THE GOVERNANCE
OF SHORT-TIME WORK COMPENSATION SCHEMES:

a theoretical proposal, an empirical analysis and an assessment of the Italian case

PhD candidate: Livia Di Stefano

Tutor: Prof. Iacopo Senatori, PhD

Doctoral Research School in Labour Relations
PhD in Labour Relations

XXVIII Cycle

Director of Doctoral Research School: Prof. Luigi Enrico Golzio, PhD
Coordinator of Doctoral Research Course: Prof. Luigi Enrico Golzio, PhD

Marco Biagi Foundation of the
University of Modena and Reggio Emilia – Economy Department "Marco Biagi"

INDEX OF CONTENTS

PART I – THEORETICAL ANALYSIS

PART II – EMPIRICAL ANALYSIS

CHAPTER I

THE THEORETICAL FRAMEWORK FOR THE ANALYSIS OF SHORT-TIME WORK COMPENSATION SCHEMES

1. The state of the art on short-time work compensation schemes' theoretical and empirical research in the field of social sciences

Short-time work compensation schemes (hereinafter, STWS) have come to the fore, in the light of the Great Recession, as a successful example of economic policy to prevent and contain workplaces' destruction during downturns. In time of crisis, STWS, introduced by policy transfer even in countries where such welfare provisions were previously unknown, have formed the object of a mainly-economical-and-empirical comparative literature (among others: Abraham and Houseman, 2014; Aricò and Stein, 2012; Arpaia *et al.*, 2010; Balleer *et al.*, 2016; Boeri and Brücker, 2011; Brey and Hertweck, 2016; Calavrezo and Lodin, 2012; Cahuc and Carcillo, 2011; Crimmann *et al.*, 2010 and 2012; Eurofound, 2010; Hijzen and Venn, 2011; Hijzen and Martin, 2013; Merkl *et al.*, 2014; Vroman and Brusentsev, 2009; Vroman, 2013; Walz *et al.*, 2012). On the whole, three fundamental research questions have driven the empirical inquiry:

1. Did STWS save jobs during the Great Recession, and
2. Which design features of STWS have proved to be the most effective in saving jobs at the minimum deadweight loss, and
3. What has determined the demand for STWS' benefits from the side of firms.

Moreover, two broader research questions have been fed by empirical findings:

4. (to what extent) are STWS *embedded* and/or *transferable* in different *institutional settings*;
5. (to what extent) it is desirable to keep STWS in place *beyond crisis*.

Needless to say, the issues addressed by questions number 3, 4 and 5 are rather complex and would require, to be properly approached, a trans-disciplinary analysis covering non-crisis time as well. Unfortunately, there exists scarce literature of this kind, since compared research on STWS, pioneered by Grais (1983), has attracted the interest of a small minority of social scientists before the most recent years.

Along with the significant heterogeneity of STWS across countries (extensively surveyed by the European Commission, the Eurofound, the ILO and the OECD only between 2009 and 2010), the existing juridical literature on the subject matter is typically country-specific and available in the national language. If the state of art of labour law studies suggests that there is room for comparative research on the topic, the state of art of other social science disciplines provides some useful elements to frame, guide and develop such an analysis.

Among the empirical findings of the national and compared STWS economic literature one seems to be of particular interest for labour law and social security scholars: at a micro level, the demand for STWS' benefits from the side of firms is negatively related with the use of flexible employment contracts; at a macro level, STWS' benefits take-up rates show at the same time a positive relationship with employment protection legislation and a negative relationship with unemployment benefits generosity. Such evidence brings Boeri and Brücker (2011a, 17) to conclude that "*flexicurity arrangements seem to be a substitute for STW*".

From a different perspective, after having analysed STWS in the framework of the "common principles of flexicurity" adopted by the European Commission in 2007, the Eurofound (2010, 6) invites to regard at these institutions as "*an extension of flexicurity*" and further as a potential vehicle of a (new) concept of flexicurity able to convey broader consensus among the social partners.

From a theoretical point of view, both conclusions are consistent with the argument of Calavrezo *et al.* (2006, 7) that the analysis of STWS may be framed in the theory of flexicurity. The question of whether such institutions may represent a "substitute for" or "an extension of" flexicurity remains instead open.

The analysis of STWS as a "flexibilization device", already proposed before and during the Great Recession with respect to Germany (Deeke 2005; Will, 2010) and France (Béraud, 1994; Calavrezo et al., 2006, 2009), seems to represent at the same time the most

appropriate approach to answer such question and the most promising evolution of the time-of-crisis-centred compared research on these institutions.

The analytical tools to explore the relationship between flexibility, security and STWS can be found in the literature on "temporary layoffs", *i.e.* the phenomenon of firing and rehiring the same workers by the same employers an indefinite number of times. Such phenomenon has been first investigated both empirically and theoretically by Feldstein (1975, 1976) and, similarly to STWS, has mainly not attracted the attention of social scientists after the 90'.

With respect to Italy, the complex interaction between flexibility and security in the regulation of unemployment benefits had been highlighted by Liso (1991a) on the occasion of the introduction of the so called "ordinary unemployment benefit with reduced requirements" (*indennità di disoccupazione ordinaria con requisiti ridotti*) by Law no. 160/1988: also in the light of the practices emerged as regards the use of unemployment benefits in the agriculture sector, the author had warned the relaxation of eligibility criteria for unemployment benefits be likely to constitute a form of "*support to the flexible use of labor*", by making it more acceptable from workers to be hired under precarious and discontinuous employment relationships and therefore threatening to produce "*perhaps unwittingly, an incentive effect to the deconstruction of full-time employment relationships*".

Such an analytical perspective, which the same author though to be "*extremely relevant*" with respect to the role of collective bargaining in the regulation of fixed-term contracts, has not triggered the development of a relevant line of research in Italy. With respect to the United States, where the phenomenon of unemployment-benefit-compensated temporary layoffs has formed the object of both scientific investigation and political concern, Feldstein (1976) has pointed out how collective agreements themselves have been explicitly regulating such a strategy. Empirical research carried out in some EU countries has evidenced that, similarly to the United States and North America, between 1/3 and ½ of total unemployment is actually temporary layoff unemployment (Røed and Nordberg, 2003, Jensen and Svarer, 2003, Alba-Ramírez *et al.*, 2007).

Differently from STWS, the interest in temporary layoffs has not experienced a comparable resurgence in the wake of the Great Recession: as a consequence, temporary layoffs have been typically neither surveyed nor included in the recent research on STWS (among exceptions: Arntz and Wilke, 2009; Braun and Brügelmann, 2014).

Nevertheless, the economic analysis of STWS shares its theoretical foundations with that of temporary layoffs, developed in turn on the theory of "implicit contracts" (Azariadis, 1975; Baily, 1974) and, more recently, combined with search theory (Arranz and Serrano, 2011). By an implicit contract workers and employers may informally agree to combine work and unemployment spells, the latter being financed by unemployment insurance, as a strategy to adapt labour inputs to fluctuation of a firm's product demand.

By such an agreement, the worker would be laid off when demand falls and recalled once recovery starts. Note that, from a labour law perspective, a similar strategy is not confined to the domain of temporary employment contracts (whose reiteration between the same worker and the same employer is subject in EU countries to limits according to Directive no. 70/1999) but may be performed even under open-ended employment contracts (whose reiteration is virtually not subject to any limit), as the worker may be dismissed for economic reasons. This proved to be true in Italy before the liberalization of fixed-term contracts: at that time, as witnessed by two representatives of the employers' organization of the tourism and hotel sector (Federalberghi), the firms' practice consisted in "*the hiring of seasonal workers under open-ended contracts and their individual dismissal with notice once the season be terminated*" (Nucara and Candido, 2012).

