, such as telephone, messages, e-mails, social networks, which are not appreciated by the recipient and which put the person in a condition of anxiety, nervousness, and fear, are implemented by colleagues or superiors.
All these behaviours are part of a culture of abuse and prevarication, disrespect for others and diversity, and violation of workers' rights, leading to critical and lasting consequences on an individual, corporate and social level.

- **Law No. 119 of 15 October 2013** (*the so-called law against feminicide*) converted into law, with amendments, the Decree-Law No. 93 of 14 August 2013, containing, *inter alia***, urgent provisions on security and for combating gender-based violence**: it enriches the Criminal Code with new aggravating circumstances and at the same time expands the measures to protect victims of ill-treatment and domestic violence.

This measure, which implements the Istanbul Convention, is based on a double track: the fundamental one of protection and prevention - through the provision of rules that strengthen and supplement the already existing tools - and the sanctioning/repressive one, by amending the provisions of the Penal Code - by modifying Article 612 *bis* (the crime of stalking) mentioned above - and of the Code of Criminal Procedure. Article 5 of Decree-Law No. 93 has provided that the Minister delegated for equal opportunities shall elaborate, with the contribution of the competent central Administrations, Regions and local authorities, as well as the Associations committed to the issue of violence against women, an "Extraordinary Action Plan against sexual and gender-based violence", prepared in synergy with the European Union's programming for the period 2014-2020, which represents an opportunity to implement an integrated system of public policies oriented in a preventive way to the protection and promotion of women's human rights, to the respect of their dignity as persons in situations of victimisation together with the protection of their children, as well as to the fight against this phenomenon. Specific information on the two Plans adopted so far (Plan 2015-2017 and Plan 2017-2020) and on the last one, currently being adopted (Plan 2021-2023), is reported later in this report.

- **Legislative Decree No. 80 of 15 June 2015** - Measures for the reconciliation of care, life and work needs, in implementation of Article 1, paragraphs 8 and 9, of Law No. 183 of 10 December 2014- in Article 24, contemplates paid leave for women victims of violence.

- **Framework Agreement on harassment and violence in the workplace initialled on 25 January 2016** implementing the Framework Agreement on harassment and violence in the workplace reached in 2007 by the respective representations at the European level (*Businesseurope, Ceep, Ueapme and Etuc*), stating, *inter alia*, that any act or behaviour amounting to harassment or violence in the workplace, according to the definitions of the Agreement, is unacceptable and that harassing behaviour or violence suffered in the workplace should be reported.

- **Law No. 205 of 27 December 2017** (State Budget for the financial year 2018 and multi-year budget for the three-year period 2018-2020). It has provided, with Article 1, paragraph 218, letter b), the amendment of Article 26 of the Code of Equal Opportunities referred to in Legislative Decree 198/2006, also inserting two new paragraphs, described below, of relevance with respect to the phenomena under examination, having significantly affected the wording of the Article[2].

Specifically, paragraph 3-*bis* protects those who take legal action for having suffered harassment or sexual harassment in the company. A worker who takes legal action for discrimination, harassment,

[2] Art. 26 - *Harassment and sexual harassment* 1. Harassment, i.e., unwanted conduct related to sex with the purpose or effect of violating the dignity of a worker and creating an intimidating, hostile, degrading, humiliating or offensive environment, shall also be deemed to be discrimination.

2. Sexual harassment, unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a female or male worker and of creating an intimidating, hostile, degrading, humiliating or offensive environment, shall also be deemed to be discrimination.

2-*bis*. Less favourable treatment of a worker by reason of the fact that she or he has refused or acquiesced in the conduct referred to in paragraphs 1 and 2 shall also be deemed to be discrimination.

3. Any act, agreement or measure concerning the employment relationship of a worker who has been the victim of conduct referred to in paragraphs 1, 2 and 2-*bis* shall be null and void if adopted because of such refusal or submission. Any unfavourable treatment by the employer in response to a complaint or action aimed at enforcing compliance with the principle of equal treatment between men and women shall also be deemed to be discrimination.

3-*bis*. A worker who takes legal action to claim discrimination on the grounds of harassment or sexual harassment in violation of the prohibitions laid down in this Chapter shall not be penalised, demoted, dismissed, transferred or subjected to any other organisational measure having direct or indirect adverse effects on working conditions as a result of the complaint. Retaliatory or discriminatory dismissal of the whistle-blower shall be null and void. A change of job within the meaning of Article 2103 of the Civil Code and any other retaliatory or discriminatory measure taken against the whistle-blower shall also be null and void. The safeguards referred to in this paragraph shall not be granted in cases where the complainant has been found, even by a judgment of first instance, to be criminally liable for offences of slander or defamation or where the complaint is unfounded.

3-*ter*. Employers are obliged, pursuant to Article 2087 of the Civil Code, to ensure working conditions that guarantee the physical and moral integrity and dignity of workers, also by agreeing with workers' trade unions on the most appropriate information and training initiatives to prevent sexual harassment in the workplace. Companies, trade unions, employers and male and female workers undertake to ensure that a working environment is maintained in which the dignity of each individual is respected and interpersonal relations based on principles of equality and mutual fairness are encouraged.

or sexual harassment in the workplace cannot be sanctioned, demoted, dismissed, transferred, or subjected to other organisational measures having direct or indirect harmful effects on working conditions if such measure is the consequence of the complaint itself. Any retaliatory or discriminatory dismissal of the complainant worker is null and void, and the latter is entitled not to compensation for damages but reinstatement. Similarly, a change of job and any other retaliatory or discriminatory measure against the complainant shall also be null and void.
Paragraph 3-*ter*, which takes up the wording of Article 2087 of the Civil Code, which places on the employer the general obligation to take all necessary measures to protect the physical and moral integrity and dignity of workers, specifies that, for these purposes, the employer is required to agree with the trade unions on the training and information initiatives deemed most appropriate, to combat the phenomenon of sexual harassment in the workplace. This emphasises the role of trade union organisations in this area.
It also adds that companies, trade unions, employers, and male and female workers undertake to ensure that a working environment is maintained in which everyone's dignity is respected, and interpersonal relations based on principles of equality and mutual fairness are fostered.
The measures to be adopted cannot be limited to the way work is done but must refer to the whole environment precisely because the risks cannot be limited to the work but to the general context in which it is carried out.
Another important provision reported in paragraph 220 of the same Article 1, mentioned above, of Law No. 205/2017, concerns the incentives to be provided to social cooperatives that, during the year 2018, have signed open-ended employment contracts in favour of the category of women victims of gender-based violence, whose condition is ascertained by documentation provided by social services or anti-violence centres, allowing them to undertake training courses.
The purpose of the Article is to encourage the employment of women victims of violence by promoting their economic independence. It is a novelty that is inserted in the framework of the pre-existing legislation pursuant to Article 24 of Legislative Decree No. 80 of 2015, which already provided women, victims of violence, the right to a paid leave of three months.
In particular, the intervention censures the possibility of retaliation against workers who decide to denounce acts of violence, seeking to eliminate the possibility that the choice to take legal action may represent a risk for the professional and economic position of the worker through demotion or dismissal. In this way, the aim is to reduce unreported violence and sexual harassment.
Law No. 69 of 19 July 2019, on "Amendments to the Criminal Code, the Code of Criminal Procedure and other provisions on the protection of victims of domestic and gender-based violence", better known by the 'name' of *"Code Red",* which included incisive provisions of substantive criminal law, as well as further provisions of a procedural nature.
The precautionary measure of the prohibition to approach the places frequented by the offended person has been modified to allow the judge to ensure compliance through control procedures by electronic means or other technical tools, such as the well-tested electronic bracelet.
The penalties already provided for in the Criminal Code have been increased with this legislation: as regards the offence of stalking, the minimum penalty is increased from six months and a maximum of five years to a minimum of one year and a maximum of six years and six months.
With particular reference to criminal law profiles, it should be noted that the Italian legal system does not provide for an ad hoc case regarding the offence of harassment, but, in case law, harassment at work has been, depending on the seriousness and manner of the harassing behaviour, attributed to various offences.
Maltreating and harassing conduct against workers is punishable not only under Article 612-*bis* (*persecutory acts-stalking*)[3], mentioned several times, but also under Articles **609-*bis*** (*sexual*

[3] *Article 612 bis of the Criminal Code provides that: "Unless the act constitutes a more serious offence, a penalty of imprisonment from six months to five years shall be imposed on anyone who, through repeated conduct, threatens or harasses another person in such a way as to cause a persistent and serious state of anxiety or fear, or to create a well-founded fear for*

violence)[4], in cases of more serious harassment, and **572** (*ill-treatment against family members and cohabitants*)[5] of the Criminal Code.

The Court of Cassation, in judgment No. 31273 of 9 November 2020, granted criminal coverage to *mobbing* through Article 612-*bis* of the Criminal Code, even though the former is only relevant in civil law due to the lack of an express provision for the crime of mobbing.

Court of Cassation, criminal section, judgment No. 31273 filed on 9 November 2020 - For the purposes of configuring a hypothesis of mobbing, it is not sufficient to ascertain the existence of multiple unlawful employer's conducts, but it is necessary that the worker alleges and proves, with additional and concrete elements, that the employer's behaviours are the result of a unifying persecutory design, preordained to prevarication

While Article 609-*bis* applies without difficulty to abuse committed in a work context, Article 572 - considered by the legislator, for the most part, to be the case of ill-treatment "in the family" - is extended to ill-treatment in the workplace if specific requirements identified by the case-law of the Supreme Court (including the character of "*para-familiarity*" in the working relationship, the position of authority of the abuser towards the victim, etc.) are met (in addition to objective conduct).

By way of example, we cite the judgment of the Criminal Court of Cassation, section VI, No. 36802 of 20 March 2018. The judgment handed down confirms the prevailing orientation, stating that sexual harassment and prevarication in the workplace to the detriment of workers are covered by the offence of mistreatment provided for in Article 572 of the Criminal Code. if the interpersonal relationship is characterised by the requirement of para-familiarity, having regard not only to the number of employees in the company, the duration of the employment relationship, the repetition of discriminatory conduct against the subjects and the reaction of the victims, but also to the relational dynamics between the workers and the employer, as well as to the existence or otherwise of a condition of subjection and subordination of the said victims. (In the case in question, the perpetrator of the harassment was the garage foreman).

Reference is also made to the judgment of the Court of Cassation - Criminal Section, No. 35588 of 19 July 2017, which decided on the case of a female employee of a local authority who was the victim of persecution (stalking) by her hierarchical superior, even outside working hours and the workplace. The defendant exercised managerial, supervisory and control powers over the injured party, which he

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his/her safety or that of a close relative or a person linked to him/her by a relationship of affection, or to force him/her to alter his/her lifestyle.

The penalty is increased if the act is committed by a spouse, including a separated or divorced spouse, or by a person who is or has been bound by a relationship of affection to the offended person, or if the act is committed by means of computer or telematic tools.

The penalty is increased by up to half if the offence is committed to the detriment of a minor, a pregnant woman or a person with disabilities referred to in Article 3 of Law No. 104 of 5 February 1992, or with weapons or by a disguised person.

The offence is punishable on complaint by the injured party. The time limit for filing a complaint is six months. The dismissal of the complaint may only be procedural. The lawsuit is in any case irrevocable if the fact has been committed by means of repeated threats in the manner referred to in Article 612, second paragraph. However, proceedings shall be taken ex officio if the act is committed against a minor or a person with disabilities referred to in Article 3 of Law No 104 of 5 February 1992, or when the act is connected with another offence for which proceedings must be taken ex officio".

[4] *Article 609 bis of the criminal code provides that: "Anyone who, by means of violence or threats or by abuse of authority forces someone to perform or undergo sexual acts shall be punished by imprisonment of from six to twelve years. The same punishment applies to anyone who induces someone to perform or undergo sexual acts: 1) by abusing the physical or mental inferiority of the offended person at the time of the act; 2) by misleading the offended person by substituting him/herself for another person. In less serious cases, the penalty shall be reduced by a maximum of two thirds".*

[5] *Article 572 of the Criminal Code "Whoever, except for the cases indicated in the preceding Article, mistreats a member of the family or a cohabitant, or a person subject to his authority or entrusted to him for reasons of education, instruction, care, supervision or custody, or for the exercise of a profession or art, shall be punished by imprisonment from three to seven years. The penalty shall be increased by up to half if the act is committed in the presence of or to the detriment of a minor, a pregnant woman or a person with disabilities as defined in Article 3 of Law 104 of 5 February 1992, or if the act is committed with weapons.*

If the fact results in serious personal injury, imprisonment from four to nine years shall apply; if it results in very serious injury, imprisonment from seven to fifteen years; if it results in death, imprisonment from twelve to twenty-four years.

A person under the age of eighteen who witnesses the ill-treatment referred to in this Article shall be deemed to be a person aggrieved by the offence".

abused at all times of the day, in order to obtain contact with the employee, to the point of plunging her into a severe state of depression and paralysing prostration. These executive powers, in addition to allowing the defendant unlimited access to the employee's workplace, also gave authoritative effect to the persecutory conduct carried out outside working hours or the workplace, making the 'siege' suffered by the offended person increasingly pervasive and suffocating.
After confirming the conviction of the author of the stalking, the Court of Cassation identified the requirements for the recognition of the civil liability of the employer, in that case the Public Administration, recognising the connection between the damage caused by the employee author of the stalking and the duties performed by him in the working relationship, even occasional, with the victim (so-called relationship of 'necessary occasionality'). According to this judgment, it was precisely the exercise of the stalker's (in that case, public) duties that facilitated the production of the damage. This relevant precedent means that the employer can be sued as civilly liable for the offence committed by the employee. This protects the victim from possible damages from the perpetrator.
In cases of more serious harassment, case law has held that the offence of sexual violence under Article 609-*bis* of the Criminal Code is committed (Court of Cassation, section III, judgment No. 36704 of 27 March 2014; Court of Cassation, section III, judgment No. 42871 of 26 September 2013).
If the harassment at work took the form of blackmailing the employee, repeatedly confronting her with the choice between submitting to the advances and losing her job, the offence of 'private violence' was deemed to have been committed.
According to case law, "*for the offence of private violence, a verbal or explicit threat is not required, as any behaviour or attitude, whether towards the passive subject or towards others, capable of instilling fear and arousing the concern of suffering unjust damage, aimed at obtaining that, through such intimidation, the passive subject is induced to do, tolerate or omit something, is sufficient*" (Court of Cassation, section V, judgment No. 29261 of 24 February 2017).
The employer "*may also be liable if the sexual harassment is committed by other persons such as the employee's hierarchical superiors. In that case, however, his liability is only civil and limited to compensation for damages or reinstatement in the workplace. If, on the other hand, the employer wilfully fails to take measures to protect the harassed employee, he is guilty of aiding and abetting the offence and falls under criminal liability*".
If the employer is the author of the harassment, "*they will not only be in breach of his contractual obligations, but also criminally liable and, therefore, he will be required to compensate not only the biological damage, but also the moral damage suffered by the employee*".
According to the Court of Cassation, *"the employee's renunciation of a secure job can be regarded as conclusive conduct confirming sexual harassment in the workplace"*.
In this regard, we cite the ruling of the Court of Civil Cassation- Labour Section- No. 7097 of 22 March 2018, according to which "*If an employee engages in harmful conduct (in this case sexual harassment) against another employee in the workplace, the employer, having remained culpably inert in removing the harmful act, is called to answer under Article. 2087 Civil Code*".
Finally, it should be noted that, with regard to activities to combat sexual harassment, with particular reference to the workplace, a series of bills have been presented and/or are being discussed in Parliament, aimed at encouraging the emergence of the phenomenon and ensuring the protection of the complaining worker, confirming that the national regulatory framework on the subject is constantly evolving.

Institutions for prevention and combating.
The Italian legal system provides for a multiplicity of institutional and administrative bodies in charge of the application and control of the principles and provisions on equality, equal opportunities, and non-discrimination in employment, such as the Department for Equal Opportunities (DPO) at the Presidency of the Council of Ministers, the Committee for Equal Opportunities (CPO) and the National Counsellor for Equality at the Ministry of Labour and Social Policies (MLPS), the Single Guarantee Committee for the enhancement of the welfare of workers and against discrimination (CUG) within

the Public Administrations and the Counsellor(s) for Equality operating at regional and vast or metropolitan area level throughout the national territory.
An essential role in preventing and combating sexual harassment and gender-based violence at work is played by the Labour Inspectorate and, more broadly, also by the Ministry of Labour and Social Policies.

The National Equality Adviser and the Equality Adviser(s)

The National Adviser, appointed by decree of the Minister of Labour and Social Policies, is a member of the National Equality Committee and plays a primary role, together with the network of Equality Advisers, in promoting and verifying the implementation of the principles of equal opportunities and non-discrimination between men and women at work.
In the exercise of its functions, it has the status of a public official and is obliged to report any offences of which it becomes aware to the judicial authorities.
In particular, she deals with cases of gender discrimination at work of national importance and the promotion of equal opportunities for male and female workers, including through collaboration with the institutions and government bodies responsible for active employment policies, training and reconciliation.
The National Adviser coordinates the National Conference of Equality Advisers acting at national, regional and provincial levels, with the task of monitoring and promoting good practices.
Moreover, the activity of the National Adviser is carried out in close connection with the central Administrations, especially with the National Labour Inspectorate and the Department for Equal Opportunities, with which fruitful cooperation is carried out, as set out in particular Memoranda of Understanding.
The Equality Advisers - established by Legislative Decree No. 198/2006 and recently strengthened through the appointment of additional units - play a fundamental role in promoting the principle of equal opportunities between men and women and implementing positive action projects.
As public officers in each Region, Metropolitan Area, and Large Area (representing the administrative level of the Provinces and Metropolitan Cities), they collect complaints from women workers concerning cases of direct or indirect discrimination, based on gender, occurring in the workplace (*access, career progression, vocational training, pay, dismissal/resignation and pension aspects*), as well as for harassment in the workplace. This service is required by law and is provided free of charge.
They can also exercise judicial protection in conciliatory actions and intervene in Court on behalf of the person concerned or even *ad adiuvandum*, in cases where there has been a violation of the prohibitions of discrimination set out in the Equal Opportunities Code.
Once the complaint has been accepted and examined, the Adviser summons the employer and asks to explain the behaviour and the incident. Generally, the employer is aware of what is happening in his company and tipically adopts a conciliatory attitude and transfers the harasser to other departments or branches of the company, up to and including dismissal for just cause in cases provided for by law. Legal action may be considered depending on the seriousness of the case and the counsellor's discussions with the complainant.
In this sense, the role of the Adviser is important because, in addition to informing, she leads the employer to respect the laws on the safety of workers in his company, as well as those on the prevention of discrimination based on gender and against sexual harassment.
Article 15 of Legislative Decree No. 198/2006 also gives the National Equality Adviser the task of carrying out ***information and training activities on the various forms of discrimination***, including sexual harassment in the workplace, which it does both directly, through special information campaigns (the last of which was carried out in 2018 with the distribution of a detailed brochure in workplaces, thanks also to the network of equality advisers in the area and the involvement of local trade unions), and indirectly, through the organisation of advanced training courses.
In the context of relations with other institutions, to strengthen the collaborations set up, Protocols of Understanding are signed, among which the most recent ones are:
- *National Forensic Council* (Protocol of 22 June 2017).

The Memorandum of Understanding signed with the National Forensic Council has resulted in the activation of a series of high-level training courses and seminars on anti-discrimination law for lawyers in the territory to create a short-list of professionals to whom the territorial Councils can turn to carry out their legal assessments on cases of discrimination. The second edition of the high-level training course is planned for 2021.

- *National Labour Inspectorate* (Protocol of 6 June 2018).

Cooperation with the Labour Inspectorate has always been a fundamental element of the role played by the Councils.

In this regard, it should be noted, the activities are regulated by a memorandum of understanding in which the local Councillors are also involved and which, along the lines of the Protocol signed, at the national level, is entered into with the respective Labour Inspectorates of territorial affiliation.