In the perspective of labour and industrial relation sociology, Hense (2014, 1-5) has suggested to consider temporary layoffs "*as a specific discontinuous employment relationship*" or "*a specific flexibility strategy*". According to this author, among the rationales of the "temporary layoffs strategy" a key role could be played by the need to conciliate flexibility with "*stability of human capital*": nevertheless, the same author does not find evidence for such hypothesis through empirical analysis.

Although the theme of "*firm-specific human capital*" (Becker, 1964) is a constant reference in the economic literature on temporary layoffs, all empirical attempts of profiling firms with respect to both layoffs practices and STWS' benefits demand have till now not shown a clear-cut picture namely with regard to value for human capital and even with regard to firms' size. We believe such difficulty to understand the firms' behaviour to be plausibly explained, if not by the lack of appropriate datasets, by the lack of an appropriate guidance theory.

Certainly, the same moral hazard problems put forward with respect to temporary layoffs are amplified under STWS, since the employment relationship is in the latter case not formally terminated. The solution to such problems has been traditionally prospected

on the terrain of "experience rating" (Feldstein, 1976; Blanchard and Tirole, 2008). Significantly, and differently from the United States and North America, European countries have applied experience rating mechanisms to STWS only and not also to unemployment insurance schemes, with the result of generating a relative incentive effect to the use temporary layoffs strategies in place of short-time work or working activity suspension.

More recently, along with the good performance of *Kurzarbeitergeld* relative to other STWS evidenced by comparative research, together with experience rating other design features that are typical of the German institution have been considered for policy recommendation. Among them are to be mentioned legal provisions that discourage 100% working time reductions and promote collective bargaining on wages and working time at plant level. It has been observed that the latter policy may even provide a better substitute for STWS, as it would allow reaching the goal of containing unemployment rate during downturns at less deadweight effects (Boeri and Brücker, 2011a and 2011b). In such a perspective, the empirical evidence that collective bargaining centralization is positively associated with STW benefits take-up rate provides further arguments for the authors' thesis.

To the best of our knowledge, the assessment of the relationship between STWS and collective bargaining has nevertheless not formed a specific focus object in the STWS literature. Moreover, the assessment of such a relationship requires in turn another crucial dimension, equally neglected by the recent STWS comparative research, to be included in the analysis: the dimension of STWS' *government* or *governance*.

Provided that, according to (Stocker, 1998, 17), both government and governance are "*ultimately concerned with creating the conditions for ordered rules and collective action*", it appears clear that the paradigm of *governance*, and not that of *government*, is capable to bridge collective bargaining and STWS. The *governance of STWS* will therefore constitute the specific object of the present research.

According to a definition given (Hollingsworth *et al.*, 1994, 5), we may intend governance as the "*totality of institutional arrangements, including rules and rule-making agents - that regulate transactions inside and across the boundaries of an economic system*". We may subsequently conclude the STWS literature to have focused on *rules* rather than on *rule-making agents* and *processes*, and to have assumed STWS to be essentially *governed*, *i.e. State-operated*. Moreover, even the perspective of corporatism or neo-corporatism has taken a quite traditional stand

with respect to STWS, failing, to the best of our knowledge, to provide objective criteria for their assessment. The lack of objective assessment criteria may partly account for the fact that, as observed in general by Bannink (2014), "*social policy development and reform in corporatist welfare states often follows a pattern of subsequent collectivization and de-collectivization*".

As rule-making agents and processes constitute the specific focus objects of governance, self-governance, collective action and reflexive law theories, in the present research we will draw from these theories to derive the analytical framework and the criteria for the assessment of STWS regulation, with respect to the Italian case. More precisely, we will explore whether a "common-pool-resource approach" may provide a more consistent analytical framework, compared to the "risk approach" derived from insurance theory, to assess the institutional design of STWS.

The concept of "risk" itself, being it considered either "new" or "old" in relation to STWS, appears in fact to be dumped by the same theories that have promoted experience rating mechanisms as a remedial (and not as a solution) to moral hazard problems in the domain of social insurances.

We put forward the difficulties in tackling insured "risks" in STWS may be due, in the Italian case, to poor formulation of eligibility conditions to access the scheme and, more in general, to flaws and incongruences in the whole scheme's design; nevertheless, compared research has evidenced a discretional component to be always embedded in such institutions (a recent research which has explicitly targeted the discretional component of STWS has identified it as a source of inefficiency, Balleer *et al.*, 2016).

This point having been clarified, the following paragraphs of the present Chapter will provide the analytical framework for the analysis and the assessment of Italian STWS in the above outlined perspective. Such framework will result in turn from a joint historical and theoretical analysis.

2. The historical perspective: the pathway of short-time work compensation schemes from company welfare to economic policy measures

Along with the emphasis put on STWS as a successful example of economic policy, one significant fact about these institutions has remained unnoticed: STWS originated as a form

of company welfare. Only later were they adopted by National States and adapted to serve some economic policy purposes.

As reported by Holzmayer (1989, 8-9), in the home country of *Kurzarbeitergeld* the first examples of STWS had been set up at firm level: as the existence of collective agreements allowing working time reduction face to production fluctuations is documented since the year 1891, in the same year companies like the "Firma Cornelius Heyl" in Worms were according short-time workers a "*waiting wage*".

Two interesting facts that emerge from Holzmayer's research need to be put forward in this respect.

As first, both waiting-wage-compensated and non-compensated short-time work were typically taking the form of a 100% working hours reduction that is, in fact if not technically, a temporary layoff. Nevertheless, in both cases the employment relationship was valued to be kept in place, in a context of low employment protection legislation.

Secondly, company-provided STWS had spontaneously arisen in a context where neither policy makers nor social scientists and opinion makers were considering short-time workers for income support, and temporary-layoff-unemployment resulting from short-time work was not covered by the first experimental unemployment compensation schemes organized by self-help associations and local communities.

The first fact is in line with the prediction of a "labour biased employment adjustment", *i.e.* the prediction by labour economy that employers are more likely to adjust the number of workers instead of the number of working-hours-per-worker face to fluctuations in demand, whenever technologies in use allow both strategies (Rosen, 1985). Moreover, in the light of such evidence, the fact that some firms had been paying their employees a wage while not working is meaningful, considering that workers would have been eligible for self-help or community organized unemployment compensation if laid off.

Since the "waiting wage" was company provided, we might plainly consider the two types of short-time work agreements (compensated and not compensated) as two different kind of *flexible and reliable contractual arrangements negotiated at individual or at firm level*: although in order to engage in a comparison between such arrangements further information on both wages and waiting wages, as well as on the industrial relation and the labour market context would be required, according to the sources quoted by Holzmayer the provision of a compensation during short-time work was not due to employers' philanthropy, since

without such provision an agreement on working time reduction would have been almost impossible to reach.

Along with the historical reconstruction drawn by Holzmayer, it emerges that the second step in the evolution of STWS had been that of a State-provided scheme conceived as an instrument, or better, as *an appendix* of economic policy.

By Law 15th July 1909 a dedicated unemployment and short-time work compensation scheme had been introduced to provide income support to tobacco industry workers, who were risking to suffer the consequences of the augmentation of the tax on tobacco products resolved by the same Law in order to consolidate State's financial standings. The rational of the scheme, which was funded by general taxation, was therefore that of buffering a Government decision that would have been likely to impact negatively on a precise labour market. One year later the same approach had been replicated by Law 25th May 1910 to address the restructuring of the potassium salts' production under State monopoly.