- *Ministry of Education, University and Research* (Protocol of 30 January 2018).

The Memorandum of Understanding with the Ministry of Education, Universities, and Research was stipulated to promote the overcoming of gender stereotypes that influence educational paths and fuel discriminatory phenomena, an activity in which the Councils have always been firmly committed through projects and collaborations with schools.

The Single Guarantee Committee for the enhancement of the welfare of workers and against discrimination (CUG)

The Single Guarantee Committees (CUG) - established pursuant to Article 21 of Law 183[6] of 4 November 2010, which amended Article 57 of Legislative Decree 165 of 30 March 2001 - are joint committees set up within the Public Administration, with the task of proposing, advising, and monitoring equal opportunities and organisational wellbeing.

These Committees replace the Equal Opportunities Committees and the Joint Committees on mobbing to make *a concrete contribution to optimising the productivity of public work, facilitating the efficiency and effectiveness of performance, encouraging job satisfaction, and ensuring a working environment in which all forms of discrimination against male and female workers are combated*.

The specific tasks of the CUG include promoting positive actions, interventions, and projects, through codes of ethics and conduct suitable for preventing or removing situations of discrimination or sexual, moral, and psychological violence - *mobbing* - in the public administration to which they belong.

Directive No. 2/2019[7] strengthens the role of the CUG as a system for monitoring situations of malaise related to violence and discrimination, also promoting the establishment of listening units within the administration.

Recently, an important initiative was activated, implemented through the signing, on 18 November 2020, of a Protocol of Understanding between the Minister for Equal Opportunities and the Family, the Minister for Public Administration, and the National Network of CUGs, to offer assistance to women victims of violence. With this Protocol, the CUGs commit themselves within the administrations in which they operate and adopt shared actions to acknowledge and bring to light reports of gender-based violence through *information material, training initiatives for employees, an ad hoc e-mail box, a dedicated telephone number, the involvement of the 'Organised Listening Unit' where established, and the monitoring of situations of violence/harassment*.

The CUG has a fundamental role in detecting all forms of discrimination relating to all risk factors that the national legal framework includes - such as *gender, age, ethnic origin, disability, sexual orientation, language,* etc. - that occur in all work areas. - which manifest themselves in all spheres of public life,

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[6] Law No. 183 of 4 November 2010 on "Delegations to the Government on the subject of arduous work, reorganisation of entities, leaves of absence, expectations and permits, social security, employment services, employment incentives, apprenticeships, female employment, as well as measures against undeclared work and provisions on public employment and labour disputes", in particular, Article 21 "Measures to ensure equal opportunities, welfare of those who work and absence of discrimination in public administrations".

[7] Directive No. 2 of 26 June 2019 of the Presidency of the Council of Ministers Minister for Public Administration and Innovation and Deputy Undersecretary for Equal Opportunities, "Measures to promote equal opportunities and strengthen the role of Single Guarantee Committees in Public Administrations".

including access to employment, working conditions, training, careers, and safety at work. Therefore, the work of these committees is also crucial for the prevention and recognition of risk behaviour, starting with what can happen in the workplace.

The National Labour Inspectorate

It was established by Legislative Decree No. 149 of 14 September 2015 - in implementing the delegated labour market reform law No. 183 of 10 December 2014 - the Single Agency for Labour Inspections, named **"Ispettorato Nazionale del Lavoro"** (INL), becomes operational as of 1 January 2017, with the assignment of the inspection functions previously exercised by the Ministry of Labour and Social Policies, INPS (*National Social Security Institute*) and INAIL (*National Institute for Insurance against Accidents at Work*), coordinating, at central and territorial level, the supervision of labour and social legislation, as well as contributory and insurance matters and the protection of health and safety in the workplace, within the limits of the competences conferred on it under Legislative Decree No. 81/2008.

The functions attributed to INL also intersect with the competences of other public entities in charge of control in areas of competence contiguous to that of INL (ASL, Carabinieri, Guardia di Finanza and Agenzia delle Entrate, Agenzie Regionali per la Protezione dell'Ambiente - ARPA - Vigili del Fuoco etc.).

2014 Conclusions of the European Committee of Social Rights (ECSR)

The Committee notes that the adoption of such preventive measures is left to the initiative of employers or collective agreements. It asks whether, specifically, preventive and awareness-raising measures, other than those of a legislative nature, have been taken by national authorities to inform workers about sexual harassment and available remedies, and to what extent the social partners are involved in the development and implementation of such measures.

In this respect, the following is reported.

Tools to encourage good practice in preventing harassment and violence at work.

The National Plan against male violence against women

In the implementation of Article 5 of the aforementioned Law No. 119 of 2013, better known as the *"Femicide Law"*, the *Extraordinary Action Plan against sexual and gender-based violence 2015-2017 and 2017-2020* have been adopted, while the 2021-2023 Plan is in the process of being adopted.

Italy had thus accepted the invitation of the Council of Europe to adopt preventive plans aimed at combating gender-based violence, following the approval of the 2011 National Plan against gender-based violence and stalking, which, even before this invitation, our country had implemented.

The first two-year Plan, adopted on 7 July 2015, was financed with more than EUR 40 million to prevent the phenomenon of violence against women, "increasing the protection of victims by strengthening cooperation between all institutions involved" and "defining a structured system of governance between all levels of government, which is also based on the various experiences and good practices already implemented in local networks and on the territory".

It represents the first instrument to outline an overall strategy to safeguard and promote the human rights of women and their children and combat gender-based violence. The Plan has defined an integrated governance model, characterised by a multidisciplinary approach (as provided for in Articles 7 and 9 of the Istanbul Convention) according to which the Presidency of the Council of Ministers, using the Department for Equal Opportunities, is responsible for the central functions of management, coordination of the system and planning of actions in synergy with the central Administrations, the Regions, local authorities and private social organisations and non-governmental associations involved in combating violence and protecting victims (anti-violence centres), to

contribute to the construction, consolidation, and expansion of the system, identifying specific areas of intervention and providing funding that differs in nature, management ownership, and territorial scope.
In particular, about the "Right to dignity at work", with obvious repercussions also on the issue of *sexual and moral harassment*, the Plan, in guaranteeing concrete measures aimed at the effective reintegration into the employment of women victims of violence, promotes coordinated actions between all public and private actors of the territorial network of employment services aimed at making employment a place of empowerment of women, a place where their skills are enhanced, a centre for overcoming substantial discrimination, a space for the promotion and protection of human rights and dignity of women.

National Strategic Plan on male violence against women 2017-2020

Subsequently, in the Council of Ministers of 23 November 2017, the Government adopted the new three-year National Strategic Anti-Violence Plan 2017-2020. To ensure maximum compliance with the Istanbul Convention, this Anti-Violence Plan is articulated according to its three strategic Axes, namely: preventing violence (through education and communication plans, as well as training of public and private sector operators); protecting and supporting victims (through territorial anti-violence networks); prosecuting and punishing (in synergy with institutional entities such as the Ministry of the Interior, Defence, Justice, the Superior Council of the Judiciary, criminal, civil and juvenile courts). The Plan was completed by constructing an integrated data collection system by ISTAT and by an evaluation analysis, carried out by the Equal Opportunities Department with IRPPS-CNR[8], on the promoted and funded interventions and, above all, on their effects and results. It should be noted that, to coincide with the adoption of the National Plan to combat violence against women 2017-2020, a page of the website www.istat.it was entirely dedicated to an overall view of this serious phenomenon, through the integration of data from various institutional sources, such as ISTAT, the Department for Equal Opportunities, Ministries, Regions, Anti-Violence Centres, Shelter Homes and other services, such as the public utility number 1522[9], activated by the Department since 2006 to provide an initial response to the needs of victims of gender-based violence and stalking, offering useful information and guidance to public and private social-health services in the country.
The issue of violence and harassment in the workplace is addressed in the above-mentioned Plan, under the heading 'Prevention' - *Male violence against women in the workplace* - where it outlines the need to adopt effective strategies to prevent and combat all forms of gender-based violence that can affect women in the context of an employment relationship and recalls the importance of the role of the social partners (trade unions, employers' associations and the Equality Advisor), to encourage positive changes in the workplace, to protect female workers and to adopt initiatives including awareness-raising, projects, actions, agreements - in every form and in every venue to prevent, reduce and eliminate the conditions that generate violence and harassment in the workplace. We also recall the Government's commitment to encouraging the implementation and strengthening of the commitments made in the Agreement signed on 25 January 2016 between Confindustria and CGIL,

[8] Institute for Research on Population and Social Policy.
[9] The public utility number 1522 is active 24 hours a day, every day of the year and is accessible from the entire national territory free of charge, both from fixed and mobile phones, with a reception available in Italian, English, French, Spanish and Arabic. The telephone operators dedicated to the service provide an initial response to the needs of victims of gender-based violence and stalking, offering useful information and orientation towards public and private social-health services in the country. Since 2006, the Department for Equal Opportunities has developed, through the activation of the public utility number 1522, a wide-ranging system action for emerging and combating intra- and extra-family violence against women. In 2009, with the entry into force of Law 38/2009 on persecutory acts, the number started to support stalking victims. The service represents the operational hub of the activities to combat gender-based violence and stalking and is based on the methodology of 'networking'. It assumes the role of a technical operational tool to support the actions carried out by local anti-violence networks, which are called upon to combat the phenomenon of gender-based violence, while guaranteeing the necessary links between the competent central administrations in the judicial, social, health, security and law and order fields. The telephone approach supports the emergence of the demand for help, allowing a gradual approach to the services by the victims with the absolute guarantee of anonymity, and emergency cases of violence are dealt with through a specific technical-operational procedure shared with the police.

CISL, and UIL to transpose the Framework Agreement on Harassment and Violence in the workplace reached on 26 April 2007 by Business Europe, CEEP, UEAPME, and ETUC, with particular attention to building and maintaining a working environment in which the personal dignity of each individual is respected, and interpersonal relations are fostered, and to communicating and raising awareness and strengthening the structures that assist female victims in all respects, including through partnerships, dialogue and networking with the specialised services referred to in Articles 22 *et seq*. of the Istanbul Convention. It also highlights the importance, within the public sector, of the function of the **Single Guarantee Committees** for the matters falling within their remit to ensure the absence of any form of violence and moral or psychological harassment and discrimination, whether direct or indirect, relating to gender.

National Strategic Plan on Male Violence against Women 2021-2023

In July 2021, the National Steering Committee, chaired by the Minister for Equal Opportunities and the Family, met for an initial discussion on the draft National Strategic Plan on male violence against women 2021-2023, prepared by the Department for Equal Opportunities, also in the light of the suggestions and proposals made by the associations and social partners involved. The new Plan has been structured in accordance with the Istanbul Convention, which is an essential reference point for policies to prevent and combat male violence against women. It will be connected to the National Strategy for Gender Equality[10], presented by the Minister for Equal Opportunities and the Family, during the Council of Ministers of 5 August 2021, after the briefing in the Unified Conference, with the National Recovery and Resilience Plan (NRRP) and, more generally, with all the interventions and actions put in place to promote women's empowerment, the main tool for preventing male violence. The Plan, which is in the process of being adopted, was also prepared through the activation, on the recommendation of the Steering Committee in 2020, of three specific thematic working groups, including one specifically dedicated to the theme of *'Violence and harassment in the workplace and the inclusion and reintegration of victims in the workplace'*.

Company codes (ethics or codes of conduct)

Effective measures to prevent harassment and violence in the workplace can result from adopting **corporate codes**, whether they are codes of ethics or codes of conduct, which are intended as acts of self-regulation within an organisation or company, whether public or private.

The European Community has promoted them since the early 1990s to repress and punish sexual harassment, subsequently extending their scope to include discrimination and mobbing.

These instruments complement, flank, and support the rules in collective agreements and legal provisions.

The Codes of Ethics and/or Conduct existing today in the Public Administration - as in many large private companies - have been drawn up since the 1990s and have undergone a profound evolution over time in terms of areas of protection, competencies, and effective prevention, which, starting from a more general concept of protection of human dignity, provide for the extension of the protection of male and female workers also against moral and psychological harassment and mobbing.

The evolution of legislation and case law has led to 'second-generation codes', which, starting from a more general concept of protection of human dignity, provide for the extension of workers' protection against moral and psychological harassment and mobbing.

[10] The National Strategy, which Italy is adopting for the first time, is inspired by the European Union's Gender Equality Strategy 2020-2025, with a long-term perspective, and represents the outline of values, the direction of the policies to be implemented and the point of arrival in terms of gender equality. For the Italian Government, the National Strategy for Gender Equality is a reference for the implementation of the NRRP and the reform of the Family Act. The strategic document adopted is the result of a wide-ranging and participatory process that involved administrations, social partners, and the main associations. The Strategy identifies five priorities: Work, Income, Skills, Time and Power, with detailed and measurable objectives and targets, to be achieved by 2026. The aim is to earn our country 5 points in the EIGE Gender Equality Index ranking.

The most modern codes of ethics and/or conduct consider all possible disturbances in working life and promote ways of seeking out and correcting situations that negatively affect the company climate, constituting regulatory support for the company that seeks the psycho-social well-being of the employee. These codes imply the inclusion, with targeted intervention procedures, of the most critical cases such as sexual harassment and mobbing.

Codes of ethics or codes of conduct typically also provide instruments to implement the prevention or repression of violence or harassment, referring in many cases to persons with specific competencies such as the Trusted Adviser(s), a figure provided for by European legislation. This figure was created in the context of protection against sexual harassment and gender discrimination, as a 'trusted professional of the company' (public or private) who is called upon to implement the necessary measures to prevent violence and harassment (public or private) called upon to implement the Code of Conduct to eliminate negative factors and promote a favourable climate in the workplace, according to precise procedures (mainly through an informal procedure aimed at preventing, mediating and resolving conflicts).

Also, the **Consolidated Law on health and safety at work No. 81/2008** identifies ethical codes and codes of conduct among the prevention tools; specifically in Article 15, paragraph 1, letter h), which reads as follows *"the planning of measures considered appropriate to ensure the improvement of safety levels over time, also through the adoption of codes of conduct and good practices".*

By way of illustration, the following are mentioned:

The code of conduct in combating sexual harassment for employees of the **Ministry of Labour** aims to prevent sexually motivated harassment and, if it occurs, it sets out to guarantee the rights of female workers, in addition to a simple and immediate appeal procedure, other appropriate procedures to address the problem and prevent its recurrence, to ensure a working environment that is not compromised by blackmail and retaliation as a result of incidents of sexual harassment. The code of conduct for the prevention and control of sexual harassment also provides for the creation of a Trusted Adviser, whose task is to provide clear and comprehensive information on the procedure to be followed, maintaining the confidentiality and preventing any possible retaliation.

The code of conduct for preventing and combating harassment, mobbing and any form of discrimination, to protect the integrity and dignity of the person of the **Revenue Agency**, the year 2021; in implementation of the three-year Plan of positive actions 2018 - 2020.

INAIL's code of conduct contains a provision which reads as follows: *"INAIL rejects any moral, psychological or physical violence which undermines the moral and professional dignity as well as the physical and psychological integrity of workers by depressing their self-esteem and motivation. It also undertakes to promote the analysis and elimination of any shortcomings, whether organisational or informational, which may contribute to the emergence of situations of conflict, psychological discomfort, and mobbing, and to guarantee effective protection to any employee, manager or non-manager who has been the victim of any prejudicial or discriminatory act or behaviour". INAIL has, moreover, put in place a whole series of positive bonus actions in favour of companies that promote and implement specific actions to prevent and protect against harassment and violence at work, providing for various types of bonus measures for such companies.*

Electrolux, formerly Zanussi, issued the first *Code of Conduct to protect the dignity of women and men in the company* back in 1994. Anyone who believes they are a victim of harassment can ask the Counsellor to intervene in writing or verbally. The Counsellor can hear the two parties, take testimonies and seek solutions to "stop the reported behaviour, remove its effects" or "prevent its recurrence".

The **Eni** group (Ente Nazionale Idrocarburi - National Hydrocarbons Agency) in its code of ethics prohibits "any form of violence or sexual harassment" and specifies that it considers the following as such: "*inducing employees to engage in sexual favours through the influence of one's role"* and *"proposing private interpersonal relations, despite an expressed or reasonably evident dislike".*

In its internal Code of Conduct, **Banca Intesa Sanpaolo** "*prohibits discrimination of a religious, political, ethnic or sexual nature", "harassment in general and sexual harassment as well as unwanted*

behaviour of a sexual nature, expressed in physical, verbal or non-verbal form, which violates the dignity of the person and creates an intimidating, hostile and humiliating atmosphere".
According to **Assicurazioni Generali's** Code of Ethics, "*sexually oriented e-mails or text messages, unwanted gestures or physical contact, as well as offensive or degrading comments on personal characteristics are prohibited and must be considered as forms of harassment*".
In this context, regarding the Committee's specific request concerning the involvement of the social partners, it should be noted that trade unions and employers' organisations at a national level are committed to the prevention of mobbing and harassment in the workplace and that many national collective agreements in the sector take these phenomena into account.
The Framework Agreement of the European social partners on harassment and violence at work of 2007, mentioned several times, was signed in 2016 by the three Italian trade union confederations, CGIL, CISL, UIL, and Confindustria.
A lot has been done in the last 10 years, in parallel with the negotiation, to incorporate it into collective bargaining, with examples of *good practice* at the national, company, and territorial levels.
In addition, many sectoral agreements signed in the last three years contain provisions or clauses to combat harassment and violence at work, demonstrating the social partners' commitment to promoting compliance with European standards in the various sectors.
It should also be noted that in the first few months of 2018, several negotiations begun in the previous five years for the renewal of national collective bargaining agreements were concluded and, from what has been noted, it can be said that the implementation of the National Agreement on Harassment and Violence at Work is relatively consolidated, as shown below.
Together with the confederal trade unions, Confindustria was the promoter of the transposition of the 2007 European Framework Agreement. The resulting Italian Agreement, which is not legally binding on companies, was left to the autonomy of the trade unions to reflect the needs and differences of the territories in the belief that it could produce better results than a more restrictive or binding agreement. Initially, it was given little consideration in collective bargaining but was subsequently included in many agreements at sectoral and territorial levels, some of which are mentioned below. On this basis, each territory elaborates and builds its response, linking up with local actors, such as Equality Advisors, anti-violence centres, and associations, with whom it defines the action to support the repression of violence. This action has launched a series of good practices and social responsibility actions, such as the Agreement signed on 22 February 2018 by Assolombarda, CGIL Camera del Lavoro Metropolitana di Milano, CISL Milano Metropoli, and UIL Milano e Lombardia, aimed at member companies and their respective workers.
The initiative consists of a fundraiser in favour of 3 territorial networks: the anti-violence network of the Municipality of Milan, the inter-institutional network of the Adda Martesana territory "Contrasto al maltreatment ed alla violenza di genere (Combating maltreatment and gender-based violence)" and the Cinisello Balsamo and Sesto San Giovanni network against violence against women. The fundraising consists of *voluntary contributions*, equal to one hour's work, from employees of member companies and Assolombarda who wish to participate, to which the respective companies will add a corresponding amount.
On another front, the **Tertiary, Distribution, and Services (TDS) collective agreement signed by Confcommercio and Filcams, Fisascat, and Uiltucs** incorporates the definitions of sexual harassment contained in Article 26, paragraphs 1 and 2 of Legislative Decree 198/2006. Moreover, harassment, explicitly or implicitly accompanied by threats or blackmail, by the employer or hierarchical superiors concerning the establishment, performance, career paths, and termination of the employment relationship is also considered serious. Confcommercio and the stipulating trade unions, recognising the need to combat such situations, have entrusted a *Permanent Joint Committee for Equal Opportunities* with the task of monitoring the phenomenon, collecting data, identifying the possible causes linked to working conditions or organisational and management factors, proposing positive actions for prevention and repression and creating a Framework Code of Conduct. Article 36 of the CCNL TDS provides for specific measures to prevent and combat sexual harassment in the workplace,

entrusting a Joint Committee with the task of receiving information, reports, or complaints. The Commission provides assistance and advice to workers who request it and, if necessary, may make use of external professionals. The Commission also has the task of disseminating the code of conduct and identifying any specific training courses for companies and workers. **The companies may also adopt, in Agreement with the R.S.A./R.S.U., beneficial initiatives to prevent such problems by disseminating them among all workers**. From the point of view of raising awareness of the phenomenon in question, the CCNL provides for the possibility for the parties to agree in the general staff training programmes to include general notions about the guidelines adopted on the prevention of sexual harassment and the procedures to be followed in cases where harassment takes place, as well as on the protection of the freedom and dignity of the person to prevent the occurrence of behaviour that can be construed as sexual harassment.