The third stage of the STWS evolution had then took place in wartime, when short-time work had been the result at the same time of raw materials' shortage and the Government's decision on 7th November 1915 to impose working time reduction as a job-rationing device. Since the State was not providing any compensation for short-time work, between 1915 and 1916 some German communities had been filling the gap by organizing STWS in collaboration with the local industry. Community-provided STWS differed one from the other and were namely targeting textile-manufacturing workers, who were anyway not accorded a subjective right to income support. Only toward the end of the conflict the *Bundesrat* had approved, on 31st January 1918, a special scheme for all workers of the industrial sector being suffering from shortage of coal-generated energy. Such scheme was designed in the form of subsidy to employers' provided STWS and was not according workers any subjective right as well.

The fourth development stage of STWS in Germany had finally been that of statutory acknowledgement and incorporation in the unemployment insurance scheme set by Law 16th July 1927 (*Gesetz über Arbeitsvermittlung und Arbeitslosenversicherung*).

As the evolution toward the modern *Kurtzarbeitergeld* had continued through the 30' and the second world conflict (see Holzmayer, 1989), in Italy the first mode of STWS had been that of corporatist-wartime-welfare.

The foundations of the "Ordinary Wage Supplementation Fund" (*Cassa Integrazione Guadagni Ordinaria*, hereinafter, C.I.G.O.), which intervenes nowadays to compensate *force majeure* events and transitory market-induced situations, had been laid down by two collective agreements signed on 13th June and 29th July 1941 between the Fascist Corporations of workers and employers.

After the abolishment of Corporatism in 1943, the C.I.G.O. regulation had been taken up by the Law and adapted to serve as an instrument of post-war-transition labour and social security law (that was notably forbidding employers in the north of Italy to dismiss their employees, see Legislative Decree of the Lieutenant of the Realm no. 523/1945). By Legislative Decree of the Lieutenant of the Realm no. 788/1945, the C.I.G.O. was set up as a separate insurance fund within the National Institute for Social Security (*Istituto Nazionale della Previdenza Sociale*, hereinafter, I.N.P.S.) financed at half by employers and State budget and supervised by a tripartite commission with very little powers (art. 7).

During the "golden age of welfare states" (Esping-Andersen, 1999; Pierson, 1994) STWS were extending their coverage, articulating and enlarging their scopes, spreading in a number of countries and, above all, consolidating as an instrument of economic policy: in Italy, along with the introduction of the "Extraordinary Wage Supplementation Fund" (*Cassa Integrazione Guadagni Straordinaria*, hereinafter, C.I.G.S.), instituted by Law no. 1115/1968 after the lobbing of social partners to allow industrial firms to carry out complex reorganization plans and overcome severe crisis contingencies; in Germany, along with the introduction in 1988 of the *Struktur-Kurzarbeitergeld*, used to manage the country's reunification.

Grais (1983) has been the first to survey STWS in OECD member States, stimulating compared empirical research at the beginning of the 90ies (Abraham and Houseman, 1992, 1993, 1994; Mosley and Kruppe, 1996; Van Audenrode, 1994; Vroman, 1992). While updating Grais' survey ten years later, Béraud (1994) has proposed two couple of categories for the analysis of STWS by classing them according to the dominance of the *insurance* vs. *solidarity* (*prise en charge collective*) logic and the *work-sharing* (*réduction du temps de travail*) vs. *flexibility* logic. Finally, a third dimension, and precisely the increasing importance of *training* during short-time work, had been predicted to play a role in a process of *convergence* of STWS across countries.

As the analytical approach proposed by Béraud has been neglected by empirical research, the dimension of STWS's *governance*, that the author was essentially approximating

by STWS's funding mechanisms, has not formed a specific focus object neither of the time-of-Great-Recession nor of the previous comparative as well as national literatures, which seem on the whole to have explicitly or implicitly assumed STWS to be *regulated and operated* by the central State.

Although the role of social dialogue and labor market stakeholders' involvement in time-of-crisis economic policy of STWS has been pointed out by Eurofound (2010) and Walz *et al.* (2012), in the assessment of STWS's design features the complex dimension of their governance has been mainly reduced to experience rating rules, as well as collective bargaining has been mostly seen as a simple *alternative* to STWS.

The relatively recent delegating Law for the reform of Italian STWS (Law no. 183/2014) had translated the latter conception into the two main principles and criteria of the reform itself: "*the provision of increased cost-sharing from firms in case of use*" (art. 1, paragraph 2, letter a), no. 5) and "*the impossibility to access the C.I.G. scheme prior to the exhaustion of all contractual possibilities to reduce the working time*" (art. 1, paragraph 2, letter a), no. 3). The subsequent Legislative Decree no. 148/2015 has consequently augmented the rate of the additional social contribution due from firms in case of use of the C.I.G. scheme.

What is most important, Law no. 92/2012 and Lgs. D. no. 148/2015 have finally set up the Italian STWS system after almost twenty years of "regulatory experiments".

As we will point out in the following paragraphs, the pattern followed by the Italian STWS's reforms in the age of "permanent austerity" (Pierson, 1998) may be depicted as a "reflexive rebus" approached through experimentation of various regulatory techniques, aiming to find, by trial-and-error, the winning combination between different regulatory sources such as collective agreements, primary and secondary legislation and even discretionary latitudes at various institutional and territorial levels.

Moreover, such regulatory experiments can be assessed with respect to *a peculiar idea of governance* derived from what may be regarded a relatively *long-enduring collective institution*: bilateralism.

3. A theoretical proposal for the assessment of short-time work compensation schemes'

3.1. The Italian case: the "reflexive rebus" of short-time work compensation schemes' reforms

Among the paradigms that have been proposed to describe the patterns followed by Welfare States after the golden age, that of "*retrenchment*" (Pierson, 1994) does not seem to fit the Italian case with respect to STWS reforms.

In fact, if we except Law no. 223/1991, art. 1 - that while reforming the C.I.G.S. scheme had unexpectedly excluded from it industrial firms employing less than sixteen workers - the coverage of STWS has been always extending and never shrinking, as both the C.I.G.O. and C.I.G.S. coverage has been progressively expanding and different schemes have been adding to C.I.G. schemes (see among others: Liso, 1991b, 1997, 2009).

Moreover, it would be improper to talk about a *deregulation* of STWS's discipline, with respect to the Legislator's choice of shifting the regulatory source of non-CIG-STWS from primary to secondary State legislation (Mulé and Di Stefano, 2014). Finally, no *privatization* has occurred as the determination of the contents of non-CIG-STWS regulation has been in fact deferred to collective agreements and neo-corporatist regional agreements (*ibidem*), since such sources have always been transposed into secondary legislation.

At this respect Trampusch (2006 and 2007) has observed the conventional conceptualization of Welfare State retrenchment to be neglecting the (increasing) role of collectively negotiated welfare benefits, suggesting to systematically include the industrial relations' dimension in the comparative research on "*retrenchment*" policies.

Developing Trampusch's approach, Johnson *et al.* (2011) have proposed a concept of "*collectivization of social risks*": anyway, in the Italian case, the increasing role of collectively-provided STWS, developed to fill the gaps of State-provided STWS, has been always reframed by STWS reforms in a setting of increased public regulatory intervention, so that neither privatization nor collectivization have definitively been experienced.

Finally, the concept "*recalibration*" (Ferrera and Rhodes, 2000; Bonoli, 2007) may partly sound neutral with respect to Italian STWS reforms, since short-time-work-induced income loss may be considered both an "old" and a "new" social risk.

Above all, the concept of "risk" itself should be (re)assessed with respect to STWS: such concept is openly challenged in the analysis of STWS like "flexibilization devices", and some empirical research (see Arntz and Wilke, 2009) has interestingly pointed out a

weakened dependency of both firms' STWS benefits demand and temporary layoffs practices from business cycle and even from weather conditions, providing further arguments to consider the former as firms' *organizational strategies*.

Moreover, the strengthening bind between STWS benefits and *training* could substance a STWS recalibration as "*flexicurity instruments*" (Eurofound, 2010, 5).

Along with the considerations expressed above, the paradigm that seems to fit our case is that of a politics of self-governance (Sørensen and Triantafillou, 2009) or, in a labour law perspective, that of a shift toward "reflexive labour law" (Rogowski, 2013).

Such shift, which can be tracked back to Law no. 662/1996, has been described by labor law scholars as an attempt to find "*the best combination between very different regulatory sources*" (Gottardi and Renga, 1998) at the same time "*flexibilizing the relationship between sources*" (Mariucci, 1998).

While adopting a "reflexive regulation" perspective, three inter-related remarks must be anyway done with respect to Italian STWS' reforms and their final outcome (Law no. 92/2012 and Lgs. D. no 148/2015).

As first, although a clear shift from substantive to procedural legal provisions has been experienced, poor formulation of both provisions has typically resulted in Government's large discretionary latitudes in STWS reforms and policies implementation. At the same time (and as a consequence) the Legislator, the Government and the I.N.P.S. have retained a (variable) portion of substantive regulatory powers.

This is in line with the second remark, that regards the prominent role of secondary legislation, in spite of *soft-law*, in the whole sources' architecture (Ministerial Decrees, hereinafter M.D., and Inter-Ministerial Decrees, hereinafter I.M.D., with or without regulatory force).

Finally, all regulatory experiments have been characterized by the common attempt to address a determinate *form of governance*, that of bilateralism.

To bridge reflexive law and bilateralism, another paradigm seems finally to fit to the Italian case at best: that of a "shift from Olson-to-Ostrom logic" in corporatist social insurance and welfare states' evolution (Bannink, 2014).

By taking up the latter paradigm the problem of regulation of self-regulation emerges as a collective action problem and the design of reflexive labour law can be assessed in a "Ostrom logic".

In the following paragraphs, the rationales for adoption of such paradigm will be provided. In Paragraph 3.1. we will address Italian bilateralism with the aim of assessing whether, after almost one hundred years from the beginning of the bilateral experience in the construction sector, bilateral bodies may be explored as a relatively long-enduring collective institution. Paragraph 3.2. will present a review of regulatory techniques experimented by the legislator to address the governance of STWS. Paragraph 3.3. will draw conclusions from the analysis carried out and introduce the second part of the research.

3.2. Bilateral bodies as long enduring institutions?

In Italy, bilateral bodies are institutions established under private law in the form of Association without legal personality (art. 36 of the Civil Code) by workers' and employers' organizations. According to their Statutes, bilateral bodies are typically self-governed by paritarian organs composed by representatives of the founding organizations (for further details, see among others: Bellardi and De Sanctis, 2011; Italia Lavoro, 2013; Leonardi, 2014; Nogler, 2014; Renga, 2013).

Such institutions do not simply constitute an example of *dynamic collective bargaining* (Kahn-Freund, 1954): although nowadays the premises for the establishment and the functioning of bilateral bodies are typically laid out by collective agreements, bilateralism historically precedes both unionization and the structuring of collective bargaining.

Moreover, bilateralism is likely to have played a mayor role in influencing both the structure and the contents of collective bargaining itself, accounting for a higher degree of *institutionalization* of industrial relations in peculiar economic sectors such as constructions and craft manufacturing (Bellardi, 1989).

According to Bellardi's research, the first bilateral bodies had been created in the form of unemployment insurance funds to provide income support for the mechanical industry workers of the Province of Turin (April 1918), for the mechanical and metalworking industry workers of the Provinces of Como and Milan (November 1918) and for the constructions' workers of the Province of Milan (April 1919).

In the framework of the first general compulsory unemployment insurance scheme set up by Royal Law-Decree no. 2214/1919, the latter fund had been in particular authorized to provide unemployment insurance to constructions' workers of the Provinces of Milan,

Como, Cremona and Pavia. After the establishment of a State operated general scheme by Royal Decree no. 3158/1923, the same fund had continued its activity by providing complementary insurance, since seasonal unemployed as well as unemployment resulting from "*periods of normal suspension*" of working activities was not covered by State insurance scheme (arts. 2 and 3).

During the golden age of welfare States, the spreading of bilateral funds at Province level throughout the national territory, promoted by collective bargaining and boosted by the approval of the so called "Vigorelli Act" (see below, Paragraph 3.2 letter B), had represented a collective response to structural change in the constructions sector. The adoption of reinforced-concrete technology, leaving larger room for the adoption of different organizational solutions, had brought to a considerable disintegration, downsizing and dispersion of construction firms (see census data reported and analysed by Bellardi, 1989).

Smaller firms' size joint to (traditionally) higher discontinuity of employment and workers' mobility had thus provided the rationales for pooling the provision of a number of entitlements and occupational welfare benefits, namely seniority benefits, at territorial level. As a result, collective bargaining had developed a nested structure, the national level essentially providing a minimum common set of rules notably to ensure workers' mobility from fund to fund. More recently, the mobility issue has driven the development of construction sector's collective bargaining at transnational level (see Bellardi and De Sanctis, 2011).

Among other occupational welfare provisions, the bilateral fund of the Province of Genoa had been offering a STWS since 1959. As such model had been taken up by collective agreements and replicated in a number of Provinces, Law 2nd February 1963 no. 77 had instituted a dedicated C.I.G.O. scheme for the constructions sector (*Cassa Integrazione Guadagni Edilizia*). After the establishment of an analogous scheme for the agriculture sector by Law 8th July 1972 no. 457 (*Cassa Integrazione Guadagni Agricoltura*), the State has not retrenched but simply *experimented different regulatory models in taking up bilateral models*.

During the 70ies the bilateral model had been extending to craft manufacturing firms, excluded from C.I.G. schemes. As Lagala (1992) reports, bilateral funds had been first established at provincial level to pool resources among all branches (as in the Provinces of Pistoia, Ravenna and Siena) as well as within single branches of craft manufacturing (such

as metalworking in the Provinces of Ferrara and Ravenna and textiles in the Provinces of Bologna, Ferrara, Mantua, Ravenna and Reggio Emilia).

During the 80ies, the spreading of bilateral bodies and funds had accompanied the structuration of a collective bargaining system of craft manufacturing. The National Inter-sectorial Collective Agreements of 22nd December 1983 and 27th February 1987 had thus promoted the establishment of bilateral institutions first at provincial and then at regional level, on an inter-sectorial basis. Finally, the National Inter-sectorial Collective Agreement of 21st July 1988 had promoted the creation of bilateral funds "*for the safeguard of human capital of both workers and entrepreneurs of the artisan trades*", with the significant scope of providing STWS. Such a definition suggests the idea to explore human capital as a "common" (Giovannetti, 2014; Requier-Desjardins, 2004) and STWS as a (relatively) long-enduring institution for its preservation. This suggestion is reinforced by the consideration that the second most successful creations of bilateralism have been training institutions.

Significantly, in the constructions sector, the first bilateral training school had been instituted in 1946 in the Province of Genoa, where few years later the first bilateral STWS was established.

Moreover, within bilateralism two different approaches to flexibility and security seem to have been developed: in the construction sector, as analysed by Bellardi (1989), the development of bilateralism has been driven by the "*acceptance*" of flexibility from the side of workers' unions; in the craft manufacturing, as analysed by Perulli and Sabel (1996, 36), bilateralism's development has represented "*a coherent choice from the side of social partners*" with respect to the model of SMEs' regional conglomerates, consistent with the Italian way to coordination and flexible specialization (see Piore and Sabel, 1984).