Several **Regional Agreements** followed the national Agreement. Among the most significant is the one of 3 May 2017 between CGIL-CISL-UIL and Confindustria Emilia Romagna, in which the regional network of Equality Advisers is recognised as the most suitable structure to which those who have suffered harassment and violence can turn. Among the most recent is the one signed on 21 December 2017 by CGIL-CISL-UIL and Confindustria South Sardinia, which entrusts the Regional Equality Adviser and the Cagliari delegation with the task of collecting reported cases.
There are also many **sectoral agreements** that, for the first time, transpose the subject matter of the European Framework Agreement.
Below are those considered most significant.
The National Contract for the Food Industry, renewed on 30 November 2015 by the FAI-CISL, FLAI-CGIL, UILA-UIL unions, introduces leave for victims of gender-based violence, with a decision that stands out as a best practice at a national level, since, in addition to the three months already provided for by law, an additional three months paid by the company are added.
The CCNL of the public employees' sector 2016-2018, signed by Aran and the unions CGIL, CISL, UIL, Confsal, on 23 December 2017, is the first of the new generation of post-European Agreement CCNLs to provide for precise disciplinary measures, such as suspension from work for up to six months and, in case of recurrence within two years, dismissal.
The 2016-2018 National Collective Labour Agreement (CCNL) between the ANAS group and FILT-CGIL, FIT-CISL, UIL PA, UGL Viabilità e Logistica, SADAFAST-CONFSAL, and SNALA-CISAL governs Article 61 on safeguarding the dignity of workers, discrimination and harassment, Article 62 on bullying and Article 63 on gender-based violence. The Agreement provides for suspension from work with deprivation of pay for up to five days for acts, behaviour, or harassment of a sexual nature that are harmful to human dignity or for forms of psychological and moral violence against subordinates and colleagues.
Article 29(12) of the **CCNL for the public sector of Education and Research** provides dismissal for *"acts, behaviour or harassment of a sexual nature involving female or male students ..."*.
The CCNL for Poste Italiane employees of 30 November 2017 between SLC CGIL, SLP CISL, UIL-Poste, FAILP-CISAL, CONFSAL COM.NI and FNC UGL COM.NI and Poste Italiane S.p.A. include a Protocol on harassment and violence in the workplace, considering the crime committed by 'third parties'.
The new National Collective Labour Agreement (CCNL) for the local functions sector for the period 2016-2018, signed by Aran and the trade unions on 21 February 2018, includes incentives for the adoption of codes of conduct against sexual harassment and provides in a provision of the Disciplinary Code for suspension from service with deprivation of pay from 11 days to a maximum of 6 months "...*where there is no seriousness and repetition*".
From what has been represented, it emerges that many trade unions and professional associations have been intensively raising awareness of the phenomenon, mainly since 2016.
There are also many ongoing initiatives, especially territorial nature and in partnership with other more specialised actors.

For the most part, these are information and counselling services that rely on structures that are already operational, such as the counters of the National Confederal Assistance Institute (INCA) of the CGIL or the National Mobbing and Stalking Listening Centre of the UIL, or the Punto Donna counters of the CISL. Several memoranda of understanding have been signed between trade unions and organisations, and associations at national and territorial level. Generally, they concern **staff training initiatives, meetings aimed at disseminating the culture of non-violence, in-depth studies, and research**. There are also specific agreements with anti-violence centres and several cooperation protocols with the *Telefono Rosa*[11].

The Committee requests more detailed information on the amounts of compensation awarded in sexual harassment cases.

As for this claim, it should be noted that the amount of damages awarded in sexual harassment proceedings may vary from case to case. The number of damages to which an employee who is the victim of harassment may be entitled depends on several factors in the individual case. In principle, it must always be borne in mind that in our legal system, except in cases where the law provides for a fixed amount, damages are personalised and must be proved by the person seeking compensation.
For this reason, by way of illustration only, many rulings are cited, representing the primary case law guidelines in settling damages in proceedings for sexual harassment in the workplace.
Generally speaking, case law has recognised the victim's right of sexual harassment to compensation for all types of damage, including **non-economic damage**, in the various components of biological, moral, and existential damage. In cases of sexual harassment, the equitable settlement of non-asset damages can be made based on criteria referring explicitly, as regards the so-called "moral damage from crime", to the odiousness of the harmful conduct, related to the state of economic subjection of the victim and, as regards the so-called 'existential damage', to the climate of intimidation created within the working environment by the employer's behaviour and the worsening of relationships within the employee's family as a result of it.
The female worker, victim of sexual harassment, is entitled to compensation for moral damage, to be settled on an equitable basis, for which both the perpetrator of the offence and the employer company are jointly and severally liable, pursuant to Articles 2087, 2043, and 2049 of the Civil Code.
- Supreme Court Employment Section ruling No. 4099 of 18 February 2020.
The Supreme Court has intervened in reforming a judgment of the Court of Appeal of Genoa, which had already raised the quantum of compensation favoring a female worker, a victim of sexual violence. Because of the seriousness of the physical and psychological damage suffered as a result of the sexual harassment carried out against her by two hierarchical superiors, followed shortly afterward by the violence perpetrated against the woman by one of the two, the Court of Appeal had considered it fair to increase by 50% the amount awarded by way of **non-economic damage**.
The victim of the vile crime appealed to the Court of Cassation, complaining that the damage to her relationship had not been included in the assessment of the damages.
The Supreme Court, therefore, stated that both the **internal aspect of the damage suffered** should be taken into account (the so-called 'moral damage' adequately defined, to be identified with the pain, as in the hypothesis, of shame, self-loathing, fear, or despair) and the **dynamic-relational aspect** (capable of affecting in a worsening sense all the external relations of the subject's life).
Consequently, *biological damage*, represented by the negative impact on the daily activities and dynamic relational aspects of the injured party's life, constitutes a prejudice, in itself, different from

[11] The telephone switchboard of the "Telefono Rosa" is active every day, H24. It is answered by volunteers, all of whom are experts in listening to and welcoming women victims of violence, also thanks to the attendance of various training courses organised by the Association. For each woman they fill in, anonymously, a detailed form with all the information about the victim, what she has suffered, the interventions already requested (First Aid, Police, etc.) and information about the perpetrator of the violence (age, role in the victim's life, substance abuse, etc.). The compiled forms allow the "Telefono Rosa" to set up a real observatory on violence, thus monitoring changes in this phenomenon over time.

subjective moral damage, understood as the inner suffering suffered by the subject as a result of the violation of his right to health; both must be compensated.
The standard measure of compensation foreseen by law or by the uniform equitable criterion adopted by the courts of merit (today according to the so-called 'variable point' system) can then be increased, in its dynamic-relational component, in the presence of anomalous, exceptional, and peculiar harmful consequences.
On the aspect of non-material damage, the Court of Appeal will be required to carry out new and further quantifications.
In the light of the above arguments, the Court concludes that *the sentence of the appeal must be annulled and the case referred back to the Court of Appeal of Genoa, in a different composition, which must follow the above principles and, without prejudice to the biological damage tout court, recognised as 15% and appropriately increased by the Court of Appeal to 50%, it must provide for the settlement of an autonomous item of damage for intrinsic, personal prejudice, connected to inner suffering, assessed in consideration of the young age of the injured party and her family and personal situation, but not quantified by the judge on the merits.*
The Court of Como, with a recent judgment (No. 95/2018), has attracted the attention of legal practitioners and the press, both for the legal principles affirmed and for the extent of the record compensation awarded to the employee victim of the unlawful conduct.
The employee had applied to the Court of Como, stating that she had experienced *"a real hell at work, both work-related and huma"*' because of her employer, who for a long period of time not only addressed her with insulting remarks about her professional skills, but also subjected her, like other colleagues, to verbal harassment of a sexual nature.
That situation had led to a state of anxiety and depression, which was treated with medication, and led to her resignation for good reason.
After stating in her appeal that in order to constitute sexual harassment in the workplace it was sufficient, under the applicable rules (Legislative Decree 198/2006), *for unwanted conduct of a sexual nature to offend the dignity of a female or male employee*, the employee requested that her employer be ordered to compensate her for the damage suffered.
The Equality Council of the Province of Como also joined the proceedings in her support.
During the trial, after hearing all the plaintiff's colleagues, it emerged that the employer had habitually made vulgar jokes, remarks, and allusions of undoubted sexual significance towards the employee, which she neither wanted nor requested, and as such fell within the concept of sexual harassment contained in the law.

After having carried out a technical expert's report to ascertain the extent of the damage suffered by the employee, the Court ordered the employer to pay record damages of more than EUR 105,000.
The judgment sets an important precedent, because for the first time in Italian jurisprudence, with unequivocal reasoning, **the principle of zero tolerance towards verbal harassment,** considered seriously damaging to personal dignity, **is affirmed**.
The Court of Cassation, labour section, in its judgment **No. 12318** of **19 May 2010**, *had already recognised the right of victims of sexual harassment at work to a large amount of compensation, even if the biological damage suffered is not serious, highlighting the odiousness of such behaviour, which, in fact, affect constitutionally protected assets.*
The case concerned a female car dealership employee who sued her employer, accusing him of sexual harassment. The Court of Appeal of Turin had already awarded the victim a compensation of EUR 300,000; the car dealer challenged the decision of the appeal judges, contesting on the one hand the reconstruction of the facts, and on the other hand the amount of the compensation, which was considered excessive and disproportionate.
The Supreme Court confirmed the decision of the Court of Appeal, pointing out that, even in the presence of minor biological damage, it is necessary to consider *"the particular gravity and odiousness*

of the damaging behaviour and therefore its considerable capacity to offend the constitutionally protected personal assets indicated as having been damaged by the employee".
It is therefore legitimate "*to proceed to an equitable settlement of non-asset damage based on different criteria, which explicitly allude, in particular, as regards the so-called moral damage caused by the crime, to the aforementioned hatefulness of the harmful conduct, induced above all by the victim's state of economic subjection, and for the part concerning the so-called existential damage, to the climate of intimidation created in the working environment by the employer's conduct and the deterioration of relations within the family unit".*

§ 2

Concerning the development of the relevant legal framework and the instruments and measures adopted in the national legal system to combat and prevent the phenomena in question, please refer to what is amply illustrated in the section on these aspects in paragraph 1.

The Committee wonders whether the same rules of evidence apply in cases of moral harassment governed by other provisions of the Civil Code.

In this regard, it should be noted, as a preliminary point, that Legislative Decree No. 216 of 9 July 2003 was amended by Legislative Decree No. 150 of 1 September 2011 - "*supplementary provisions to the Code of Civil Procedure on the reduction and simplification of civil proceedings*" - which, to reduce the number of civil proceedings, amended the procedural rules on "disputes relating to discrimination" to give coherence to a series of measures issued between 1998 and 2006 in implementation of specific European Community directives.
In general, Article 28 of Legislative Decree 150/2011 (in force since 6 October 2011) includes "disputes on discrimination" among those of Chapter III, i.e., those "governed by the summary procedure of cognition" (Chapter III *bis*, Title I of Book IV of the Code of Civil Procedure).
More specifically, Article 28 provides for a number of very peculiar provisions for anti-discrimination protections, which primarily reproduce the provisions of Article 4 of Legislative Decree No. 216 2003 - referred to in relation to cases of moral harassment - which still constitutes the main regulatory reference point for combating discrimination in terms of working conditions.
The recent reform introduced by Legislative Decree No. 150/2011 repealed most of the paragraphs of Article 4 of the aforementioned Decree 216.
These amendments, however, do not entail a substantial change in anti-discrimination protection since the new provisions of Article 28 of Legislative Decree No. 150/2011 reproduce almost faithfully what was previously provided for in the 2003 text.
Paragraph 4 of Article 28[12] corresponds precisely to paragraph 4 of the previous legislation, prescribing the reversal of the burden of proof (which is incumbent on the defendant) in the event that the plaintiff "provides facts [...] from which the existence of discriminatory acts, agreements or conduct can be presumed". However, the reintroduction of the possibility of inferring such facts also from statistical data is appreciable.
The dominant jurisprudential orientation places on the employee the burden of proving all the factual elements that characterise the vexatious conduct, and therefore the breach and the causal link between this and the damage suffered, while it is up to the employer to prove the absence of fault, and therefore that the acts and conduct implemented are consistent with the obligation to protect under Article No. 2087 Civil Code, that in any case they are not linked by a persecutory or

[12] *4. Where the plaintiff provides facts, including statistical data, from which the existence of discriminatory acts, agreements or conduct may be presumed, the burden of proving the absence of discrimination shall lie with the defendant. Statistical data may also relate to recruitment, contribution schemes, assignment of duties and qualifications, transfers, career progression and dismissals in the company concerned.*

discriminatory intent, or that an impossibility of performance caused the non-performance for reasons not attributable to him.
Article 2087 of the Civil Code has a vast scope, considered by case law as an 'open' rule and a sanctioning tool to punish all those conducts of the employer capable of damaging the personality and dignity of the employee, with an evidentiary regime that is highly favourable to the employee. The other provisions of the Civil Code (essentially Article 2043, *a general provision, which provides for the obligation to compensate anyone who causes unjust damage to others by any intentional or negligent act*), to which the Committee refers, and which are referred to in the previous report, and to which recourse is made on a residual basis with respect to Article 2087, are subject to the ordinary rules of evidence. However, since Article 2087 is the main reference provision in respect of the conduct under consideration, it may reasonably be said that the employee enjoys a very broad scope of protection.
In this regard, a well-established jurisprudential orientation formulated with reference to the case of '*straining*' is cited.
"It is an attenuated form of mobbing where the character of continuity of vexatious actions is not found, which, however, if they are found to be productive of damage to the psychophysical integrity of the worker, justify the claim for compensation based on Article No. 2087 Civil Code, a rule that the Supreme Court of Cassation has subjected to an extensive interpretation, constitutionally oriented to the respect of essential and primary goods such as the right to health, human dignity and inviolable rights of the person, protected by Articles 32, 41 and 2 of the Constitution" (Cass. 04/11/2016, No. 3291 - Cass. 19/02/2018, No. 3977).
The jurisprudence also intervenes in mobbing, with a definition now consolidated in the national legal system.
The term "mobbing" is commonly used to refer to systematic and prolonged conduct of the employer or the hierarchical superior towards the employee in the working environment, resulting in systematic and repeated hostile behaviour that ends up taking the form of prevarication or psychological persecution, which may lead to the moral mortification and marginalisation of the employee, with a detrimental effect on his physical and psychological balance and his personality as a whole.
Usually, mobbing aims to induce the mobbed employee to leave the job.
From a medical and scientific point of view, the phenomenon of mobbing has been widely studied and debated. The fact remains that there is no specific legal framework for mobbing, and this has contributed to many uncertainties and doubts about the very qualification of mobbing.
Mobbing does not consist of a single fact but of a series of conducts that may differ from each other but can be classified in a single scheme.
Among the various expressions of mobbing are:

- *demotion and de-qualification of the tasks to which the employee is assigned;*
- *marginalisation in the workplace;*
- *dissemination of offensive and false information about the mobbed person;*
- *continuous criticism of the work performed by the mobbed person;*
- *attacking the social image of the bullied person in relation to their colleagues.*

Mobbing can come from above (vertical mobbing), from below (bottom-up mobbing), or from the side (*horizontal mobbing*).
The systematic conduct towards the mobbed employee results in a real psychophysical disability, i.e. a permanent reduction in the individual's ability to work.
Therefore, it is correct to classify mobbing within the category of occupational illnesses that entitle to recognition of biological damage, as admitted by the National Institute for Insurance against Accidents at Work (INAIL).

The employee can claim compensation from the employer for damages suffered because of mobbing. From a contractual point of view, this is because, as repeatedly stated, mobbing constitutes a breach by the employer of the safety obligation provided for by law (Article 2087 of the Civil Code).

As already pointed out, Jurisprudence has clarified that the employer, to comply with the safety obligation, must not only implement the safety measures provided for by the laws on workers' health and safety but must also refrain from any conduct detrimental to the psychophysical integrity of the worker.
It follows not only that the employer must not, in person, perform any act or the fact that damages the psychophysical integrity of the employee, but also should prevent, dissuade and eliminate any conduct by other persons within the company organisation that may damage the psychic and physical integrity of the employee and, as in the present case, constitute mobbing.
This is a real contractual commitment on the part of the company.
To claim damages, the employee must, in the first place, proceed with a direct letter to the employer in which he asks for compensation for the mobbing damage and with which, moreover, the limitation period is interrupted.
If the employer does not reply or considers that it is not a case of mobbing, the employee may appeal to the judge, requesting the establishment of mobbing and compensation for the damage suffered.