In the latter regard, the development of STWS may be explained by artisan flexible firms' concern for autonomy: this would in turn suggest to value a different role of *job-specific* human capital in *construction sector* and *firm-specific* human capital in the *craft manufacturing sector*. Moreover, concerns for autonomy may contribute to explain why bilateralism has produced observatories on the labour market but has not engaged in labour market intermediation (encouraged by Lgs. D. no. 276/2003, art. 2, paragraph 1, letter h), in the framework of the so called "Biagi" labor market reform).

3.3. A review of regulatory techniques

Two premises must be put forward before engaging in a review of the various regulatory techniques that have been experimented in Italy to extend STWS's coverage beyond C.I.G. schemes, with respect to collective bargaining. The first premise concerns the never-implemented disposal of art. 39 of the Italian Constitution (A). The second premise regards a first attempt of transposing the contents of collective agreements into law while waiting for the Constitutional disposal's implementation (B). Moreover, the review encompasses collective regulatory techniques as well (C).

A) Art. 39 of the Constitution

According to art. 39 of the Italian Constitution:

> *"No obligations may be imposed on trade unions other than registration at local or central offices, according to the provisions of the law. A condition for registration is that the statutes of the trade unions establish their internal organisation on a democratic basis. Registered trade unions are legal persons. They may, through a unified representation that is proportional to their membership, enter into collective labour agreements that have a mandatory effect for all persons belonging to the categories referred to in the agreement"*

B) The "Vigorelli Act"

The so-called "Vigorelli Act" (Law no. 741/1959) had delegated the Government to adopt, by Legislative Decrees, minimum economic and legal standards on employment conditions for each "*category*" of workers. According to the principles and criteria set out in the delegating Law, the Government should "*conform to each clause of each collective agreement*" signed by trade unions prior to the date of entering into force of the delegating Law itself (art. 1). The Government should conform as well to collective agreements signed at Province level by trade unions affiliated with a national organization, whenever not according lower standards (art. 4). National and provincial collective agreements' provisions should not be in contrast with the law (art. 5). Minimum standards thus set could be derogated *in melius* by collective and individual bargaining and eventually modified by law while waiting for the Constitutional disposal's implementation (art 7).

By declaring the constitutional illegitimacy of Law no. 1027/1960, art. 1, which had extended the Vigorelli Act's transposition disposal to future collective agreements as well,

the Constitutional Court had stated, with respect to art. 39, that "*any attempt of achieving the same effects through a different disposal would be lacking constitutional legitimacy*" (Ruling no. 106/1962). Nevertheless, the Court had declared the legitimacy of the Vigorelli Act as "*a temporary and exceptional Law intended to regulate a past situation*".

Moreover, the Court had also stated that the notion of "*category*" had to be intended according to the definition given by collective agreements and not according to exogenous classification criteria of economic activities (Ruling no. 70/1963). The Court had finally declared the constitutional illegitimacy of two provisions, contained in Lgs. D. no. 1032/1960 and no. 715/1961, that had been extending to all constructions firms the obligation to contribute to bilateral funds. Nevertheless, in this case the Court's decision was due to inconsistent formulation of both the national and the provincial collective agreements (Ruling no. 129/1963).

C) "Contractualization"

After Constitutional Court Ruling no. 129/1963, the National Collective Labor Agreement of constructions workers signed on 25th November 1966 had inaugurated a new regulatory technique: "contractualization" of bilateral funds' provisions (art. 63). By such technique, the latter have been *incorporated* in the minimum contractual standards on employment conditions. Employers could freely decide whether to provide them directly or through bilateral funds, their employees having in the former case the right to claim provisions directly from firms. Moreover, case-law had significantly recognised all bilateral funds' provisions and even contributions to bilateral funds as *a form of wage* (Cassation Court Ruling no. 524/1998 and no. 249/1999).

The "Contractualization" technique has been adopted and further developed by artisans' organizations in the National Inter-Sectorial Agreement of 23rd July 2012. According to the latter agreement, employers who do not contribute to a bilateral fund are not only responsible for the direct provision of benefits, but must pay to workers and "*additional wage component*". With respect to the additional wage component - whose yearly amount is much higher than the yearly amount of bilateral funds' contribution – law scholars have been questioning the legitimacy of such contractual arrangement (Liso, 2012).

D) "Conditionalization"

Since 1963 the Ministry of Public Works had required constructions firms' willing to award public works to comply with a "social clause" demanding full respect of collective agreements, namely including contribution to bilateral funds. The principle had then been formally laid down by art. 36 of Workers' Statute (Law 300/1970).

Years later, the "social clause" had progressively been extended: Law-Decree no. 71/1993, art. 3, had subordinate the acknowledgement of a tax relief to the "*full respect of the economic and regulative provisions set by collective agreements*" from the side of artisan trades' firms; the so-called "Biagi Reform" (Law no. 30/2003, art. 10) had further extended the latter principle to "*all tax reliefs and facilities*" from the side of artisan and wholesale firms, travel agencies, tour operators and similar firms. Note that in all the mentioned sectors of economic activity bilateral bodies have been established (Leonardi, 2014).

However, notwithstanding the latter two disposals, case-law (see Cassation Court Ruling no. 6530/2001) and even the Ministry of Labour and Social Policies are still oriented to exclude contributions to bilateral bodies among set requirements.

E) The "Merloni Act"

The existence of a plurality of collective agreements signed by different organizations of the constructions sector had brought the Legislator to address the issue of mobility between bilateral funds. The "Merloni Act" (Law no. 109/1994, art. 37) had thus invited social partners to establish, within one year from the date of its entering into force, a memorandum of understanding for mutual acknowledgement between constructions sector's bilateral funds: after the elapsing of such term, a legal regime of mutual acknowledgement would have automatically been established. Despite term's prorogation, no understanding had been signed and the Merloni Act's disposal has entered into force.

The constitutional legitimacy of such disposal with respect to art. 39, questioned by some law scholars, (Miscione, 1997) has never been addressed by the Constitutional Court.

F) National Paritarian Inter-professional Vocational Training Funds

The "Framework Act on Vocational Training" (Law no. 845/1978, art. 25) had created a State fund for the financing of vocational training policies. To finance the fund, established within the Ministry of Labour and Social Security, employers had been charged an additional social contribution amounting to 0.30% of the workers' gross wages. Years later, the so called "Treu Package" (Law no. 196/1997) had conveyed such tax to "*one or more national funds, articulated at regional and at territorial level, to be established under private law and managed with the participation of social partners*" (art. 17, paragraph 1, letter d). Finally, the Budget Law for the year 2001 (Law no. 388/2000, art. 118) has promoted the creation, by collective agreements signed between the most representative workers' and employers' organizations at national level, of "*National Paritarian Inter-professional Vocational Training Funds*" (Fondi Paritetici Interprofessionali Nazionali per la Formazione Continua, hereinafter, F.P.I.) to finance vocational training programs at sectorial, territorial and firm level. Programs shall be agreed between employers' and workers' representatives and shall be funded at 50% or 100% depending of geographical location. FPI can be established in the form of Association with or without legal personality (arts. 12 and 36 of the Civil Code), have to be established at sectorial level and may be articulated at regional or territorial level. Employers are free to decide whether to destine the 0.30% contribution to an authorized F.P.I. or to the I.N.P.S. Contributions are collected by the I.N.P.S. and redistributed to F.P.I., together with the sums resulting from possible sanctions. F.P.I. are authorized and supervised by the Ministry of Labor and Social Policies.

By Law-Decree no. 185/2008, converted into Law no. 2/2009, F.P.I. had been temporarily and exceptionally authorized to provide income support to workers (art. 19, paragraph 7) in the framework of anti-crisis policies.

Finally, the Fornero Reform (Law no. 92/2012, art. 3 see below, J) has given collective agreements signed between the most representative workers' and employers' organizations at national level the power to decide the dissolution of F.P.I. into the new "Bilateral Solidarity Funds" (paragraph 13) or, in alternative, to destine the 0.30% social contribution to bilateral wage funds (paragraph 15 letter d).