About the further request for information made by the Committee (ECSR) on the amounts of compensation awarded in proceedings for moral harassment, reference should be made to what was said in connection with proceedings for sexual harassment.
The amount of compensation to which the employee may be entitled depends on several factors: the damage is personalised and must be proved, distinguishing between pecuniary and non-pecuniary damage.
However, to understand how much mobbing damage can amount to, it is necessary to distinguish the various damages for which the employee may claim compensation.
First of all, it is necessary to consider *pecuniary damage*. The amount of this type of damage depends on the expenses incurred in connection with the mobbing (e.g., *the sums spent for medical and psychological treatment suffered as a result of mobbing behaviour; loss of earnings resulting from the impoverishment of the professional skills of the mobbing victim if the mobbing entails forced inactivity at work, the compromise of the professional image, the loss of opportunities, the failure to advance in one's career*) and its pathological consequences. In addition, pecuniary damage also includes *'loss of earnings*' such as, for example, the loss of income if the employer dismisses the employee as an extreme act of mobbing or demotes him by reducing his salary.
As far as *non-pecuniary damage* is concerned, in the case of mobbing, the following is required

- *existential damage or damage to social and relational life, also in the extra-work context (such as family relationships). Jurisprudence admits the compensability of existential damage whenever the illegitimate conduct violates a constitutionally protected good and therefore, indeed, in the case of mobbing, it is compensable since the right to health protected by the Constitution, in Article 32, is violated;*
- *moral damage, i.e., damage to the emotional sphere suffered due to the unlawful behaviour of colleagues and/or hierarchical superiors, such as mobbing involving repeated insults and other humiliations and abuses. In this case, jurisprudence only seems to allow compensation for non-material damage if the unlawful act is a crime. The worker could, therefore, first ask for the criminal case to be established, and then ask for moral damage, also considering that mobbing is often also a crime (for example, in terms of culpable personal injury or defamation);*
- *biological damage, i.e., damage to psychophysical integrity that can be clinically ascertained. In this case, it is necessary to ascertain the percentage of injury to psychophysical integrity ascertained by the medical-legal report. Based on the percentage value and the injured party's age, it is possible to determine the amount of money due as damages.*

Labour judges usually settle, on an equitable basis, under Article 1226 of the Civil Code[13], *damages for mobbing* (and other harassing conduct, such as stalking, etc.), if it is not possible to quantify them in

[13] Art. 1226 of the Civil Code Equitable assessment of damages: "*if the precise amount of the damages cannot be proved, they shall be assessed by the court on an equitable basis".*

their precise amount for one or more items, adopting as a parameter the salary due during the period in which the mobbing conduct took place and continued.
A new very recent order of the Supreme Court (**Ord. No. 31558 of 04.11.2021**) stated that, in the case of demotion, the right to compensation for damages does not start when the employee contests the new position, but already from the moment he is assigned to new and inferior duties because the conduct of the employer constitutes a 'permanent tort'.
This makes it possible to obtain greater compensation and prevents the statute of limitations from running.
The **Court of Santa Maria Capua Vetere** (judgment of **10 February 2015**) examined the case of a worker, a medical director of orthopaedics, dismissed by the hospital where he worked: the subject was able to demonstrate, with accuracy and detail, through copious documentation and court findings, how, for about eight years, he had been subjected to a series of harassing behaviours by the hospital administration.
In particular, the applicant suffered a progressive qualitative and quantitative reduction in the duties carried out, to the point of being substantially deprived of all the activities falling within his professional qualification, even to the point of being prevented from performing surgical activities.
In addition to this de-skilling, there was also *permanent and systematic harassment: intimidation, blackmailing disciplinary charges, total disregard of the applicant's repeated and justified requests, continuous transfers from one office to another, marginalisation and, finally, dismissal.* All this led to a progressive deterioration in the applicant's health.
Following the provisions of Article 2087 of the Civil Code, the applicant has provided evidence of the causal link between the effect of the breach of the employer's duty of safety and the injury suffered. In contrast, the defendant's health authority has confined itself to a generic challenge to all the circumstances alleged.
In conclusion, the company was ordered to pay damages.
In particular, with regard to the quantification of damages for mobbing, the Court recognised the possibility of compensation for "two distinct types of damage, namely pecuniary and non-pecuniary". The first case concerns the "economic damage"; the second represents the damage caused by the injury of non-economic interests inherent to the person, determined by the violation of inseparable personal rights recognised by the Constitution. Among these is the right to health.
In the general category of "non-asset damage" in this case, professional damage has also been taken into consideration - consisting of both the prejudice deriving from the impoverishment of the professional capacity acquired by the worker and the failure to achieve a greater capacity (so-called "*emerging damage*"), and the prejudice suffered due to the loss of further earning opportunities (so-called "*loss of profit*").
Ruling on the appeal brought against the judgment by which the Court of Appeal had overturned the amount of damages quantified as compensable damages resulting from the crime of stalking, the Court of Criminal Cassation, section V, with **judgment No. 22780 of 9 June 2021**, ruled that the amount of such damages should be considered as compensable. 22780 - in accepting the thesis of the civil plaintiff's defence, which had complained of the substantial and unjustified reduction in the amount determined as compensation for damages (to the extent of 90%) - affirmed the vital principle that *in terms of equitable compensation of moral damage resulting from the crime of stalking, it is possible to review in the Court of law, as a violation of Art. 1226 Civil Code, the rule which must be taken into account in the assessment of the damages, in order to determine the extent of the damage. - which must be taken into account in the application of criminal law, and, at the same time, as a hypothesis of absence of motivation, of "apparent motivation", of "manifest and irreducible contradiction" and of "perplexing or incomprehensible motivation"- the assessment of the judge who did not indicate, not even briefly, the criteria followed to determine the extent of the damage and the elements on which he based his decision on the "quantum".* Settlement on an equitable basis, even in its so-called 'pure' form, consists of a careful balancing of the various factors that are likely to affect the damage in the specific case so that even though exercising a discretionary power, the magistrate is called upon to

give an account, in the grounds, of the specific weight attributed to each of them, to make clear the logical path followed in his determination and make it possible to assess whether the principles of actual damage and total compensation have been respected. It follows that when the reasons for the assessment are not indicated and the specific criteria used in the liquidation are not referred to, the judgment is guilty of nullity due to lack of motivation and violation of Article 1226 of the Civil Code.

ARTICLE 28

THE RIGHT OF THE WORKERS' REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE ACCORDED TO THEM

The legislative framework of reference remains unchanged compared to the previous reports. However, this document provides the clarifications requested by this Committee on the protection applying to the workers' representatives within the undertaking.

Law No. 300 of 20 May 1970 laying down: "*Regulations on the protection of the freedom and dignity of workers, trade union freedom and trade union activity, in the workplace and employment regulations*", better known as Workers' Statute, represents a fundamental set of regulations of the Italian labour law that, following partial amendments and integrations, still constitutes the main reference law governing the relationships between the workers, the undertaking and trade union rights.
Title III (*Trade union activity*) specifically contains the rules governing Company Trade Union Representatives (*Rappresentanze Sindacali Aziendali*, RSA) and the prerogatives of the trade union activity in the workplace, recognising to the trade union, the ability to act in the judicial sphere to achieve the workers' protection and representation. In this regard, we recall the fundamental right to set up trade unions set forth under Article 19 (*Constitution of company trade union representatives*) as well as the additional provisions to allow the exercise of trade union activity within the workplace according to various provisions (meeting, leaves, posting, guarantees of the trade union function) laid down from Article 20 to 27.
Article 30, under Title IV (*Various and general provisions*) also provides for special leaves that can be used by provincial and national trade union leaders.
RSA and RSU (*Rappresentanze Sindacali Unitarie* - Unitary Workplace Trade Union Representatives), identified as the representatives of public and private workers, carry out similar functions; the main difference relies in how they are set up.
RSA are elected by members of a specific trade union by which they are represented. The said representative bodies do not take part in collective bargaining, unless under specific conditions expressly provided.
The RSA leader is the person who concretely and effectively carries out the trade union activity within a specific production unit. The Workers' Statute provides for a set of guarantees for the RSA leaders to ensure they are protected when carrying out their duties and functions.
The Workers' Statute introduced RSAs as a form of trade union representation; it guarantees the workers' right to set up company trade unions in each production unit, provided that more than 15 employees work in the said unit - Article 35 (*Scope of application*). In the 90s, in most of the undertakings RSAs were replaced by RSUs, but this has not led to the elimination of RSAs. Trade union associations can, in fact, choose not to take part in RSU elections and to set up their own RSAs, in line with the requirements provided by the Statute.
RSUs are elected by all workers employed in the undertaking, regardless of their membership in a specific trade union. RSU representatives, who are elected by all the employees (including those who are not members of a trade union), act on behalf of all workers regardless of their membership in different trade unions and they take part in collective bargaining.
As previously anticipated, they were introduced in the early 90s and replaced RSAs in most of the cases. More specifically, on 20 December 1993, an Inter confederation agreement was signed between CONFINDUSTRIA and CIGL, CISL and UIL concerning the constitution of Unitary Workplace Trade Union Representatives (RSU). This agreement provided that the Trade Unions which want to take part in RSU elections, must refrain from using RSAs. Those who are elected in a RSU do not belong to a specific trade union organisation, but they are workers who represent other workers' needs. The law focuses on point 5 (*Duties and functions*) of section I (*Constitution and Functioning*) of the above-mentioned Inter confederation agreement, according to which: *"RSUs will replace RSAs and their leaders in exercising the powers and functions entitled to them due to legal provisions".* RSU members take over RSA leaders in exercising rights, leaves, trade union freedom and guarantees entitled to them, as an effect of the provisions set forth under Title III of the Workers' Statute.

Rights, duties and functions
The Workers' Statute guarantees, protects, and supports the exercise of trade union activities within the undertaking through various provisions, illustrated below.

Under Article 20 (*Assembly*), company trade union representatives can call assemblies in the production unit, both outside and during working hours, up to a limit of ten hours per year, which will be regularly paid. Subject to prior notice to the employer, the external leaders of the trade union that has set up the company trade union representative may participate in the meetings.

The employer must allow referendum to be held in the undertaking outside working hours, both general and by category, on matters relating to trade union activity, called by the company trade union representatives, with guaranteed right of participation for all workers belonging to the production unit and the category particularly concerned - Article 21 (*Referendum*).

Article 22 (*Transfer of company trade union leaders*), paragraph 1, provides that the transfer of company trade union representative leaders from the production unit where they are employed can only be arranged with the prior authorisation of the trade union associations to which they belong to. The *ratio* of the institution is the anti-discrimination protection of both the specific subject holding the position and the trade union organisation, which is called upon to allow the transfer based on its own organisational assessments. The protection provided for in paragraph 1 of the above-mentioned Article 22, regarding unlawful transfers, is extended until the end of the following year in respect of which the trade union leadership position has over.

In the event of the unlawful dismissal of a trade unionist, an emergency procedure is also provided for to ensure his immediate reinstatement in his job.

In accordance with Article 23 (*Paid leaves*), leaders of company trade union representatives are entitled to paid leaves for the performance of their functions. To exercise this right, the employer must be notified in writing, as a rule 24 hours in advance, through the company trade union representatives.

Unpaid leaves are also provided for participation in trade union negotiations or in trade union congresses and conferences, for no less than eight days per year - Article 24 (*Unpaid leaves*). In this case, to exercise this right, written notice must be notified to the employer, as a rule within three days beforehand, again through the company trade union representatives.

Pursuant to Article 25 (*Right of posting*), the company trade union representatives are entitled to post publications, texts, and communications on matters of trade union and labour interest on appropriate spaces, which the employer is obliged to provide in places accessible to all workers within the production unit.

Article 27 (*Premises of company trade union representatives*) states that, in production units with at least 200 employees, the employer makes available to company trade union representatives for the exercise of their functions, on a permanent basis, a suitable common premise within the production unit or next to it. In production units with a fewer number of employees, company trade union representatives may, on request, use a suitable premise for their meetings.

The provision of Article 30 (*Leaves for provincial and national leaders*) guarantees members of provincial and national governing bodies of company trade union representatives associations the right to paid leaves, as provided for in collective bargaining, to attend meetings of the above-mentioned bodies.

Lastly, it should be noted that RSA and RSU in the public administration have been regulated by Article 42 (*Trade union rights and prerogatives in the workplace*) of Legislative Decree No. 165 of 30 March 2001 laying down *"General rules on the organisation of work in the public administration".* In any administration or body employing more than 15 employees, RSAs can be set up by trade union organisations providing with the representativeness requirements for collective bargaining. As regards unitary representatives, a Unitary Staff Representative Body (*Rappresentanza Unitaria del Personale*, RUP) can be set up through elections in which the participation of all workers is guaranteed.

ARTICLE 29

THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES

As for the reference period related to this report, no changes have occurred in the regulatory framework.

The European Committee of Social Rights requested more information concerning the social measures proposed to mitigate the impacts of dismissals.

Following the requests of the European Committee of Social Rights (ECSR), it should be noted that:

Several regulatory actions were implemented, and a series of measures were introduced to face the Covid-19 epidemiological emergency. From the labour point of view, the said measures were addressed to protect the workers, aiming to promote work from home and provide income support to mitigate the reduction or suspension of work following the emergency.

The income support interventions due to COVID-19 can be authorised for the suspension or reduction of work starting from 23 February 2020 and for a maximum period of sixty-seven weeks for CIGO (*Cassa integrazione guadagni ordinaria*, standard fund to supplement earnings scheme), and eighty-two weeks for CIGD (*Cassa integrazione guadagni in deroga*, exceptional fund to supplement earnings scheme) and the wage subsidy allowance, except for an additional period applying to some areas.

More specifically, in the **Legislative Decree No. 18 of 17 March 2020**, "*Measures to support labour under Title II*" Articles 19-22 *quinques*, social safety net special measures are extended to the national territory.

Article 70 *bis* of **Legislative Decree No. 34 of 19 May 2020** (so-called *Decreto Rilancio*) provides additional "*Special regulations on salary benefits*".

Article 1 of **Legislative Decree No. 104 of 14 August 2020** "*Urgent measures to relaunch economy*", provides new standard fund to supplement earnings, wage subsidy allowance, and exceptional fund to supplement earnings schemes.

The so-called "*Decreto Ristori*", **Legislative Decree No. 137 of 28 October 2020**, Article 12, sets out additional urgent measures to support businesses and the economy in relation to the Covid 19 epidemiological emergency, while the procedures set out under Articles 4, 5, and 24 of Law No. 223 of 23 July 1991 **(collective dismissals)** remain precluded. Similarly, regardless of the number of workers, the employer cannot **terminate the contract** for objective causes pursuant to Article 3, Law No. 604 of 15 July 1966, and the current procedures stated under Article 7 of the same Law remain suspended. The foreclosures and suspensions stated under paragraphs 9 and 10 of Article 12 do not apply in case of dismissals occurred for the company's permanent closure, following the latter's liquidation and without any continuation, including partial, of the activity. Similarly, the dismissals due to bankruptcy, in case no temporary exercise is provided, or its termination is decided, are not included in the ban.

The 2021 budget law introduced a **new framework** and set new deadlines to request wage supplementation schemes and wage subsidy allowances from **1 January 2021 to 31 March 2021** for **ordinary lay-off funds** and from **1 January 2021 to 30 June 2021** for **standard wage subsidy allowances**.

Consequently, **and only for the periods included under the said time framework**, Article 1, paragraphs 299-308 of Law 178/2020, envisages the **provision of the said schemes** of CIGO and standard allowances **for a maximum of twelve weeks**. The supplementary allowance periods requested and authorised pursuant to the articles stated under the so-called *Decreto Ristori*, and allocated, even partly, during periods starting after 1 January 2021, have to comply, if authorised, to the new period of twelve weeks. With circular letter No. 28

of 2020, INPS clarified that the new period of wage supplementation schemes envisaged by the 2021 Budget Law should be considered net of any weekly allowances requested and authorised previously for January 2021 pursuant to *Decreto Ristori* No. 137 of 2020.

In the same letter, INPS specified that starting from 1 January 2021, the said 12-weeks period constitutes the maximum allowable time for the same productive unit, also in case they are allocated different types of schemes, such as wage subsidy allowance or exceptional fund to supplement earnings schemes. No additional contribution is provided for the wage supplementation schemes allocated under the 2021 budget law.

The *Decreto Sostegni* (Article 8 paragraph 1, Legislative Decree 41/2021) envisages the possibility to request up to 13 weeks of standard fund to supplement earnings scheme, to be used for periods included between 1 April, 2021 and 30 June 2021, and up to a maximum of 28 weeks, to be used for periods included between 1 April 2021 and 31 December 2021 for wage subsidy allowance schemes.

As specified in INPS circular letter No. 72 of 2021, the above-mentioned 13 weeks add to the previous 12 weeks provided under the 2021 budget law, which should be allocated in the first quarter of the current year. Subsequently, for the allocation of CIGO due to Covid, the employers have an overall period of 25 weeks to allocate the schemes from 1 January to 30 June 2021.

FROM 1 JULY 2021, TO 31 OCTOBER 2021 **(*Decreto Sostegni-bis*)**

The employers of textile companies, manufacture of wearing apparel, or leather and fur apparel, and manufacture of leather and similar products (based on the provisions of Article 50-*bis* of Legislative Decree 73/2021), can require up to 17 weeks of standard fund to supplement earnings scheme, to be used between 1 July 2021 and 31 October 2021. These schemes do not require any additional contribution.

UP TO 31 DECEMBER 2021 **(Legislative Decree No. 103 of 2021)**

The companies with no less than one thousand employees managing at least one industrial plant of national strategic interest can submit a request for the allocation of standard fund to supplement earnings schemes for Covid-19 for a maximum duration of 13 additional weeks, accessible up to 31 December 2021 (Article 23, Legislative Decree 103/2021).

<u>SPECIAL AND TEMPORARY PROVISIONS FOR CIGO AND CIGS</u>

By way of derogation from the general framework on CIGS (as defined under **Legislative Decree 148/2015**), Article 40 of **Legislative Decree 73/2021** recognises the possibility for industrial and craft enterprises (i.e., enterprises eligible for CIGS under the general rules) that have suffered a 50% drop in turnover compared to the first half of 2019, to submit - subject to the stipulation of collective company agreements to reduce the working activity of employees to maintain employment levels - an application for extraordinary wage integration treatment for a maximum of 26 weeks for periods between 26 May 2021 and 31 December 2021 (not counted in the maximum limits provided for by the general rules). The workers affected by a reduction in working hours (which cannot be higher than 80% against the hourly average and 90% for each worker) are recognised as a special lay-off fund equal to 70% of the overall pay. As provided under the general regulations, no additional contribution applies to these schemes.

Moreover, according to the same provision, up to 31 December 2021, the companies that request CIGO and CIGS according to the general regulations from 1 July 2021 do not have to pay the additional contribution usually required.

Finally, the Sostegni-*bis* Decree (**Article 40-*bis* of Legislative Decree 73/2021**) recognises a further extraordinary wage supplementation scheme - up to a maximum limit of thirteen weeks accessible by 31

December 2021 - for the employers that cannot resort to ordinary or extraordinary wage supplementation schemes as defined under the general regulations, for the termination of duration limits.

Contribution exemption for open-ended contracts

Article 6 of Legislative Decree 104/2020 also envisages that the employers, excluding those working in the agricultural sector, hire permanent workers (excluding apprenticeship contracts and domestic work contracts) following 15 August 2020 and by 31 December 2020, without having to pay social security contributions for a maximum period of six months and within the maximum limit of EUR 8,060 per year, as redefined and applied on a monthly basis.

The exemption does not include workers who were hired under an open-ended contract during the six months preceding the hiring in the same company.

Moreover, the exemption is also recognised in cases when the fixed-time wage labour became an open-ended contract (after 15 August 2020) and can be combined with other exemptions or reductions of financing rates defined under the applicable law, within the limits of the due social security contribution.

Contribution exemption for reoccupation contract

The so-called *Decreto Sostegni bis* (Article 41 paragraph 5 of **Legislative Decree** 73/2021) introduced a total exemption from the payment of social security contributions for private employers hiring workers under a reoccupation contract (as introduced by the same Decree *Sostegni bis)*, valid for a maximum period of six months and within the maximum amount of EUR 6,000 per year, as redefined and applied every month (hence equal to EUR 3,000).

It is hereby recalled that the European Commission, with final resolution C (2021) 5352 of 14 July 2021, authorised to grant the exemption in question (see circular letter 115/2021 issued by INPS).

This exemption applied to private employers - excluding the agricultural sector and domestic labour, whether or not they act like entrepreneurs, but it cannot be recognised to businesses operating in the financial sector, as they do not fall within the scope of final Communication C (2020) 1863 of 19 March 2020.

For a more comprehensive analysis of the bonus calculation in question, the contributions that are not subject to reductions, and the suspension cases, please refer to Circular letter No. 115 of 2021 issued by INPS.

Extension of forward contracts

As for forward contracts, the ***Decreto Rilancio*** **(Article 93 of Legislative Decree 34/2020**) initially envisaged the possibility to renew or extend the fixed-term contracts in force as of 23 February 2020 up to the deadline of 30 August 2020 (as clarified in a FAQ published on the Ministry of Work and social policies), even in the absence of the conditions (so-called motives) required under the applicable law

The above-mentioned provision was amended in the following Decree issued in August (Article 8 of Legislative Decree 104/2020) that abolished the condition according to which the contracts subject to extension or renewal should be those in force as of 23 February 2020 and allowed forward employee contracts of the private sector to be renewed or extended for a maximum period of 12 months and only once, through a procedure carried out by 31 December 2020, also by way of derogation in the presence of specific motives required under the applicable law.

This last deadline was initially extended to 31 March 2021 (**Law 178/2020**) and subsequently to **31 December 2021** under the *Decreto Sostegni* (**Article 17 of Legislative Decree 41/2021).** The same *Decreto Sostegni* also specified that, in the enforcement of the renewal and extension of forward contracts, even in the absence of

motive, the renewals and extensions already implemented through the previous legislative provisions should not be taken into account.

Prohibition of dismissal.

Article 46 of the Decree *Cura Italia* No. 18 of 2020, as amended by the *Decreto Rilancio* No. 34/2020 (Article 80), initially introduced a prohibition of **individual dismissal for a just objective reason**, regardless of the number of workers, **and collective dismissals** (including by suspending the procedures already started) for 5 months starting from 17 March 2020.

Subsequently, the ***Decreto Agosto* No. 104/2020 (Article 14)** extended said prohibition by making it subject to the condition that **the employer had not fully benefited from the wage supplementation schemes** recognised for the period going from **13 July to 31 December 2020**, related to the COVID-19 epidemiological emergency, or **from the contribution exemption** recognised to those who did not benefit from the schemes mentioned above.

Subsequently, the prohibition against carrying out the dismissals described above, and the suspension of pending procedures launched after 23 February 2020, were further extended, respectively up to 31 January 2021 through *Decreto Ristori* (Article 12 of Legislative Decree 137/2020), up to 31 March 2021 through the 2021 Budget Law (Article 1, paragraph 309-311, L. 178/2020) and, finally, up to **30 June 2021** by means of *Decreto Sostegni* (Article 8, paragraph 9, Legislative Decree 41/2021).

Only for the employers who benefit from the exceptional fund to supplement earnings scheme, the wage subsidy allowance, and the Agricultural Lay-off Fund for Covid-19 as provided under the *Decreto Sostegni* from 1 April 2021 and 31 December 2021, the prohibition of dismissal stated above applies **up to 31 October 2021** (Article 8, paragraph 10, Legislative Decree 41/2021).

The following emergency decrees continuously extended the general prohibition of dismissal to the companies employing extraordinary social safety net during the Covid emergency, among which there is the *Decreto Sostegni* (Legislative Decree No. 41/2021).

The *Decreto Sostegni-bis* (Legislative Decree No. 73/2021, converted into Law No. 106/2021) subsequently introduced the possibility for the companies to use the standard fund to supplement earnings scheme, without additional contributions, **up to 31 December 2021** and maintaining the prohibition of dismissal.

Moreover, the employers who suspend or reduce the work activity due to the Covid-19 emergency and cannot resort to ordinary lay-off funds are recognised as an extraordinary wage supplementation scheme in derogation for a maximum of 13 weeks, to be used **up to 31 December 2021.**

As for the employers who submit a request for wage supplementation the prohibition of dismissal remains in force for the entire duration of the wage supplementation scheme.

The European Committee of Social Rights requested more information on whether the employers must collaborate with the administrative authorities or public entities responsible for adopting measures to tackle unemployment by informing them about planned collective dismissals and/or collaborating with them to requalify redundant workers or by providing them with other forms of support before finding a new job.

During the joint examination of a collective dismissal procedure, the trade unions of workers and employers can discuss to identify non-traumatic solutions to manage redundancy, such as employing the above-

mentioned social safety net, launching active labour policies including requalification, training, pre-retirement etc.

THE FOLLOWING ENTITIES DEAL WITH THE REQUALIFICATION OF REDUNDANT WORKERS IN ITALY:

Job Centres

Job centres (CPI) are public structures coordinated by autonomous Regions and Provinces. They bring together job demand and supply and ***promote active labour policy*** actions. They also carry out administrative activities, such as registration to mobility lists and protected groups lists, termination of employment relationships, and issuance of unemployment certificate.

ANPAL

The National Agency of Active Policies (ANPAL) ***promotes and coordinates training programmes*** addressed to employed and unemployed people, in line with the competencies of autonomous Regions and Provinces. It monitors the Inter-professional Funds for lifelong training and Bilateral Funds. It promotes special projects for youth training.

DID on line

The DID (*Dichiarazione di immediata disponibilità*) on line - ***Statement of Immediate availability*** to work is a statement that formally defines the commencement of the unemployment status for an individual unemployed people, or those who received communication for dismissal, can submit their DID to access programmes and services for their reintegration into the labour market.

The DID statement can be filled by accessing the ANPAL portal, regional portals, or directly at the Job Centre or an Institution for advice and social assistance (Patronato).

The Committee requests whether sanctions apply if the employer fails to communicate the planned dismissals to workers' representatives. It also requests to specify the preventive measures to ensure that the dismissals are not enforced before the employer's obligation to inform and discuss with the workers' representatives.

The regulatory framework does not envisage any individual sanction in case the employer fails to communicate to the workers' representatives that a collective dismissal procedure was launched, but it envisages the possible invalidity of the collective dismissal in case the procedures set forth by law are not complied with.

As ruled by the regulations, the confrontation between the parties aims to ensure fair and joint consultations between workers' and employers' trade unions. The employer who wants to launch a collective dismissal procedure should formally comply with the provisions set out under **Articles 4 and 24 of Law No. 223 of 1991 and subsequent amendments and integrations.**

If the employer does not comply with the procedure defined by law, including performing all its stages and implementation measures, and without neglecting any element, the collective dismissal will be deemed invalid.

Therefore, **the collective dismissal will be illegitimate if:**

- It is not adopted **in written form**;
- **Discussions with trade unions** were not carried out;
- The company failed to correctly comply with the **choice criteria** and carried out discriminatory conduct.

Given the previous cases, the unlawful dismissal ordered by the employer can be contested by bringing an action before the Court.

Article 4

"Droit à une rémunération équitable"

§. 1

Au cours de la période de référence aucune modification du cadre normatif précédemment illustré n'est intervenue dans le cadre du présent paragraphe.

*Concernant le cas de non conformité quant au **salaire minimum**, nous rapportons ci-dessous la réponse fournie par le gouvernement italien au cours de la 124ème session du Comité Gouvernemental de la Charte Sociale Européenne, qui s'est déroulée à Strasbourg du 2 au 5 mai 2011.*

"En Italie, le principe de la rémunération minimum indispensable est édicté par la Constitution italienne, au titre de l'article 36, d'après lequel "Le travailleur a droit à une rétribution proportionnée à la quantité et à la qualité de son travail et en tout cas suffisante pour assurer à lui-même et à sa famille une existence libre et digne".
Ceci étant dit, le système juridique national ne prévoit pas une quantification du salaire minimum, déléguant la définition des conditions de travail à la libre négociation entre les parties intéressées à travers les Conventions collectives nationales de chaque catégorie professionnelle.
Ces conventions, représentant le plus haut degré d'autonomie des groupes professionnels, sont mises en place à travers une relation bilatérale de nature contractuelle aussi bien en ce qui concerne l'aspect substantiel que l'aspect formel et en tant que telles, sont soumises aux règles de droit commun. Ces dernières sont signées par les organisations syndicales sectorielles et s'appliquent à tous les travailleurs appartenant au secteur en question, dans la mesure où, selon une pratique constante, la convention collective nationale de travail d'un secteur donné s'applique même aux travailleurs non inscrits aux syndicats signataires.

Les salaires minimum sont donc différents d'une convention à l'autre et, au sein d'une même convention, dépendent de la qualification ou du niveau de rémunération. Dans tous les cas, la définition du montant des salaires doit respecter l'art. 36 de la Constitution susmentionné et donc garantir au travailleur une rétribution proportionnée à la quantité et à la qualité de son travail et en tout cas suffisante pour assurer à lui-même et à sa famille une existence libre et digne.

L'accord interconfédéral [1] du 15 avril 2009, en matière de réforme des organisations contractuelles, a apporté de nombreuses nouveautés par rapport au précédent accord du 23 juillet 1993 qui avait prévu, dans le cadre de la Convention collective nationale, une durée quadriennale pour ce qui concerne les aspects normatifs et biennale pour ce qui concerne le thème de la rémunération ainsi qu'un système conventionnel se basant sur deux niveaux, l'un national lié à la catégorie professionnelle, l'autre soit au sein de l'entreprise elle-même soit au sein du territoire, en fonction des pratiques déjà en place dans les différents secteurs.

[1] Par Accord interconfédéral, on entend l'accord visant à définir les règles générales concernant les travailleurs, signé par les Confédérations des travailleurs et des employeurs.

Ces nouveautés portent sur:
-la durée triennale des conventions collectives, aussi bien en ce qui concerne les aspects économiques que les aspects réglementaires, ainsi qu'un deuxième niveau de convention à l'échelle de l'entreprise ou bien du territoire, le cas échéant, en fonction de la pratique actuelle, dans le cadre de secteurs spécifiques, valable pour une durée de trois ans.
- le calcul de l'indice des prix à la consommation pour la période de trois ans, en remplacement du taux d'inflation prévisionnel, à travers un nouvel indice prévisionnel calculé sur la base de l'IPCA (l'indice des prix à la consommation harmonisé au niveau européen pour l'Italie), affranchi des variations des prix des biens énergétiques importés;
-l'application dudit indice prévisionnel à un montant de rémunération moyen se composant des minimums prévus dans les tableaux, du montant des augmentations périodiques d'ancienneté en fonction de l'ancienneté moyenne du secteur et des autres indemnités éventuelles d'un montant fixe établies par la convention collective nationale de la catégorie professionnelle.

La convention nationale a le rôle de garantir substantiellement le pouvoir d'achat des rémunérations.

L'ensemble du résultat économique de l'accord de 2009 pour le travailleur, découle de trois facteurs qui interagissent entre eux:
a) les augmentations de salaires prévus par la convention nationale;
b) l'augmentation de salaire sur la base de la convention de deuxième niveau qui sera, dans la mesure où elle est liée à des objectifs de productivité et d'efficacité, encore plus significative étant totalement ou en partie, exempte du paiement des cotisations et d'impôts;
c) la création d'un "élément de garantie" en faveur des travailleurs employés auprès d'entreprises dépourvues de convention de deuxième niveau et ne percevant pas d'autres types de rémunérations individuelles ou collectives au-delà de ce qui leur revient de par la convention nationale.

L'ensemble de ces règles contractuelles, ajoutées aux dispositions de loi en matière de rétribution, contribuent à garantir au travailleur italien le respect des deux principes fondamentaux en matière de rétribution: celui de la proportionnalité et celui de la suffisance de la rétribution.

A titre de complément d'information, il est signalé que la question du salaire minimum fait l'objet d'attention de la part du législateur, étant donné qu'un projet de loi est actuellement à l'examen du Parlement, justement sur la question des "Normes en matière d'introduction du salaire minimum inter-catégories et du salaire social, établissement de cotisations minimums à la sécurité sociale, lutte contre la dérive fiscale et introduction de l'échelle mobile".
(A ce propos, il est précisé que le projet de loi en question a expiré au terme de la législature. Le 15 avril 2013 ont été remises à Laura Boldrini, nouvelle Présidente de la Chambre, plus de 50 000 signatures en faveur d'une loi d'initiative populaire pour l'introduction d'un salaire minimum garanti en Italie).

Au vu de ce qui précède, bien que les observation du Comité méritent une évaluation attentive, nous estimons que la législation italienne contient des normes répondant aux paramètres de la Charte sociale européenne en matière de salaires minimums.

Parmi les nouveautés intervenues dans le cadre de la convention collective lors de la période de quatre ans considérée, nous signalons également le nouvel accord interconfédéral et l'accord sur la productivité signé par les partenaires sociaux.

Accord interconfédéral du 28 juin 2011, dont les points les plus qualifiants concernent les nouvelles règles en matière de représentativité syndicale et de négociation d'entreprise:

- par rapport à la représentativité syndicale les données associatives représentées par les délégations relatives aux cotisations syndicales reçues des travailleurs ont été adoptées comme base. Le nombre des délégations est certifié par l'INPS[2]. Les données recueillies et certifiées sont pondérées par les consensus obtenus lors des élections périodiques des RSU. Les organisations syndicales, afin d'avoir le droit de prendre part aux négociations, doivent avoir une représentativité supérieure à 5% de l'ensemble des travailleurs de la catégorie à laquelle s'applique la convention collective nationale de travail;

-concernant la négociation d'entreprise, afin de réaliser un système de relations industrielles, syndicales et contractuelles en mesure d'une part de créer des conditions pour une compétitivité accrue et une productivité qui renforce le système productif et, de l'autre, de générer des emplois stables et protégés, des mesures de renforcement des conventions de deuxième niveau, plus aptes à répondre aux différentes exigences de contextes productifs spécifiques, ont été prévues. Ce genre de conventions peut aboutir, ne serait-ce que de façon expérimentale et temporaire, à des ententes qui diffèrent des réglementations liées aux conventions collectives nationales de travail (dans les limites et selon les procédures prévues par les conventions nationales elles-mêmes). Dans une situation de crise ou d'investissements significatifs, ces derniers peuvent également modifier, en attendant que les renouvellements définissent la matière au niveau de la convention nationale appliquée dans l'entreprise, les dispositions de la convention nationale régissant les prestations de travail, les horaires et l'organisation du travail; enfin, il est prévu que les conventions d'entreprise aient une validité erga omnes engageant les syndicats signataires de l'accord et opérant au sein de l'entreprise, dès lors qu'elles sont approuvées par la majorité des RSU (Représentation Syndicale Unitaire) ou des RSA (Représentation Syndicale d'Entreprise) et qu'à l'occasion de la consultation préalable des travailleurs, la majorité de ceux-ci votent en leur faveur.

[2] Institut national de sécurité sociale, *note du traducteur*

Accord sur la productivité du 21 novembre 2012

Cet accord, signé par les syndicats des entreprises et des travailleurs, à l'exception de la CGIL, a permis de tracer les lignes directrices pour la croissance de la productivité et de la compétitivité en Italie, dans le souci de développer un système de relations industrielles en mesure de créer les conditions pour une reprise de l'économie, de l'emploi, du bien-être social, afin de parvenir à un rééquilibre de bilan plus durable.

Les principaux points peuvent être résumés comme suit:
-mesures structurelles d'incitation en matière fiscale et de charges sociales: les parties signataires demandent au gouvernement et au parlement de stabiliser la détaxation du salaire de productivité pour les revenus jusqu'à 40 000 euros bruts avec un impôt de 10% ainsi que la réduction du coin fiscal qui génèrerait à son tour une baisse de la part des prélèvements pesant sur le travail et sur les entreprises de façon disproportionnée et décourageant les investissements et l'emploi;

- relations industrielles et convention collective nationale: la convention collective nationale de travail, garante des rémunérations et des règles à l'égard de l'ensemble des travailleurs appartenant au secteur d'application de la convention, a pour objectif de sauvegarder le pouvoir d'achat des salaires, en cohérence avec les tendances économiques, le marché de l'emploi, la confrontation avec la compétitivité internationale. Elle doit en outre prévoir une nette délégation en faveur du deuxième niveau de convention en ce qui concerne les matières pouvant avoir un impact positif sur la croissance de la productivité, telles que les éléments contractuels régissant les prestations de travail, les horaires et l'organisation du travail;

- valorisation de la convention de deuxième niveau en réservant une partie des augmentations de salaire éventuellement prévus par les renouvellements des conventions collectives à la mise en place de mesures spécifiques et efficaces de hausse de la productivité, en vue de soutenir les contextes productifs des entreprises;

- représentation: on souhaite, à travers un accord, lancer la procédure pour le calcul de la représentation syndicale, en application dudit accord du 28 juin 2011;

- engagement à donner un nouvel élan à l'éducation technique professionnelle et réaliser une meilleure coordination entre les systèmes de formation publique et privée;

- négociation en vue de la productivité: la négociation collective devra être exercée en pleine autonomie sur les matières ayant un impact sur la productivité et étant actuellement régies principalement ou exclusivement par la loi. En particulier, on souhaite soumettre à la négociation le thème de l'équivalence des fonctions, de la mise à jour des compétences, de la redéfinition des horaires et de leur répartition notamment selon des modèles de flexibilité ainsi que des modalités de compatibilité

entre l'utilisation des nouvelles technologies et la protection des droits fondamentaux des travailleurs.

A titre de complément d'information, voici ci-joint quelques données publiées par l'Istat[3] concernant, respectivement, les rémunérations contractuelles annuelles décaissées pour les employés à plein temps, Ensemble (Tableau 3) et aux rémunérations décaissées pour les employés à plein temps, par secteur de l'administration publique et typologie d'employé (Table 7), en ce qui concerne les Années 2005-2010.

Tableau 3 - rémunérations contractuelles annuelles décaissées pour les employés à plein temps, par convention- Total - années 2005 - 2010 (montants en euros)

REGROUPEMENTS DE CONVENTIONS	2005	2006	2007	2008	2009	2010
	19 622	**20 206**	**21 048**	**21 886**	**22 735**	**23 225**
	20 815	21 068	21 575	22 376	22 796	23 204
	19 681	**19 863**	**20 288**	**21 015**	**21 540**	**22 244**
	22 431	**23 026**	**2 642**	**24 285**	**24 782**	**24 601**
	23 166	23 672	24 305	25 000	25 554	25 188
	22 661	*23 191*	*23 770*	*24 498*	*25 172*	*24 734*
	26 892	*17 449*	*27 837*	*29 174*	*30 137*	*29 436*
	27 505	*28 127*	*28 402*	*29 919*	*31 000*	*30 110*
	22 180	*22 237*	*23 491*	*23 445*	*25 064*	*24 258*
	21 307	*21 828*	*22 468*	*23 001*	*23 525*	*23 229*
	21 892	*22 024*	*23 261*	*23 215*	*24 812*	*24 018*
	22 058	*22 114*	*23 359*	*23 314*	*24 922*	*24 121*
	20 873	*21 669*	*21 955*	*22 827*	*22 715*	*22 715*
	24 103	*24 728*	*25 501*	*26 005*	*26 658*	*27 242*
	30 783	*30 783*	*32 189*	*32 474*	*30 998*	*30 998*
	22 135	22 513	23 438	23 901	24 415	24 418
	22 161	*22 540*	*23 471*	*23 931*	*24 452*	*24 452*
	20 351	*20 643*	*21 192*	*21 864*	*21 839*	*22 029*
	20 762	21 767	22 088	22 743	23 078	23 231
	20 290	*21 245*	*21 506*	*22 347*	*22 245*	*22 245*
	18 961	*20 875*	*20 323*	*21 702*	*22 620*	*21 877*
	25 593	*27 123*	*27 306*	*27 339*	*30 393*	*29 858*
	22 012	*22 338*	*22 939*	*23 035*	*23 035*	*24 333*
	19 040	*20 476*	*21 222*	*21 600*	*22 042*	*22 320*
	21 214	*21 744*	*22 225*	*22 876*	*23 761*	*24 641*
	17 599	**17 816**	**18 236**	**19 231**	**19 391**	**19 770**
	31 901	31 988	32 665	32 954	34 081	34 889
	26 514	*26 774*	*27 476*	*28 151*	*28 912*	*29 567*
	46 867	*46 987*	*46 987*	*46 987*	*48 895*	*51 027*
	25 445	*25 453*	*26 500*	*26 813*	*27 634*	*27 753*
	21 575	*23 007*	*23 474*	*23 885*	*24 722*	*25 013*
	32 580	**32 531**	**33 048**	**35 839**	**35 281**	**36 058**
	32721	32777	32 875	36 076	35 347	38 248
	31 701	31 723	34 126	34 360	34 874	34 874
	17 557	*17 657*	*18 321*	*18 468*	*19 115*	*19 269*
	17 879	*18 673*	*18 673*	*19 303*	*19 874*	*19 874*
	17 151	*18 526*	*18 832*	*19 112*	*19 112*	*19 112*
	15 293	*15 436*	*15 436*	*15 989*	*16 847*	*17 031*
	15 759	*16 113*	*16 776*	*17 367*	*18 147*	*18 712*

[3] Institut national de la statistique italien, *note du traducteur*

13 456	*13 700*	*14 459*	*14 656*	*15 359*	*15 741*
17 887	*18 341*	*18 917*	*19 874*	*20 273*	*21 457*
23 501	*21 344*	*25 386*	*22 854*	*22 854*	*23 040*
17 171	*17 487*	*17 487*	*18 357*	*19 529*	*19 342*
16 493	*17 132*	*17 454*	*18 482*	*18 654*	*19 136*
19 981	**20 529**	**20 992**	**21 822**	**22 308**	**22 800**
24 304	26 921	25 638	27 862	27 519	27 575
23 223	**26 297**	**24 586**	**27 174**	**26 764**	**26 827**
21 526	24 270	23 936	24 224	25 007	25 117
24 359	27 436	25 708	28 488	28 022	28 129
24 408	*27 542*	*25 760*	*28 541*	*28 077*	*28 184*

Tableau 3 - rémunérations contractuelles annuelles décaissées pour les employés à plein temps, par convention- Total - années 2005 - 2010 (montants en euros)