G) Solidarity Agreements

Law-Decree no. 726/1984, converted into Law no. 863/1984, art. 1, had introduced an additional version of C.I.G.S.-funded benefit, which was conceived to avoid layoffs though

work-sharing agreements at plant level in case of redundancy (the so called "Defensive Solidarity Agreements", *Contratti di Solidarietà difensivi*)[1]. Law-Decree no. 148/193, converted into Law no. 236/1993, had in turn created a similar version of such benefit to be accorded outside the C.I.G.S.' scope (art. 5 paragraph 5). Moreover, paragraph 8 of the same article subordinated the access to the latter benefit from the side of artisan firms upon the condition that bilateral wage funds should finance the 50% of the benefit itself.

To date, the institution of Defensive Solidarity Agreements has been reconfigured as one of the three hypothesis of intervention of the C.I.G.S. scheme (art. 21 Lgs. D. no. 148/2015).

H) Temporary Agency Work Funds

While introducing temporary agency work in Italy, the "Treu Package" had charged agencies an additional, dedicated social contribution amounting to 5% of temporary workers' gross wages. Such contribution had been destined to a State fund, established within the Ministry of Labour and Social Security and regulated by secondary legislation, dedicated to the financing of temporary workers' vocational training. Vocational training policies had to be defined by collective agreements or, alternatively, by a tripartite Commission, which detained the power to approve vocational training projects. Regions might take part in projects' financing and priority should be given to projects presented in collaboration with bilateral bodies. Collective agreements could enable the fund to deliver further provisions, and notably income support measures, subject to augmentation of the social contribution's rate. Such augmentation had to be adopted by secondary legislation.

The so called "Biagi Reform" (Lgs. D. no. 276/2003) has disposed the substitution of the latter fund by a new one to be established under private law in the form of Association with or without legal personality (artt. 12 and 36 of the Civil Code), even within already existing bilateral bodies. The social contribution rate has been brought to 4% and the fund has been enabled to provide active and passive labour market policy measures. Such measures have to be defined by collective agreements or, in alternative, by secondary legislation adopted after consultation with the most representative workers' and employers'

[1] Art. 2 of the same Law-Decree had as well introduced the so called "Expansive Solidarity Agreements" (*Contratti di Solidarietà espansivi*), an institution providing for a short-time work start-up allowance in case of adoption, by a firm, of work-sharing policies aimed at augmenting employment levels by hiring new workers. This institution is to date regulated by art. 41 Lgs. D. no. 148/2015.

[2] By the expression "*social shock absorbers*", derived from the political and industrial relations' jargon and taken

organizations. The level of the contribution rate can be varied by secondary legislation after consultation with the most representative workers' and employers' organizations. The Fornero Reform has finally brought the contribution rate to 2,6% (art. paragraph 39 Law no. 92/2012).

I) The "pilot" reform of STWS: sectorial Solidarity Funds

Art. 2, paragraph 28 Law no. 662/1996 (hereinafter, in short, "paragraph 28") had introduced provisions "*on a pilot basis*" in the waiting of a general, systematic reform of "*social shock absorbers*"[2]. More in particular, the Government had been delegated to adopt, after hearing the social partners, one or more Decrees to introduce active and passive labour market policy measures on behalf of "*categories and business areas*" and "*bodies and public and private companies operating in the public utility services*" excluded from C.I.G. schemes. Among principle and criteria for the exercise of such regulatory power were: the "*setting up, by national collective agreements, of specific funds financed by a social contribution of at least 0.50% the gross wage*" (letter a); the concomitant definition of active and passive labour market policy measures by the same collective agreements (letter b); the institution of such funds "*within the I.N.P.S.*" and their management "*with the help of social partners*" (letter e).

Finally, an additional social contribution, set at maximum rate of 1,50%, had to be charged when drawing provisions from the funds (letter d). Contributions should normally be charged on employers unless a contribution up to 25% being asked to workers (letter c).

The "minimal design" of the so called "paragraph 28" (Miscione, 1998) and its implementation had raised a number of questions among labour law scholars. In fact, the Government had in turn interpreted its role in a broader "pilot" basis, by resolving to issue a "framework regulation" conceived to complete and clarify paragraph 28 and to provide guidance for collective agreements. Such a regulation, approved by I.M.D. no. 477/1997, had further extended the Government's powers by establishing that, by future Decrees, specific sectorial Regulations would have been approved once collective agreements be signed and sent to the Ministry of Labor and Social Policy. By the latter disposal, a new, out-and-out rule-making system, that had not been previsted by the delegating law, had been established (Magri, 1998).

[2] By the expression "*social shock absorbers*", derived from the political and industrial relations' jargon and taken up by the Law for the first time in "paragraph 28", the Italian legislator has meant the portion of labor welfare system made up of short-time work compensation schemes and unemployment benefits' schemes.

According to Magri, such system was likely to be incompatible with the rules on legislative function's delegation laid down in the Constitution of the Italian Republic (art. 76 Const.[3]): on the one hand, the Government had been delegated to transpose unknown rules from future collective agreements, without the provision of a time limit; on the other hand, Government had been accorded virtually unlimited powers. In fact, both flaws were due to poor formulation of delegating principles and criteria and, on the whole, of "paragraph 28" itself: nevertheless, the harmony between collective agreements and decrees resulting from its implementation has been interpreted by law scholars as to the prove that "paragraph 28" had been previously negotiated with the social partners (Pandolfo and Marimpietri, 2001, 103).

Some scholars had been even questioning the Constitutional legitimacy of such disposal with respect to art. 39 (Gottardi, 1998): note that, probably being mindful of the Constitutional Court Ruling no. 106/1962, the Legislator had stressed the temporary and "*pilot*" nature of "paragraph 28" provisions, adopted "*in the waiting*" of a general, systematic reform.

The first collective agreements under "paragraph 28" had been signed by the organizations of the banking and cooperative banking sector on 28th February 1998, providing the model and the denomination for the so-called "Solidarity Funds". The content of such agreements had been transposed in I.M.D. no. 157/2000 and no. 158/2000 without any substantial modification, except specifying the powers of the tripartite Committees in charge for the management of the funds. Beyond banking, Solidarity Funds had been established both at sectorial (as for the insurance and tax collection services) and firm or group level (as for railways, postal services and former State monopolies): the peculiar characteristics and the historical contingencies of such businesses, hit by liberalization and privatization policies and undergoing restructuring processes, had thus shaped the typical features of the funds.

Three kinds of measures where typically provided by Solidarity Funds: training and short-time work benefits, respectively in the form of a wage replacement and a wage supplementation allowance, and early retirement incentives, in the form of monthly allowance a or a lump sum offered to workers close to qualify for a retirement pension.

[3] Art. 76 of the Constitution of the Italian Republic states that: "*The exercise of the legislative function may not be delegated to the Government unless principles and criteria have been established and then only for a limited time and for specified purposes*".

Training and short-time work benefits, also called "*ordinary*" benefits, measures or provision, were financed by social contribution (the so called "*ordinary contribution*"), which was credited on firms' virtual saving accounts. A single employer could typically draw training benefits, on behalf on its own workers, up the amount of its total saving in a certain time span, and short-time work benefits up to the double. Early retirement incentives, also called "*extraordinary*" benefits, measure or provisions, typically consisted of an early retirement scheme in form of a monthly allowance equal to the expected amount of the future retirement pension. Such scheme was totally financed by employers, who had to transfer to the fund the needed amount, in case of use. Solidarity Funds were managed by tripartite paritarian Executive Committees which were significantly accorded the power to suspend the obligation to pay ordinary contributions whenever resources be sufficient for the provision of training and short-time work benefits. Since the latter measures, and especially short-time work benefits, had been scarcely if not virtually never claimed by employers, suspensions had represented the rule rather than the exception.