REGROUPEMENTS DE CONVENTIONS	2005	2006	2007	2008	2009	2010
Tabac monopoles	*22 424*	*25 250*	*23 547*	*26 296*	*25 848*	*25 950*
Présidence du Conseil des Ministres	*23 773*	27 188	25 253	25 378	29 963	30 672
Organismes économiques non marchands	*22 727*	26 072	25 536	25 523	26 793	26 769
Régions et collectivités locales	20 154	22 788	21 312	23 657	23 401	23 391
Service Sanitaire National	23 312	26 387	24 625	27 276	26 976	26 986
Recherche	22 083	30 776	24 562	24 562	29 801	27 006
Education publique	24 895	28 153	26 105	29 324	28 441	28 582
Conservatoires	*24 856*	*27 555*	*25 879*	*26 010*	*26 793*	*28 183*
Ecoles	*24 903*	*28 337*	*26 261*	*29 549*	*28 619*	*28 756*
Université – non enseignants	*24 779*	*24 746*	*23 192*	*25 596*	*25 344*	*25 333*
Forces de l'ordre	31 269	31 209	32 403	32 479	32 619	33 815
Militaires – Défense	28 792	28 795	30 074	30 106	30 210	31 396
Pompiers	23 308	26 333	24 603	27 515	26 175	27 098
	20 983	**22 012**	**22 069**	**23 223**	**23 517**	**23 949**

Tableau 7 - rémunérations contractuelles annuelles décaissées pour les employés à plein temps, par secteur de l'administration publique et par typologie d'employé - années 2005 - 2010 (montants en euros)

CONVENTIONS/SECTEURS	2005	2006	2007	2008	2009	2010
MINISTERES						
	51 368	77 725	58 690	58 928	60 330	71 411
	21 526	24 276	23 936	24 224	25 007	25 117
	22 092	**25 289**	**24 595**	**24 882**	**25 677**	**25 995**
	49 090	74 371	56 135	56 368	57 750	66 135
	24 408	27 542	25 760	28 541	28 077	28 184
	25 096	**28 847**	**24 596**	**27 182**	**26 783**	**27 186**
	51 609	*79 216*	*59 263*	*59 502*	*60 920*	*72 323*
	22 424	25 250	23 647	26 296	25 848	25 950
	23 202	**26 689**	**24 596**	**27 182**	**26 783**	**27 186**
	54 933	87 584	63 926	64 176	65 653	66 668
	23 773	27 188	25 253	25 376	29 963	30 672
	27 983	**35 347**	**30 478**	**30 618**	**34 785**	**39 010**
UNIVERSITES						
	53 450	54 642	56 551	57 990	60 176	62 035
	24 779	24 746	23 192	25 596	25 344	25 333
	38 837	**39 405**	**39 549**	**41 480**	**42423**	**43 329**
ECOLES ET CONSERVATOIRES						
	44 340	62 490	49 371	49 602	50 967	61 531
	24 903	28 337	26 261	29 549	28 619	28 756
	24 666	27 555	25 879	26 010	26 793	28 183
	25 048	**28 590**	**26 433**	**29 671**	**28 773**	**29 039**
RECHERCHE						
	43 415	58 886	47 836	47 836	57 155	52 204
	22 083	30 776	24 562	24 562	29 801	27 066
	23 483	**27 372**	**26 400**	**26 391**	**27 666**	**27 840**
ORGANISMES PUBLICS NON MARCHANDS						
	55 963	83 282	63 548	63 732	65 192	73 886
	22 727	26 072	25 536	25 523	26 793	26 769
	23 483	**27 372**	**26 400**	**26 391**	**27 666**	**27 840**
REGIONS ET COLLECTIVITES LOCALES						
	46 365	58 663	59 313	52 007	53 833	63 692
	20 134	22 788	21 132	23 657	23 401	23 391
	20 639	**23 478**	**22 043**	**24 202**	**23 986**	**24 166**
SERVICE SANITAIRE NATIONAL						
	57 890	58 187	54 115	59 401	56 981	60 595
	72 832	73 130	68 369	74 692	71 775	75 719
	23 312	26 386	24 625	27 276	26 976	26 986
	32 989	**35 495**	**33 140**	**36 511**	**35 691**	**36 495**
MILITAIRE-DEFENSE						
	55 351	56 585	58 593	60 029	61 574	63 974
	28 792	28 795	30 074	30 106	30 210	31 396
	31 393	**31 516**	**32 867**	**33 037**	**33 281**	**35 430**
FORCES DE L'ORDRE						
	59 607	60 936	63 091	64 658	66 539	69 155
	31 269	31 209	32 403	32 479	32 619	33 815
	31 682	**31 642**	**32 851**	**32 948**	**33 114**	**34 330**

	POMPIERS					
	50 742	77 724	58 230	71 594	69 809	70 032
	23 308	26 333	24 603	27 515	26 175	27 098
	23 451	**26 601**	**24 778**	**27 745**	**26 403**	**26 506**
MAGISTRATS	102 244	106 926	109 726	114 820	117 760	121 340

Tableau 7 - rémunérations contractuelles annuelles décaissées pour les employés à plein temps, par secteur de l'administration publique et par typologie d'employé - années 2005 - 2010 (montants en euros)

CONVENTIONS/SECTEURS	2005	2006	2007	2008	2009	2010
	NIVEAUX					
Ministères	21 526	24 276	23 936	24 224	25 007	25 117
Bureaux des contributions	24 408	27 542	25 760	28 541	28 077	28 184
Tabac monopoles	22 424	25 250	23 647	26 296	25 648	25950
Présidence du Conseil des Ministres	23 773	27 188	25 253	25 376	29 963	30 672
Organismes économiques non marchands	22 727	26 072	25 536	25 623	26 793	26 769
Régions et collectivités locales	20 134	22 788	21 312	23 657	23 401	23 391
Service Sanitaire National	23 312	26 387	24 625	27 276	26 976	26 986
Recherche	22 083	30 776	24 562	24 562	29 801	27 066
Conservatoires	24 666	27 555	25 879	26010	26 793	28 183
Ecoles	24 903	28 337	26 261	29 549	28 619	28 756
Université-non enseignants	24 779	24 746	23 192	25 596	25 344	25.33
Forces de l'ordre	31 269	31.20	32 403	32 479	32 619	33 815
Militaires – Défense	28 792	28 795	30 074	30 106	30 210	31 396
Pompiers	23 308	26 333	24 603	27 515	26 175	27 098
Total						
	24 304	**26 921**	**25 638**	**27 862**	**27 519**	**27 757**
DIRIGEANTS DEPENDANT DE CONVENTIONS						
	50 742	77 724	58 230	71 594	69 809	70 032
	43 415	58 886	47 836	47 836	57 155	52 204
	51 368	77 725	56 690	58 928	60 330	71 411
	46 365	58 663	59 313	52 007	53 833	63 692
	57 890	58 187	54 115	59 401	56 981	60 585
	72 832	73 130	68 369	74 692	71 775	75 719
	44 430	62 490	49 371	49 602	50 967	61 531
	52 302	78 556	59 604	59 515	61 234	69 800
	54 933	87 564	63 926	64 176	65 653	86 668
	65 519	**69 118**	**63 543**	**68 106**	**66 439**	**70 859**
DIRIGEANTS NE DEPENDANT PAS DE CONVENTIONS						
	59 607	60 936	63 091	64 556	66 539	69 155
	55 351	56 585	58 593	60 029	61 574	63 974
	102 244	106 928	109 728	114 820	117 760	121 340
	53 450	54 642	56 551	57 990	60 176	62 035
	59 608	61 208	63 247	65 104	67 257	69 440
	54 195	*55 404*	*57346*	*58 793*	*60 846*	*62 851*
	102 244	*106 928*	*109 728*	*114 820*	*117 760*	*121 340*
	27 388	**30 033**	**28 502**	**30 942**	**30 591**	**31 230**

Source : Istat, Enquête sur les rémunérations contractuelles. Données élaborées en 2011.

Revenu moyen familial net (à l'exclusion des loyers imputés) Années 2003-2010 (en euros)									
REGIONS REPARTITIONS GEOGRAPHIQUES	2003	2004	2005	2006	2007	2008	2009	2010	
Italie	26 521	27 815	27 731	28 529	29 243	29 606	29 766	29 786	
Source: Istat, Enquête sur le revenu et les conditions de vie (Eu-Silc)									

Enfin, sont rapportés ci-dessous, à titre d'exemple, les tableaux indiquant les rémunérations brutes et nettes annuelles prévues par certaines conventions collectives s'appliquant aux catégories de travailleurs les plus représentatives, classées sur la base du niveau/catégorie des travailleurs.

Il est rappelé que la quasi-totalité des conventions collectives nationales de travail prévoit un tableau de rémunération se différenciant plutôt sur la base des positions des travailleurs selon différents niveaux "hiérarchiques" et d'ancienneté professionnelle, indiquant la rémunération brute pour chaque niveau de convention en question.

Conventions: Transport, logistique et expédition marchandises Rémunération conventionnelle brute et nette pour la période du 1.1.2011 au 31.08.2011				
Niveau	**Qualif.**	**Rémunération annuelle**		
		Brute	**Nette**	**Nette mensuelle**
Q	Cadres	28 353,00 €	19 723,00 €	1 408,78 €
1	Employés	25 966,00 €	18 251,00 €	1 303,64 €
2	Employés	23 848,00 €	16 952,00 €	1 210,85 €
3S	Employés	21 555,00 €	15 556,00 €	1 111,14 €
	ouvriers	21 555,00 €	15 568,00 €	1 112,00 €
3J	Employés	20 993,00 €	15 214,00 €	1 086,71 €
	ouvriers	20 993,00 €	15 226,00 €	1 087,57 €
4S	Employés	19 971,00 €	14 593,00 €	1 042,35 €
	ouvriers	19 971,00 €	14 604,00 €	1 043,14 €
4J	ouvriers	19 223,00 €	14 148,00 €	1 010,57 €
5	ouvriers	19 058,00 €	14 048,00 €	1 003,42 €
6	ouvriers	17 805,00 €	13 284,00 €	948,85 €
6J	ouvriers	17 163,00 €	12 893,00 €	920,92 €

Salaire net moyen mensuel (200 060,00 €: 13 niveaux = 15 389,23 €: 14 mensualités) = **1 099,23** €

Conventions: Travailleurs industrie des machines Rémunération conventionnelle brute et nette pour la période du 1.1.2008 au 31.12.2008				
Cat.	**Qualif.**	**Rémunération annuelle**		
		Brute	**Nette**	**Nette mensuelle**
1	ouvriers	14 964,00 €	11 406,00 €	877,38 €
2	ouvriers	16 382,00 €	12 259,00 €	943,00 €
	Employés	16 363,00 €	12 241,00 €	941,61 €
3	ouvriers	17 988,00 €	13 222,00 €	1 017,07 €
	Employés	17 967,00 €	13 203,00 €	1 015,61 €
4	ouvriers	18 731,00 €	13 667,00 €	1 051,30 €
	Employés	18 708,00 €	13 647,00 €	1 049,76 €
5	ouvriers	19 995,00 €	14 425,00 €	1 109,61 €
	Employés	19 971,00 €	14 403,00 €	1 107,92 €
5S	Employés	21 285,00 €	15 190,00 €	1 168,46 €
6	Employés	22 875,00 €	16 143,00 €	1 241,76 €
7	Employés	25 598,00 €	17 774,00 €	1 367,23 €
7Q	Employés	26 312,00 €	18 212,00 €	1 400,92 €

Salaire net moyen mensuel (185 792,00 €: 13 niveaux = 14 291,62 €: 13 mensualités) = **1 099,00 €**

§.2

Concernant le cas de non conformité quant au ***repos compensatoire****, nous rapportons ci-dessous la réponse fournie par le gouvernement italien au cours de la 124ème session du Comité Gouvernemental de la Charte Sociale Européenne, qui s'est déroulée à Strasbourg du 2 au 5 mai 2011.*

La contestation émise par le Comité européen des droits sociaux se réfère en particulier à l'absence, dans le cadre de la ***convention collective de l'industrie alimentaire, d'une clause attribuant au travailleur un repos compensatoire d'une durée supérieure aux heures supplémentaires effectivement travaillées.***

Nous ne saurions tomber d'accord sur l'observation du Comité étant donné qu'au titre dudit art. 4 paragraphe 2 de la Charte sociale européenne, en vue d'assurer l'exercice effectif du droit à une rémunération équitable, les Parties s'engagent "à reconnaître le droit des travailleurs à un taux de rémunération majoré pour les heures de travail supplémentaires, exception faite de certains cas particuliers".

Selon le "Digest de jurisprudence du Comité Européen des Droits Sociaux", rassemblant les interprétations du Comité sur les différents articles de la Charte, le recours à un repos compensatoire des heures supplémentaires est conforme à l'art. 4, par. 2 à condition que ce congé soit d'une durée supérieure aux heures supplémentaires effectivement travaillées.

Tel que nous l'avons déjà indiqué dans le précédent rapport du gouvernement italien, la loi de référence en Italie en matière de travail supplémentaire est le décret législatif 66/2003.
L'art. 5, 5ème alinéa dudit décret, stipule que le travail supplémentaire doit être comptabilisé à part et compensé par les majorations de salaire prévues dans les conventions collectives de travail. Les conventions collectives peuvent tout de même prévoir, en alternative ou en plus des majorations de salaire, que les travailleurs puissent bénéficier de repos compensatoires.

Et en effet, justement la convention collective du secteur alimentaire, tout comme bien d'autres, donne la possibilité au travailleur de choisir entre le versement d'une majoration de salaire en contrepartie du travail supplémentaire et de bénéficier de repos compensatoires, grâce au système connu sous le nom de "compte épargne-temps". Ainsi, le principe de l'obligation de majoration du salaire ordinaire prévu par la Charte sociale s'en trouve respecté.
A simple titre d'exemple, les dispositions contenues dans les conventions collectives de travail du secteur privé de l'industrie des machines et des installations ainsi que la convention collective national de travail des entreprises offrant des services de télécommunication sont rapportées: "Aux travailleurs déclarant formellement ... souhaiter la conversion en repos, ne sera versée qu'une majoration globale de 50% (ou autre pourcentage conformément aux tableaux) de celle prévue en cas de travail supplémentaire". Par exemple, la Convention Collective Nationale des employés des entreprises du secteur des télécommunications établit que pour "les heures supplémentaires venant s'ajouter au compte épargne-temps, sera versée une majoration globale de 50% de celle prévue pour le travail supplémentaire...".

Au vu de ce qui précède, bien que les observations du Comité méritent une évaluation attentive, nous estimons que la législation italienne contient des normes répondant aux paramètres de la Charte sociale européenne en matière de repos compensatoires.

A ce propos, nous confirmons ce qui précède et à ce jour, aucune nouveauté n'est apparue.

Concernant la question spécifique du Comité européen des droits sociaux, de savoir si des violations liées au non paiement du travail supplémentaire ont été constatées lors de l'activité de surveillance, nous signalons ce qui suit.

Il n'est pas possible de fournir l'information requise pour l'instant. En revanche, un nouveau système opérationnel sera mis en place l'année prochaine qui donnera la possibilité d'extraire ce genre de données, qui pourront donc être fournies dans le prochain rapport.

§.3

Dans le système juridique italien, les sources de droit assurant l'égalité des rémunérations et des genres proviennent de la Charte constitutionnelle de 1948, des lois ordinaires et des règlements nationaux.

- *Au **niveau constitutionnel***, sont à signaler les articles **3, 37, 51 et 117**, qui affirment respectivement que "*Tous les citoyens ont une même dignité sociale et sont égaux devant la loi, sans distinction de sexe...", "**La femme qui travaille a les mêmes droits et, à égalité de travail, les mêmes rétributions que le travailleur**. ». « Tous les citoyens de l'un ou de l'autre sexe peuvent accéder aux fonctions publiques et aux charges électives dans des conditions d'égalité... » ,* et que «*Les lois régionales enlèvent tout obstacle empêchant une complète égalité des chances entre les hommes et les femmes…*».

- **Décret législatif n°198 du 11 avril 2006** "*Code d'égalité des chances entre hommes et femmes*" (ci-après dénommé "Code"): réaménagement des normes présentes en Italie en faveur de l'égalité des chances et contre les discriminations, abrogation de nombreuses lois précédentes et unification de l'ensemble de la législation en la matière en un texte unique. Ce décret s'occupe des égalités des chances entre les genres en matière de travail, de l'égalité de traitement entre les hommes et les femmes en termes d'accès aux biens et services et leur fourniture ainsi que de l'égalité des chances dans les rapports civils et politiques.

- **Le Décret législatif n°5 du 25 janvier 2010** *"Mise en œuvre de la directive 2006/54/CE relative au principe de l'égalité des chances et de l'égalité de traitement entre les hommes et les femmes en matière de travail et d'emploi"* a modifié sur plusieurs points le **Code**, renforçant le principe anti-discriminatoire entre les genres, en le développant et l'élargissant à tous les niveaux dans les différents domaines, notamment en matière d'emploi, de travail et de rémunération, prévoyant également des sanctions plus sévères en cas de violation desdits principes. L'objectif de la mesure est donc celui

d'éviter les disparités de traitement entre hommes et femmes dans le monde de l'emploi et d'extirper toute forme de disparité et de discrimination.

Nous illustrons donc ci-dessous les principales modifications apportées par le décret législatif 5/2010 par rapport audit Code.

Le nouvel alinéa n°1 de l'art. 28 du **Code** a renforcé **l'interdiction de la discrimination en matière de salaires** déjà existante, précisant qu' *"est interdite toute discrimination, directe et indirecte, concernant tout aspect ou condition liés aux rémunérations, se rapportant à un même travail ou à un travail auquel on attribue la même valeur. Les systèmes de classement professionnel visant la définition des rémunérations doivent adopter des critères communs pour les hommes et les femmes et être élaborés de façon à éliminer toute discrimination"*. En cas de violation de l'article 28, l'inobservation est punie d'une amende **de 250 euros à 1500 euros.**

La protection judiciaire contre les discriminations

Pour contrecarrer les éventuelles violations de l'interdiction de discrimination, la loi dispose des procédures de protection spécifiques, aussi bien à l'amiable que judiciaires, relevant de la responsabilité de la figure institutionnelle de la Conseillère pour l'égalité, créée avec la qualité d'officier public au niveau national, régional et provincial. De plus, les associations et organisations syndicales représentantes d'un droit ou d'un intérêt auquel il a été porté atteinte ont la possibilité de s'adresser à la justice et la protection judiciaire est non seulement reconnue aux victimes de la discrimination, mais également à ceux qui subissent un préjudice de la part de l'employeur pour avoir défendu une victime de discrimination.

A ce sujet, le Chapitre III du Livre III du Titre I du Code est consacré à la **protection judiciaire** de la personne victime de discrimination directe et indirecte ou de harcèlement, y compris sexuel.

Les articles 36-41bis font une distinction entre discrimination individuelle et discrimination collective.

Discrimination individuelle

Dans le premier cas, le I^er alinéa de l'art. 36 du Code, tel que modifié par le décret législatif 5/2010, régit la légitimité procédurale en reconnaissant le droit à quiconque entendant agir en justice suite à toute discrimination quant à l'accès au travail, à la promotion et à la formation professionnelle, aux conditions de travail dont la rémunération, ainsi qu'aux systèmes de retraite complémentaires collectives, et ne souhaitant pas se prévaloir des procédures de conciliation prévues par les conventions collectives, d'entamer une tentative de conciliation au titre de l'article 410 du code de procédure civile ou, respectivement de l'article 66 du décret législatif n°165 du 30 mars 2001 (tel que modifié par la loi n°183 du 4 novembre, connue sous le nom de Collegato Lavoro[4]), y compris par l'intermédiaire de la conseillère ou du conseiller pour l'égalité provincial ou régional territorialement compétent. En outre, le II^ème alinéa du même article autorise le travailleur ayant subi un comportement discriminatoire sur le lieu de travail, à présenter une instance auprès du Tribunal faisant office de juge du travail ou, pour les aspects soumis à sa juridiction, au tribunal administratif régional territorialement compétent, de façon directe ou en délégant le Conseiller pour l'égalité.

Discrimination collective

Dans le deuxième cas, c'est l'art. **37** du Code qui régit l'action en justice visant la reconnaissance et l'élimination de la discrimination collective, lequel attribue une légitimité directe à agir en justice à la Conseillère ou au Conseiller régional ou encore national, bien que le travailleur garde son droit d'agir de façon autonome.
Il y a discrimination collective lorsqu'ont été mis en oeuvre des actes, des pactes ou des comportements discriminatoires, directs ou indirects, à l'égard de plusieurs personnes, même si les travailleuses et les travailleurs visés par les discriminations ne sont pas immédiatement identifiables.

De même, sur la base des dispositions dudit article, en cas de discrimination collective, les Conseillères ou les Conseillers pour l'égalité, avant d'entamer une action en justice, peuvent tenter la voie de la **solution à l'amiable**, en demandant à l'auteur de la

[4] La nouvelle disposition en cette matière prévoit une tentative de conciliation unique, **applicable dans le secteur privé mais aussi dans le secteur public**, et dont les règles reprennent en partie celles du précédent art. 410 du code de procédure civile et en partie celles des articles 65 et 66 du décret législatif n°165 du 30 mars 2001, abrogés par ladite loi.

discrimination d'élaborer un plan d'élimination des discriminations constatées dans un délai maximum de 120 jours, ayant préalablement consulté, dans le cas d'une discrimination perpétrée par un employeur, les représentations syndicales ou, à défaut, les associations locales adhérant aux organisations syndicales les plus représentatives à l'échelle nationale. Si le plan est jugé à même d'éliminer les discriminations, la Conseillère ou le Conseiller pour l'égalité entame la procédure de conciliation et le procès-verbal correspondant, sous forme de copie authentique, acquiert force exécutoire à travers une ordonnance du tribunal faisant office de juge du travail.

Les Conseillères ou les Conseillers pour l'égalité, au cas où ils ne souhaiteraient pas avoir recours à la procédure de conciliation ou en cas d'échec de cette dernière, peuvent saisir le tribunal faisant office de juge du travail ou le tribunal administratif régional territorialement compétents (deuxième alinéa, art.37 du Code).

Le juge, dans la sentence par laquelle il constate les discriminations sur la base de l'instance présentée au titre du deuxième alinéa, en plus de prévoir, si cela a été demandé, la réparation du préjudice, y compris extrapatrimonial, ordonne à l'auteur de la discrimination de définir un plan d'élimination des discriminations constatées, ayant préalablement consulté, s'agissant d'un employeur, les représentations syndicales ou, à défaut, les associations locales adhérant aux organisations syndicales les plus représentatives à l'échelle nationale, ainsi que la Conseillère ou le Conseiller régional ou national. Dans la sentence, le juge établit les critères, y compris en termes de délais, à respecter dans le cadre de la définition et de la mise en œuvre du plan.

Enfin, au titre du quatrième alinéa du même article, la Conseillère ou le Conseiller régional et national pour l'égalité peuvent décider **de saisir en référé le tribunal** faisant office de juge du travail ou le tribunal administratif régional territorialement compétent. Le juge saisi, dans les deux jours suivants, après avoir convoqué les parties et pris des informations sommaires, s'il juge qu'il y a bien violation telle que décrite dans l'instance, à travers une ordonnance motivée et immédiatement exécutoire, en plus de prévoir, si cela a été demandé, la réparation du préjudice, y compris extrapatrimonial, dans les limites de la preuve fournie, ordonne à l'auteur de la discrimination la cessation du comportement préjudiciable et adopte toute autre mesure à même d'éliminer les effets des discriminations constatées, dont l'obligation de définir et de mettre en place un plan d'élimination de ces dernières de la part du responsable.

Dans l'action en justice, dans les cas de discrimination, l'inversion du principe général de la charge de la preuve, selon lequel une personne dénonçant un fait illicite est tenue de le prouver, revêt une importance toute particulière, et pas seulement du point de vue strictement procédural. Selon l'art. **40** du Code, lorsque le requérant fournit des éléments de fait, extraits notamment de données de nature statistique, relatifs aux embauches, aux régimes de rémunération, à l'attribution de fonctions et de qualifications, aux mutations, à l'évolution de carrière et aux licenciements, exprimés selon des termes précis et cohérents, suffisants pour fonder la présomption de l'existence d'actes, pactes ou comportements discriminatoires en fonction du sexe, il revient au défendeur d'apporter la preuve de l'inexistence de la discrimination.

Ledit article allège ultérieurement la charge de la preuve dans la mesure où il ne requiert pas que la présomption revête un caractère grave, mais seulement que la discrimination soit fondée sur des présomptions précises et cohérentes.

Une autre nouveauté à signaler concerne le durcissement des sanctions liées à la violation des interdictions de discrimination. Les sanctions administratives pour la violation des normes en matière d'accès au travail, de **rémunération**, de conditions de travail et de prévoyance complémentaire sont plus sévères: la somme est passée d'un montant allant de 103 à 516 euros à un montant allant de 250 à 1 500 euros (art. 41 du Code); en cas d'inobservation des ordres du juge prescrits dans le cadre des procédures d'urgence contre les discriminations, ce n'est plus la sanction visée à l'art. 650 du code pénal (peine d'emprisonnement jusqu'à 3 mois ou amende jusqu'à 216 euros) qui s'applique, mais une contravention prévoyant le paiement d'une amende jusqu'à 50 000 euros ou une peine d'emprisonnement jusqu'à 6 mois (cinquième alinéa, art. 37 du Code).

Quant à l'accès aux prestations sociales, les travailleuses ont le droit de continuer à travailler jusqu'aux mêmes limites que celles prévues pour les hommes (art. 30 du Code).

Il est utile de rappeler à ce propos l'**art. 46** (Rapport sur la situation du personnel) du Code, tel que modifié par le décret législatif 5/2010, sur la base duquel les entreprises publiques et privées employant plus de cent employés sont tenues de rédiger un rapport tous les deux ans au moins sur la situation du personnel masculin et féminin dans chaque profession et portant sur la situation des embauches, de la formation, de la promotion professionnelle, des niveaux, des passages d'une catégorie ou de qualification à une autre, d'autres phénomènes de mobilité, de la mise au chômage partiel, des licenciements, des départs en préretraite et en retraite, du salaire effectivement perçu. Ce rapport est transmis aux représentations syndicales d'entreprise et à la conseillère et au conseiller régional pour l'égalité, qui en élaborent les résultats en les transmettant à la conseillère ou au conseiller

national pour l'égalité, au Ministère du Travail et des politiques sociales et au Département pour l'égalité des chances de la Présidence du Conseil des Ministres. On estime que les données des rapports prévus à l'art. 46 du Code pour l'égalité des chances entre hommes et femmes peuvent faire office de preuve statistique à même de fonder la présomption de l'existence d'un comportement discriminatoire.

La parité des salaires est l'une des composantes fondamentales de l'égalité entre hommes et femmes sur le marché du travail. Pour la mesurer, on utilise *"l'écart salarial de genre"* (gender pay gap). L'écart est donné par la différence entre le salaire horaire moyen des hommes et le salaire horaire moyen des femmes, exprimée en pourcentage par rapport au salaire horaire moyen des hommes et indique donc dans quelle mesure les femmes gagnent moins que les hommes.

La Commission européenne a divulgué les chiffres concernant l'écart salarial de genre au sein de l'Union européenne : la différence salariale en Europe est de 16,2%, de 5,3% en Italie. Les dernières données de 2011 affichent un écart salarial moyen au sein de l'Union européenne de 16,2% et de 5,8% en Italie.

§.4

Concernant le cas de non conformité quant au ***délai de préavis en cas de cessation du contrat de travail****, nous rapportons ci-dessous, la réponse fournie par le gouvernement italien au cours de la 124ème session du Comité Gouvernemental de la Charte Sociale Européenne, qui s'est déroulée à Strasbourg du 2 au 5 mai 2011.*

La période de préavis, comme nous l'avons déjà souligné dans le dernier rapport (2009) mais aussi dans la réponse orale fournie au Comité à l'occasion de l'audition qui s'est tenue à Strasbourg en 2008, est établie par les partenaires sociaux dans les conventions collectives de travail du secteur ou de la catégorie productive, selon des règles qui varient en fonction de ***l'ancienneté de service et de la catégorie professionnelle d'appartenance du travailleur*** *et qui sont différentes d'une convention à l'autre, étant donné que cette dernière est le fruit d'une négociation. Il est donc logique que les partenaires sociaux, conscients des réelles exigences et des particularités de chaque secteur, conviennent d'un commun accord, après avoir mené les évaluations nécessaires, de la période de préavis de licenciement et de démission qu'ils auront jugée adéquate.*
En ce qui concerne les secteurs productifs indiqués par le Comité, il convient de souligner les points suivants:

1) *tous les délais de préavis auxquels il est fait référence sont valables pour les travailleurs ayant* ***déjà dépassé la période d'essai et, donc, pour les contrats de travail stables****;*
2) *les délais de préavis trop courts de l'avis du Comité et pointé du doigt par ce dernier, ne concernent, dans la plupart des cas,* ***qu'une partie*** *des travailleurs des secteurs pressentis.*

INDUSTRIE TEXTILE

Par rapport à 2009, année où le dernier rapport relatif au paragraphe 4 de l'article 4 de la Charte Sociale a été présenté, la convention collective nationale de travail du ***secteur de l'industrie textile a été significativement modifiée et améliorée*** *du point de vue des période de préavis, si l'on part du principe que établis dans la convention précédente étaient trop courtes. Sur la base des dispositions de l'article 113 de la dernière convention collective nationale de travail de la Fédération Italienne des Industriels du Textile, signé le 2 septembre 2010, les délais de préavis ne sont en effet* ***jamais inférieurs à un mois*** *et vont d'un minimum d'1 mois de préavis pour les travailleurs de* ***2ème, 3ème et 4ème niveau*** *ayant une* ***ancienneté de service jusqu'à 5 ans,*** *à un maximum de* ***4 mois*** *pour les travailleurs de* ***7ème et 8ème niveau*** *ayant* ***plus de 10 ans d'ancienneté de service****.*
Par rapport aux 3 cas de non conformité indiqués par le Comité, à savoir:

1) *une* ***semaine de préavis ne peut pas être considérée comme un délai raisonnable pour un travailleur*** *quel qu'il soit, qu'il ait ou non terminé les six mois d'essai;*
2) ***2 semaines de préavis ne peuvent pas être considérées comme un délai raisonnable pour les travailleurs ayant plus de six mois de service;***
3) ***un mois de préavis ne peut pas être considéré comme un délai raisonnable pour les travailleurs ayant cinq ans ou plus de service;***

la convention collective nationale de travail de l'industrie textile signé en 2010 prévoit des délais de préavis plus longs dans tous les cas cités ci-dessus, soit:

1) ***pour aucun travailleur une semaine de préavis;***
2) ***de un à 4 mois de préavis pour les travailleurs ayant plus de six mois de service;***
3) ***de un mois et demi à 3 mois de préavis pour les travailleurs ayant cinq ans ou plus de service.***

Par conséquent, l'Italie EST CONFORME au paragraphe 4 de l'article 4 de la Charte Social européenne pour le secteur textile*.*

INDUSTRIE DES MACHINES

Dans le ***secteur de l'industrie des machines****, en revanche, la réglementation des délais de préavis est toujours la même, étant actuellement encore en vigueur la convention collective signée le 20 janvier 2008, autrement dit la même que celle qui était en vigueur à l'époque de la dernière audition. Sur la base de cette dernière les délais de préavis vont d'un* ***minimum de 7 jours pour les travailleurs de 1er niveau ayant jusqu'à 5 ans d'ancienneté de service à un maximum de 4 mois pour les travailleurs de 6ème et 7ème niveau ayant plus de 10 ans de service****.*
Par rapport aux 4 cas de non conformité indiqués par le Comité, à savoir:

1) ***une semaine de préavis ne peut pas être considérée comme un délai raisonnable pour un travailleur quel qu'il soit, qu'il ait ou non terminé les six mois d'essai;***
2) ***neuf jours de préavis ne peuvent pas être considérés comme un délai raisonnable pour les travailleurs ayant de cinq ans à 10 ans de service;***
3) ***douze jours de préavis ne peuvent pas être considérés comme un délai raisonnable pour les travailleurs ayant plus de 14 ans de service;***
4) ***un mois de préavis ne peut pas être considéré comme un délai raisonnable pour les travailleurs ayant cinq ans ou plus de service;***

la convention collective nationale de travail de l'industrie des machines signé en 2008 prévoit dans certains cas des délais de préavis plus longs, à savoir:

1) *une semaine de préavis seulement pour les travailleurs de 1er niveau (la catégorie la plus basse) ayant jusqu'à 5 ans d'ancienneté de service;*
2) *15 jours de préavis pour les travailleurs de 1er niveau ayant de cinq à dix ans de service; 20 jours de préavis pour les travailleurs de 2ème et 3ème niveau ayant de cinq à dix ans d'ancienneté de service et 3 mois de préavis pour les travailleurs de 6ème et 7ème niveau ayant de cinq à dix ans d'ancienneté de service et donc, toujours un préavis plus long par rapport aux neuf jours indiqués par le Comité;*
3) *20 jours de préavis pour les travailleurs de 1er niveau ayant plus de 10 ans d'ancienneté de service; un mois de préavis pour les travailleurs de 2ème et 3ème niveau ayant plus de 10 ans d'ancienneté de service; 2 mois et 15 jours de préavis pour les travailleurs de 4ème et 5ème niveau ayant plus de 10 ans d'ancienneté de service; 4 mois de préavis pour les travailleurs de 6ème et 7ème niveau ayant plus de 10 ans d'ancienneté de service, donc toujours un délai plus long que les douze jours indiqués par le Comité;*
4) *15 jours de préavis pour les travailleurs ayant cinq années ou plus d'ancienneté de service; 20 jours de préavis pour les travailleurs de 2ème et 3ème niveau ayant cinq années ou plus d'ancienneté de service; 2 mois de préavis pour les travailleurs de 4ème et 5ème niveau ayant cinq années ou plus d'ancienneté de service; 3 mois de préavis pour les travailleurs de 6ème et 7ème niveau ayant cinq années ou plus d'ancienneté de service;*

Par conséquent, l'ITALIE EST PARTIELLEMENT CONFORME POUR CE QUI EST DU PREMIER ET DU QUATRIEME POINT, TOTALEMENT CONFORME POUR CE QUI EST DU DEUXIEME ET DU TROISIEME POINT, au paragraphe 4 de l'article 4 de la Charte Sociale Européenne dans le secteur de l'industrie des machines.
Quoi qu'il en soit, il faut considérer que la convention collective nationale de travail de l'industrie des machines est une convention qui commence à dater et on peut donc espérer que la prochaine convention collective apportera des améliorations y compris du point de vue des délais de préavis, comme cela a été le cas pour la convention de l'industrie textile.

INDUSTRIE ALIMENTAIRE
Le ***secteur de l'industrie alimentaire****, enfin, comporte plus de cas différents que les deux autres secteurs que nous venons d'aborder, dans la mesure où les travailleurs n'y sont pas homologués mais divisés en: employés, intermédiaires et ouvriers. Sur la base des dispositions de l'art. 72 de la convention collective nationale de travail signée le 22 septembre 2009, les délais de préavis vont d'un minimum de* ***6 jours*** *pour les ouvriers ayant une* ***ancienneté jusqu'à 4 ans révolus*** *jusqu'à un maximum de 4 mois de préavis pour les employés (la catégorie professionnelle la plus élevée dans ce secteur) de* ***1er niveau, ayant une ancienneté de service supérieure à 10 ans révolus****.*
Par rapport aux 3 cas de non conformité indiqués par le Comité, à savoir:

1) *une* ***semaine de préavis ne peut pas être considérée comme un délai raisonnable pour un travailleur*** *quel qu'il soit, qu'il ait ou non terminé les six mois d'essai;*
2) *douze jours de préavis ne peuvent pas être considérés comme un délai raisonnable pour les travailleurs ayant plus de 14 ans de service;*
3) *un mois de préavis ne peut pas être considéré comme un délai raisonnable pour les travailleurs ayant cinq ans ou plus de service;*

la convention collective nationale de travail de l'industrie alimentaire signée en 2009 prévoit les délais de préavis suivants:

1) ***6 jours de préavis pour les seuls ouvriers (la catégorie la plus basse) ayant une ancienneté de service non supérieure à 4 ans; en aucun autre cas le délai de préavis est égal ou inférieur à une semaine;***

2) *60 jours de préavis pour les travailleurs intermédiaires ayant plus de 10 ans d'ancienneté de service; 2 mois pour les employés ayant plus de 10 ans d'ancienneté de service;*
3) *45 jours de préavis pour les travailleurs intermédiaires ayant de cinq à 10 années d'ancienneté de service;*

A ce propos, nous confirmons ce qui précède et à ce jour, aucune nouveauté n'est apparue.

§.**5**

Concernant le cas de non conformité quant aux ***limites aux retenues sur les salaires****, nous rapportons ci-dessous, la réponse fournie par le gouvernement italien au cours de la 124ème session du Comité Gouvernemental de la Charte Sociale Européenne, qui s'est déroulée à Strasbourg du 2 au 5 mai 2011.*

Nous prenons acte des observations formulées dans les Conclusions 2010 par le Comité européen des droits sociaux à propos de l'art. 4, par. 4 et à ce sujet, tout en confirmant ce qui a déjà été illustré lors du précédent rapport du gouvernement italien, il nous semble opportun de décrire de nouveau la situation italienne en ce qui concerne cette question.

Il n'est pas inutile de rappeler à ce sujet que l'art. 36 de la Constitution italienne stipule que "Le travailleur a droit à une rétribution proportionnée à la quantité et à la qualité de son travail et en tout cas suffisante pour assurer à lui-même et à sa famille une existence libre et digne".

Cette norme, qui, dans la mesure où elle provient de la Constitution, subordonne la loi ordinaire qui ne peut y déroger, doit être interprétée selon deux acceptions: l'une d'ordre positif, l'autre d'ordre négatif. En ce qui concerne la première, que la disposition constitutionnelle susmentionnée a l'effet immédiat de subordonner la loi ordinaire, la convention collective et toute autre source de réglementation en cette matière, de façon à ce que la rémunération payée ne soit pas inférieure au seuil permettant au travailleur et à sa famille de pouvoir mener une existence libre et digne.

Quant à la deuxième acception (négative), il convient de dire que si l'on se limitait au concept venant d'être exprimé plus haut, on aurait affaire à une application et à une interprétation strictement formelles de l'art. 36 de la Constitution, qui en trahiraient l'esprit, étant donné que s'il est vrai que le travailleur doit bénéficier d'une rémunération ayant les caractéristiques visées plus haut, il est tout aussi vrai que si l'Etat n'interdisait pas les interventions susceptibles de réduire ces rémunérations, les ramenant en-deçà du seuil garanti constitutionnellement, l'esprit de la norme serait, de fait, trahi.

Ceci n'est toutefois pas le cas, dans la mesure où l'art. 36 de la Constitution non seulement impose (positivement) le paiement de salaires adéquats, mais s'érige également en rempart (négatif) contre les systèmes (tels que la saisie par ex.) qui, ayant un effet réducteur sur les salaires, risqueraient de les priver de leur fonction constitutionnelle.

Quant à l'observation du Comité européen des droits sociaux relative au fait que la législation italienne ne prévoit pas de mesures à même de garantir que la paie des salariés, déduit des éventuelles retenues, soit quand même suffisante pour assurer la subsistance de ces derniers et des personnes étant à sa charge, nous ne saurons tomber d'accord là-dessus dans la mesure où, au titre-même dudit art. 4, paragraphe 5 de la Charte sociale européenne, pour garantir l'exercice effectif du droit à une rémunération équitable, les parties s'engagent "à n'autoriser des retenues sur les salaires que dans les conditions et les limites prescrites par la législation ou la réglementation nationale, ou fixées par des conventions collectives ou des sentences arbitrales".