In fact, massive use of collective dismissals and consensual termination of employment relationships with senior workers, in typically overstaffed firms, had resulted in massive use of extraordinary benefits. The scarce use of ordinary benefits had brought in turn social partners to reform the fund (Collective Agreement 16th December 2009) and to unanimously take position against the extension of the C.I.G. (Collective agreement 20th June 2007).

H) The "non-reform" of STWS: "exceptional" STWS

Since 2002 Budget Laws have regularly financed an "exceptional" STWS (*Cassa Integrazione Guadagni in deroga*, hereinafter, C.I.G.D.). Such scheme has been conceived through a new regulatory technique: the Law has simply authorized the Ministry of Labour and Social Policies to derogate, by secondary legislation, to ordinary STWS legislation, subject to a (very) minimal set of prescriptions (see among others: Barbieri, 2009; Liso, 2009).

In such a framework, the Ministry of Labor and Social Policies has in fact delegated the whole C.I.G.D. regulation, governance and management to the Regions. Regions have in turn involved social partners and bilateral bodies in the whole policy cycle, performing a sort of regional neo-corporatism (Mulé and Di Stefano, 2013, 2014). The regulation of the

C.I.G.D. has been thus laid out in tripartite agreements and wholly transposed in Inter-Ministerial Decrees.

The C.I.G.D. has been first used to absorb the crisis of automotive and the textile manufacturing sector; from 2009, the scheme has turned to be the main policy response of the Italian Government to the Great Recession (Mulé and Di Stefano, 2013). On the whole, the policy may be thought to have played a major role in preserving human capital of SMEs (Mulè and Di Stefano, 2013, 2014).

Moreover, from 2009, the C.I.G.D. has been partly financed by the European Social Fund. The latter circumstance has led in turn to the necessary reconfiguration of the measure, which has been integrating activation policies as well.

The implementation of new, "active" C.I.G.D. has finally lead to further involvement of bilateral bodies on the both sides of passive and active labour market policies governance (see for further details: Mulè and Di Stefano, 2013, 2014). The State-Region Agreement (Accordo Stato-Regioni) of the 12th February 2009 and subsequent agreements had finally framed the C.I.G.D. in a formalised set of rules and procedures turning "exceptional social shock absorbers" into a "system", with the disclaimer that the policy "*does not represent nor a reform neither a devolution of social shock absorbers, but rather a joint effort between the State and the Regions due to the exceptionality of the current economic situation*". At the very last stage, the Government had issued a Decree (I.M.D. no. 83473/2014) providing uniform criteria for the examination of C.I.G.D. claims throughout the national territory.

The system of exceptional social shock absorbers, whose gradual abolition had been scheduled by the Fornero Reform parallel to the implementation of Bilateral Solidarity Funds (see below, letter J), will cease to exist by the year 2017.

I) Unemployment insurance-incorporated STWS

Law-Decree no. 35/2005, converted into Law no. 80/2005, art. 13 paragraphs 7 and 8, had formally inaugurated an unemployment insurance-incorporated STWS. More precisely, the law had allowed for the use of unemployment benefits in case of 100% working time reduction due to transitory events and market situations in firms excluded from C.I.G. schemes. The claim of unemployment benefits on behalf of the employees of artisan firms was allowed upon condition that bilateral wage funds finance the 20% of the benefits themselves.

Law-Decree no. 185/2008, converted into Law no. 2/2009, had extended the latter condition to all firms (art. 19, paragraph 1, letters a) and b) and the Fornero Reform had prolonged the validity of the legal provision until 2017 (art. 3 paragraph 17 Law no. 92/2012). Note that claim of unemployment benefits in case of 100% working time reductions had been admitted even before 2005 by some I.N.P.S. territorial offices.

J) The "final reform" of STWS: Bilateral Solidarity Funds

Law no. 92/2012 (so called "Fornero Act", after the name of the Minister of Labor and Social Policies Elsa Maria Fornero), art. 3, has provided STWS to cover all firms having more than fifteen employees and not being already included in C.I.G. schemes (paragraph 10).

The coverage of the C.I.G.S. scheme has been simultaneously extended to stably include airlines and other airport-located businesses, as well as medium and large wholesale, private security, travel agencies, tour operators and similar firms (paragraph 1). To convey the extension of STWS beyond the area of C.I.G. three options have been made available:

- A *privileged* option (paragraph 4), by which the social partners have been invited to draft, in national collective agreements at sectorial or inter-sectorial level[4], the regulation of "Bilateral Solidarity Funds" (*Fondi di Solidarietà Bilaterali*) to be established within the I.N.P.S. and regulated by secondary legislation, on the model of former Solidarity Funds (see letter I of the present paragraph). This model has been defined by Liso (2013) as a "*spurious*" bilateral model, not to be confounded with the "*pure*" bilateral model (see below);
- A *reserve* or *default* option (paragraph 19), consisting in a "Residual Solidarity Fund" (*Fondo di Solidarietà Residuale*) to be directly established and regulated by Government within the I.N.P.S. and destined to provide a STWS to workers and firms not covered by a Bilateral Solidarity Fund or an "alternative" Bilateral Solidarity Fund (see below);
- An *alternative* or *last-minute* option (paragraph 14), introduced by an amendment in the process of Law 92/2012 approval, allowing continuation, subject to a set of legal prescriptions, of bilateral wage funds under private law in economic sectors characterized by "*settled bilateral systems*". This model, in the context of the Fornero Reform, has been defined the "*pure*" bilateral model (Liso, 2013).

[4] On the role and functions of collective bargaining in the broader framework of the Fornero Reform see Senatori (2012).

On the whole, the principal novelty brought about by the reform has therefore been represented by the Residual Solidarity Fund, established by I.M.D. no. 79141/2014. For the rest, the "minimal design" of the Fornero Reform has left large room for discretionary choices in its implementation, with regard both to former Solidarity Funds' reconvention and bilateral funds' adjustment (regulated by art. 3 paragraphs 15, 42-47 Law no. 92/2012) and the creation of totally new Bilateral Solidarity Funds (regulated by art. 3 paragraphs 4-41). Discretionary spaces have persisted although much more detail has been provided by Law no. 92/2012 compared to Law 662/1996 (above, letter I), notably with respect to the STW benefits' design (see art. 3 paragraphs 31-32 Law no. 92/2012).

The Jobs Act has definitively settled such an institutional setting while intervening on selected design elements of both C.I.G. and non-C.I.G. schemes.

3.4. The analytical setting

Some preliminary conclusions may be drawn from the analysis carried out in the present Chapter:

1. STWS are historically born in form of company welfare as a kind of *flexible and reliable contractual arrangement negotiated at individual or at firm level* (Paragraph 2). In Italy, the development of bilateralism at provincial or regional level represents a form of pooling (Paragraph 3.1);
2. Bilateralism is a constant reference term with respect to the different regulatory techniques that have been experimented in Italy to extend STWS after the last C.I.G. scheme has been established in 1972 (Paragraph 3.2);
3. After almost one hundred years from the beginning of the bilateral experience in the construction sector, bilateral bodies and funds may be explored as a relatively long-enduring collective institution, namely with respect to value for human capital (Paragraph 3.1).

Empirical investigation on bilateral funds with respect to STWS is dumped by both the process described in the same Paragraph 3.1, ended up with the establishment of C.I.G.O. schemes, and the policy of "exceptional STWS", described in Paragraph 3.2. H), intended to cover firms and economical sectors excluded from the scope of statutory STWS. Such processes and policies have been consequently progressively restricting the target of

bilateral funds' income support measures. The present research is therefore focused on two STWS: the C.I.G.O., as the longstanding Italian STWS (see Paragraph 2), and Solidarity Funds (see Paragraph 3.2. J), that have represented the first "pilot experiment" for the establishment of a non-C.I.G. STWS and have provided the model for the Fornero Reform, subsequently taken up by the Jobs Act.