En outre, le Comité européen des droits sociaux, dans les Conclusions 2010, a demandé la façon dont d'autres types de dettes, tels que les impôts, les dettes à payer à l'employeur et à l'Etat sont gérés dans la pratique et la façon dont est garanti le revenu minimum aux salariés.

Comme déjà indiqué dans le précédent rapport du gouvernement italien, la loi de référence en Italie à ce sujet est représentée par le décret du président de la république n°180 du 5 janvier 1950 "Texte unique des lois en matière de saisies et de cession des paiements, salaires, et retraites des salariés des administrations publiques", et par l'art. 545 du code de procédure civile ainsi que dans certaines dispositions contenues dans des lois spéciales. Ces normes fixent des limites objectives à la saisie de créances dans le cadre de l'expropriation auprès de tiers. En outre, la loi de finances 2005 (Loi n°311/2004) a définitivement assimilé les dispositions relatives à la saisie des salaires du secteur privé à celles du secteur publique.

Le principe général prévoit que les rétributions (dont les salaires, les retraites, les allocations, etc.) ne peuvent faire l'objet de saisie que dans les limites suivantes:
1) jusqu'à concurrence d'un tiers calculé sur le montant après déduction des retenues, au titre des pensions alimentaires dues de par la loi;
2) jusqu'à concurrence d'un cinquième calculé sur le montant après déduction des retenues, au titre des dettes envers l'Etat et envers les autres organismes, sociétés et entreprises employant le débiteur, découlant de son contrat de travail;
3) jusqu'à concurrence d'un cinquième calculé sur le montant après déduction des retenues, au titre des impôts dus à l'Etat, aux provinces et au communes étant, dès leur origine, à la charge de l'employé ou du salarié;
4) Les sommes dues par des entreprises privées au titre des salaires ou autres indemnités liées au contrat de travail y compris de licenciement, peuvent être saisies au titre des pensions alimentaires dans la mesure établie par le président du tribunal ou par un juge délégué par ce dernier.
La saisie, en cas de concours des circonstances indiquées ci-dessus, ne peut concerner plus de la moitié du montant des sommes susmentionnées.
Les autres limites contenues dans les dispositions de loi spéciales continuent à s'appliquer, indépendamment de ce qui précède.

En outre, au titre de l'art. 546 du code de procédure civile, "En cas de saisie effectuée auprès de plusieurs tiers, le débiteur peut demander la réduction proportionnelle de chaque saisie en vertu

de l'art. 496[5] ou la déclaration d'inefficacité de certaines d'entre elles, ...". La norme réglemente expressément la faculté du débiteur de demander la réduction de la saisie effectuée auprès de plusieurs tiers à travers la réduction proportionnelle de chaque saisie en vertu de l'art. 496 ou la déclaration de l'inefficacité de certaines d'entre elles.

Concernant la saisie des retraites, la Cour Constitutionnelle, par sa sentence n°506/2002 a établi l'insaisissabilité absolue "de la part de la retraite, allocation ou indemnité nécessaire à assurer au retraité des moyens de subsistance suffisants, et la saisissabilité de la part restante à raison d'un cinquième.

En application de ce principe, la jurisprudence a fait coïncider la part absolument insaisissable de la retraite avec le "revenu mensuel minimum", qui devrait garantir au retraité le "minimum vital"; ce seuil coïncide avec le montant du revenu mensuel minimum ou de la retraite sociale reconnue, égal à 467 euros mensuels environ.

A titre de complément d'information, il est également indiqué que la jurisprudence de fond a jugé qu'il incombait au Juge de l'Exécution de définir le montant saisissable de la retraite, à travers un exercice pondéré de son pouvoir d'appréciation qui tient compte aussi bien des raisons du créancier que de celles du débiteur (voir Trib. Bari, Section II, 21.03.2006).

A la lumière de ce qui précède, bien que l'on ne trouve pas dans la législation italienne de normes établissant de façon explicite le montant minimum du salaire ou de la retraite ne pouvant être saisi, nous estimons que le système est doté d'un ensemble de normes et de régimes faisant obstacle à toute attaque aux rétributions susceptibles de ramener ces dernières en-dessous du seuil minimum garantissant la subsistance du travailleur et des personnes étant à sa charge.

Au contraire, nous estimons que l'absence d'un paramètre monétaire rigide est une circonstance utile, permettant d'évaluer chaque situation selon une orientation constitutionnelle et d'empêcher une réduction excessive des moyens de subsistance des travailleurs.

Parmi les nouveautés intervenues au cours de cette période de quatre ans, il faut encore signaler une importante nouveauté en termes de saisie auprès de tiers. Introduite par le décret-loi n°16 du 2 mars 2012 (Dispositions urgentes en matière de simplifications fiscales, d'efficacité et d'amélioration des procédures de contrôle), transformé en la loi n°44/2012, qui a prévu de nouvelles limites en ce qui concerne la saisie auprès de tiers, en particulier la saisie du salaire et la saisie de la retraite. La disposition de référence dans le décret-loi n°16/2012 est l'art. 3, cinquième alinéa, qui a introduit l'art. 72-ter (Limites de

[5] Art. 496 du code de procédure civile (Réduction de la saisie): *"A la demande du débiteur ou encore d'office, lorsque la valeur des biens saisis est supérieure au montant des frais et des créances visés à l'article précédent, le juge, ayant préalablement consulté le créancier saisissant et les autres créanciers étant partie à la procédure, peut disposer la réduction de la saisie".*

saisissabilité) du décret présidentiel n°602 du 29 septembre 1973 (Dispositions en matière de perception des impôts sur le revenu) qui stipule textuellement: *"Les sommes dues au titre de salaires et autres indemnités liées au contrat de travail, y compris de licenciement, peuvent être saisies par l'agent percepteur dans la mesure d'un dixième pour des montants jusqu'à 2 500 euros et d'un septième pour des montants supérieurs à 2 500 euros et ne dépassant pas 5 000 euros. Si les sommes dues au titre des salaires ou autres indemnités liées au contrat de travail, y compris de licenciement, dépassent les cinq mille euros, la mesure visée à l'article 545, quatrième alinéa du code de procédure civile continue à s'appliquer.*

A travers la directive d'Equitalia du 7 mai 2013 sur les dettes envers le trésor, de nouvelles dispositions viennent s'appliquer en matière de paiements à tempérament, rehaussant le seuil de la dette permettant d'obtenir l'échelonnement des paiements sur simple demande motivée. Equitalia a fait passer de 20 mille à 50 mille le seuil de montant permettant d'obtenir l'échelonnement automatique des paiements, sans devoir annexer de documents justifiant la situation de difficulté économique. Pour les dettes dépassant les 50 mille euros, l'échelonnement n'est accordé qu'après vérification de la situation de difficulté économique. L'agent percepteur analyse le montant de la dette et les documents illustrant la situation économique et financière du contribuable.

Sont rapportées ci-dessous, à titre de complément et d'illustration de ce qui vient d'être exposé, quelques sentences traduisant les orientations de la jurisprudence en la matière:

Tribunal de Nola, ordonnance du 2 décembre 2009 ... le critère de pondération des intérêts contraires du créancier agissant en exécution forcée et du débiteur-retraité a été défini par la Cour Constitutionnelle selon une double limite à la saisissabilité établie des retraites des débiteurs saisis: a) n'est saisissable que la part excédante par rapport à la somme nécessaire à assurer "*des moyens de subsistance suffisants*" au retraité, b) la part restante n'est saisissable qu'à raison d'un cinquième, "*conformément aux règles fixées par l'art. 545 du code de procédure civile*", *qui garantit la reconnaissance du droit à l'aide sociale afin d'assurer une existence digne à tous ceux ne disposant pas de ressources suffisantes. Il en découle que la saisie de la retraite exécutée au-delà des limites autorisées est radicalement nulle en ce qu'elle viole des normes péremptoires. La nullité est constatée d'office sans avoir besoin de recourir à une quelconque exception ou opposition de la part du débiteur saisi".*

Cour Suprême de Cassation, Section III, sentence n° 6548 du 22 mars 2011: *"L'insaisissabilité partielle des retraites a été édictée dans le but de protéger l'intérêt public consistant à garantir au retraité des moyens de subsistance suffisants (art. 38 de la*

Constitution), objectif d'autant plus évident depuis l'entrée en vigueur de la Charte des droit fondamentaux de l'Union européenne depuis le 1er décembre 2009 (date d'entrée en vigueur du Traité de Lisbonne) qui, à l'art. 34, troisième alinéa, garantit la reconnaissance du droit à l'aide sociale destinée à assurer une existence digne à tous ceux qui ne disposent pas de ressources suffisantes. Il en découle que la saisie de la retraite exécutée au-delà des limites autorisées est radicalement nulle en ce qu'elle viole des normes péremptoires. La nullité est constatée d'office sans avoir besoin de recourir à une quelconque exception ou opposition de la part du débiteur saisi". L'évaluation de l'existence et du montant de la part de retraite nécessaire à assurer au retraité des moyens de subsistance suffisants, et en tant que telle, légitimement assujettie au régime de l'insaisissabilité absolue aux seules exceptions, obligatoirement indiquées, des créances privilégiées, échoit, à défaut d'interventions du législateur à ce sujet, au juge de l'exécution.

Par conséquent, la Cassation a jugé irrépréhensible la motivation du juge du fond, qui a estimé, sur la base le l'expérience commune, le montant de 303,25 € mensuels insuffisant pour garantir les besoins primordiaux d'existence d'un retraité, compte tenu des frais indispensables d'alimentation, d'habillement et de logement. La disponibilité du logement et les consommations ordinaires d'électricité, eau et gaz, bien que dans les limites du seuil minimum pour une existence digne; soulignant que le seul paramètre de la retraite minimum doit être considéré insuffisant, dans la mesure où il répond à des exigences différentes (dont, naturellement, celles liées aux finances publiques) de celles de l'équilibre entre besoins élémentaires du débiteur et exigences de protection de la créance.

Tribunal de La Spezia, orientation du 9 novembre 2011 (les critères qu'adopteront les juges de l'exécution auprès du Tribunal de La Spezia pour la définition de la part de rémunération apte à assurer des moyens de subsistance suffisants et dont à assujettir au régime d'insaisissabilité absolue). :

A cette fin, selon le Tribunal de La Spezia:

- il est nécessaire de se référer à un paramètre de référence objectif, tel que le revenu mensuel minimum établi par l'INPS en tant que retraite minimum (la Circulaire n°16 du 2/2/2010 de l'Inps a établi, pour l'année 2010, que le revenu mensuel minimum au titre de la retraite est de 460,97 €), pour définir le seuil de somme insaisissable, tout en laissant la possibilité pour le créancier de saisir la part de revenu résiduelle selon les règles ordinaires (normalement dans la limite d'un cinquième, sauf dans le cas de créances privilégiées);
- le débiteur peut toutefois prouver que le minimum vital est en réalité supérieur à cette somme (revenu minimum au titre de la retraite de la part de l'INPS) en raison de besoins vitaux justifiés et documentés; tels que la location d'un logement (à justifier en produisant le contrat de location); la consommation d'électricité, eau et gaz, besoins alimentaires et d'habillement (dans ce domaine l'appréciation du juge de l'exécution est suffisante);

- à défaut d'apport de ces preuves, le juge de l'exécution doit s'en tenir à la limite de 460,97 € (somme insaisissable), autorisant toujours la saisie du revenu résiduel selon les règles ordinaires (normalement, saufs dans les cas de créances privilégiés, dans la limite d'un cinquième).

MINISTERO del LAVORO
e delle POLITICHE SOCIALI

07 October 2021

SECOND LEVEL CONTRACT REGISTRATION

Following the issue of the Inter-Ministerial Decree of 25 March 2016 concerning tax incentive de-taxation defined under Article 1 of Law No. 208 of 28 December 2015, the Ministry of Labour made the procedure for the telematic registration of corporate and local agreements available.

The system was fully enforced after 60 days starting from 15 July, namely the transitional period to submit the contract models signed in 2015.

Over the years, the telematic procedure has allowed registering additional subsidies related to signing corporate or local collective agreements.

The figures below refer to all second-level agreements registered after the system enforcement on 30 September 2021.

Table 1: Regional distribution of the contracts registered after the system enforcement as of 30 September 2021, divided by year and competent regional ITL (Labour Territorial Inspectorate).

ITL Region	2016	2017	2018	2019	2020	2021	Total
01-PIEDMONT	1,621	1,023	1,258	2,315	1,243	1,194	8,654
02-AOSTA VALLEY	29	26	35	23	35	54	202
03-LOMBARDY	5,224	3,289	3,715	5,285	3,301	3,397	24,211
04-BOLZANO	35	27	85	194	170	160	671
04-TRENTO	566	239	194	269	160	138	1,566
05-VENETO	2,617	1,443	1,549	1,937	1,229	1,411	10,186
06-FRIULI	516	382	411	519	407	429	2,664
07-LIGURIA	416	248	283	338	283	231	1,799
08-EMILIA ROMAGNA	3,025	1,832	2,595	3,616	1,470	1,387	13,925
09-TUSCANY	1,278	767	941	1,047	831	745	5,609
10-UMBRIA	212	150	163	254	164	119	1,062
11-MARCHE	334	188	271	423	276	300	1,792
12-LAZIO	1,185	834	1,108	1,721	1,276	1,772	7,896
13-ABRUZZO	240	144	191	255	164	220	1,214
14-MOLISE	40	17	37	57	37	26	214
15-CAMPANIA	367	220	448	1,171	488	507	3,201
16-APULIA	217	190	167	402	315	323	1,614
17-BASILICATA	107	40	51	63	70	61	392
19-SICILY	74	52	62	136	80	71	475
20-SARDINIA	211	170	182	305	214	241	1,323
Total	**18,461**	**11,388**	**13,844**	**20,582**	**12,396**	**12,990**	**89,661**

Table 2: Distribution of the agreements registered after the system enforcement as of 30 September 2021, divided by year and economic sector.

Economic Sector	2016	2017	2018	2019	2020	2021	Total
Agriculture	280	157	135	128	114	97	911
Manufacturing	7,547	4,110	4,998	6,590	3,813	4,042	31,100
Services	10,634	7,121	8,711	13,864	8,469	8,851	57,650
Total	**18,461**	**11,388**	**13,844**	**20,582**	**12,396**	**12,990**	**89,661**

Table 3: Distribution of the agreements registered after the system enforcement as of 30 September 2021, divided by year and type of contract.

Type of contract	2016	2017	2018	2019	2020	2021	Total
Corporate	9,645	9,192	11,327	16,003	10,645	10,989	67,801
Local	8,816	2,196	2,517	4,579	1,751	2,001	21,860
Total	**18,461**	**11,388**	**13,844**	**20,582**	**12,396**	**12,990**	**89,661**

TABLE 1

Proclaimed/executed strikes and Committee's preventive actions

Sector	Proclaimed Strikes	Executed Strikes	Revoked Strikes	Proclaimed/executed National Strikes	Preventive actions	% Preventive actions	Revocations or delays due to preventive actions	Adjustments following preventive actions	Effectiveness of the Committee's actions
National General	8	4	4	8/4	7	88%	4	1	71%
General Transportation	1	1		1/1					
Regional General	3	2	1		2	67%	2		100%
Territorial General	1	1			1	100%	1		100%
National Multisectoral	2	2		2/2	2	100%		1	50%
Regional Multisectoral	3	1	2		1	33%	1		100%
Water	3	3							
Tax Agencies	1	1							
Railway procurement	7	5	2	1/1					
Lawyers	31	21	10	2/1	1	3%	1		100%
Fuels	5	4	1	4/3	1	20%			0%
Reclamation consortia	2	2							
Credit	1		1	1/0					
Electricity	50	16	34	4/2					
Helicopters	1	1		1/1					
Energy and Oil	4	3	1		1	25%	1		
Non-economic public entities	2	2							
Funerary	6	2	4		3	50%	3		
Gas	5	4	1						
Gas, Water	4		4		3	75%	3		
Environmental Hygiene	202	102	100	3/3	50	25%	38	2	
Security service providers	39	28	11	1/1	6	15%	5		
Freelancers	1		1	1/0					
Professional and Honorary magistrates	7	5	2	6/4	1	14%			
Metal workers	15	5	10	2/2	3	20%	2		
Ministries	16	9	7	1/1	1	6%	1		
Bus and driver hire	2	2			1	50%			
Cleaning/multiservice	111	58	53	8/6	22	20%	18	4	
Regions and local Autonomies	85	62	23	7/7	11	13%	8	1	
Research	9	6	3	6/6	2	22%	2		
Private Healthcare	44	29	15	12/8	9	20%	8		
School	28	19	9	24/17	6	21%	4		
Postal Service	71	64	7	21/21	7	10%	1	4	

Public radio and television service	8	3	5		1	13%	1		
National Healthcare Service	112	70	42	10/7	20	18%	16	1	
Motorway security and rescue	28	22	6	2/2	2	7%	2		
Taxi	4	3	1	1/1					
Telecommunications	24	18	6	23/18	1	4%	1		
Air transport	149	75	74	68/34	46	31%	42	4	
Railway transport	35	24	11	8/7	5	14%	5		
Maritime transport	20	8	12	10/3	4	20%	4		
Road freight transport	25	12	5	6/5	3	12%	1	1	
Railway freight transport	19	12	7	9/8	2	11%	2		100%
Local public transport	259	160	99	3/2	50	19%	45	4	98%
University	9	6	3	9/6	2	22%	2		100%
Firefighters	10	9	1						
TOTAL	1472	894	578	267/185	277	19%	224	23	89%

TABLE 2

2019/2020 Strike Comparative Framework

	Proclaimed Strikes		Executed Strikes		Strike Days	
Sector	**2019**	**2020**	**2019**	**2020**	**2019**	**2020**
National General	15	8	14	4	5	3
General Transportation	6	1	6	1	3	1
Public Sector	2	0	1	0	1	0
Regional General	3	3	2	2	2	2
Province General	1	0	1	0	1	0
Territorial General	2	1	1	1	1	1
National Multisectoral	2	2	2	2	1	2
Regional Multisectoral	2	3	2	1	1	1
Local Multisectoral	1	0	1	0	1	0
Water	0	3	0	3	0	3
Tax Agencies	3	1	3	1	3	1
Railway procurement	22	7	11	5	8	4
Lawyers	39	31	36	21	26	12
Fuels	10	5	7	4	7	4
Reclamation consortia	3	2	2	2	2	2
Credit	48	1	25	0	23	0
Drugs distribution and logistics	6	0	3	0	3	0
Electricity	20	50	10	16	6	14
Helicopters	0	1	0	1	0	1
Energy and Oil	6	4	4	3	3	2
Non-economic public entities	7	2	4	2	4	2
Funerary	3	6	2	2	2	2
Gas	0	5	0	4	0	2
Gas, Water	23	4	8	0	8	0
Environmental Hygiene	410	202	209	102	111	65
Security service providers	82	39	61	28	49	18
Freelancers	2	1	2	0	1	0
Professional and Honorary magistrates	16	7	13	5	7	4
Metal workers	2	15	2	5	2	5
Ministries	25	16	19	9	18	8
Bus and driver hire	0	2	0	2	0	1
Cleaning/multiservice	210	111	127	58	79	49
Regions and local Autonomies	169	85	105	62	76	47
Research	0	9	0	6	0	3
Private Healthcare	67	44	43	29	33	20
School	39	28	29	19	18	10
Postal Service	92	71	82	64	40	33
Public radio and television service	133	112	88	70	61	49
National Healthcare Service	8	8	6	3	5	3
Motorway security and rescue	31	28	14	22	12	17
Taxi	2	4	1	3	1	3
Telecommunications	37	24	22	18	16	14
Air transport	235	149	133	75	21	17
Railway transport	100	35	59	24	41	16
Maritime transport	29	20	14	8	11	8

Road freight transport	15	25	10	20	9	20
Railway freight transport	13	19	9	12	9	7
Local public transport	374	259	250	160	95	63
University	12	9	9	6	8	3
Firefighters	18	10	19	9	8	9
TOTAL	2345	1472	1462	894		