Chapter II engages in the reconstruction of such "pilot experiment" by resorting to sources like parliamentary documents, legislation, collective agreements, praxis and the I.N.P.S. annual financial balances, in view of its assessment, also with respect to C.I.G. and the STSW reform, which will be carried out in Chapter V. Its is worth pointing out that any assessment of Solidarity Funds has been performed to date, namely before taking such funds as a model for the STWS reform. And indeed the prior evaluation of a "pilot experiment" results would have been not only due, but also very useful, under different profiles; since the experiment has been carried out in the service sector, and the institution of STWS has born in the industrial sector; since the experiment has been taken as a model by the final STWS reform, lastly settled by Lgs. D. no. 148/2915 in the framework of the "Jobs Act"; since the legislator has not only picked up the model of Solidarity Funds but has also modified some significant element of the scheme's design.

Chapter III, dedicated to the assessment of the relationship between the C.I.G. and collective bargaining, is meant to answer the question whether legal and contractual institution for working time (re)arrangement, managed either collectively or individually, may provide a substitute to STWS, upon what conditions, and with what possible outcomes, at least in the Italian case; such an assessment is in particular carried out in relation to the condition for the admission to the C.I.G.O. benefit., that represent "*the problematic fulcrum of the institution*" (Lenti, 1979, 566); the extent of the role social partners can play through collective bargaining in the governance of the scheme is therefore and consequently derived.

Chapter IV is meant to complete the latter analysis by reconstructing, through analysis of the only secondary source openly available to date (*i.e.* case-law), the role of the C.I.G.O. statutory governance bodies competent to decide upon claims and the practices effectively followed throughout the Italian territory at this respect. Such an analysis is needed since it is not "*scientifically possible to construct a whole juridical configuration of the C.I.G. without first assessing its political and economical configuration*" (Lenti, 1979, 560), which, given vague

formulation of eligibility conditions, can be only derived from the assessment of such practices.

CHAPTER II

THE GOVERNANCE OF SOLIDARITY FUNDS ESTABLISHED UNDER ART. 2 PARAGRAPH 28 LAW NO. 662/1996

1. The "classic" models: the Solidarity Funds of banking and cooperative banking sectors

The path that has led to the approval of Law no. 662/1996 and to the establishment of the first Solidarity Funds in the banking and cooperative banking sectors has been anything but short, predetermined and linear.

Originally, Bill no. 2372 presented by the Prodi Government to the Chamber of Deputies on 30th September 1996 did not envisaged the introduction of experimental measures on behalf of firms excluded from STWS, but rather the temporary extension of the C.I.G.S. and Mobility[5] benefits "*to the State Railways company* [Ferrovie dello Stato S.p.A.], *the Italian Posts* [Ente Poste Italiane], *the Autonomous Administration of State Monopolies, the Company for the railways operating on the basis of a concession and the railways under governmental management commissioner, the National Body of State Roads and the Municipal utility companies*" (art. 29) [6].

Such provision outlined a tailor-made measure destined to precise recipients, who were yet provided a less favourable treatment compared to the general rule: unlike the industrial sector and the other categories of undertakings already included in scope of C.I.G.S. and Mobility scheme, the listed bodies and companies could be accorded benefits "*up to the amount…of the social contribution due by recipients*" themselves, without the financial help of the State. The consequential establishment of dedicated funds within the I.N.P.S., distinct from C.I.G.O. and C.I.G.S. funds and provided with financial autonomy, had been concomitantly disposed.

---

[5] The "Mobility allowance" (*indennità o trattamento di mobilità*), in force till 1st January 2017 and subsequently abolished by the Fornero Reform, consisted of a special, more generous unemployment benefit reserved to workers dismissed from firms falling within the scope of the C.I.G.S. scheme. The institution of "Mobility" (mobilità) had been introduced and regulated by Law no. 223/1991, arts. 4 to 9.

[6] *http://leg13.camera.it/chiosco.asp?content=/_dati/leg13/lavori/stampati/sk2500/frontesp/2372.htm*.

During the discussion in the Parliament, the Government had unexpectedly modified such policy by presenting an amendment to substitute the entire article 29[7]. The new proposed text[8] was already a rudimentary version of "paragraph 28"[9], which would take its final shape during the Bill examination by the competent Committee of the Senate[10].

Compared to the original text innovations were considerable, both in formal and substantial terms: on the one hand, it had been decided to resort to an absolutely new regulatory technique; on the other hand, it had been decided to extend the scope of the provision to all economic sectors excluded from STWS.

Such a change in the perspective is also reflected in the paths that has led to the funds' establishment: the first actors to take the initiative for their creation were in facts the social partners of those sectors that originally Bill no. 2372 had not mentioned at all.

---

[7] The course of events emerges from the parliamentary debate and is summarized with efficacy in the speech of MP Teresio Delfino, who had criticized the switch "*from an article ... providing very precise rules, to another that subordinates the exercise of regulatory powers by the Government to certain guiding principles and criteria on which the Parliament could not in any way express its opinion*", with the result of attributing "*wide discretionary powers to the Government*"; in the words of the minority speaker MP Nicola Bono, the new article had introduced "*a surreptitious delegation…of regulatory powers that, in the present case, becomes substantial, since they involve a number of competences that the Government arrogates to itself with respect to a future, alleged, better not defined bargaining activity with the trade unions of the services sector*" (*http://leg13.camera.it/chiosco.asp?content=/_dati/leg13/lavori/stenografici/framedinam.asp?sedpag=sed094/s000r.htm*).

[8] "*Within 180 days from the date of entry into force of the present law, with one or more decrees of the Ministry of Labour and Social Security, in consultation with the Ministry of the Treasury, adopted under Article 17, paragraph 3 of Law 23 August 1988 n. 400, after hearing the trade unions and obtaining the opinion of the competent parliamentary committees, measures for pursuing active policies of income and employment support in the context of firms' and sectors' restructuring processes and to deal with crisis situations affecting bodies and State and private companies operating in the public utilities services, as well as affecting the categories and areas of economic activity not covered by social shock absorbers, are defined. The exercise of regulatory power is subject to the following principles and criteria: definition, by national collective bargaining, of specific measures; financing of such measures by social contributions to be shared between employers and employees; definition of the benefit's amount as comprehensive of all due social contributions; definition of the management criteria for the fund; definition of the procedures and criteria for the admission to the benefits within the limits of the available resources, and consequent establishment within the INPS of a dedicated fund; achievement of higher net income contribution for at least 150 billions of Lire for the year 1997*" (amendment no. 30.26 to Bill A.C. no. 2372/1996).

[9] "*In the waiting for a systematic reform of social shock absorbers, within 180 days from the date of entry into force of the present law, with one or more decrees of the Ministry of Labor and Social Security, in consultation with the Ministry of the Treasury, adopted under Article 17, paragraph 3 of law 23 August 1988, n. 400, after hearing the trade unions and obtaining the opinion of the competent parliamentary committees, measures for pursuing active policies of income and employment support in the context of corporate restructuring and to address crisis situations of bodies and public and private companies operating in the public utility services, as well as affecting the categories and business areas not covered by social shock absorbers, are defined on a pilot basis. In the exercise of regulatory power the Government shall adhere to the following principles and criteria: a) setting up, by national collective agreements, of specific funds financed by a social contribution of at least 0.50% the gross wage; b) definition, by the same agreements, of specific measures and related criteria, amounts and procedures for their approval, within the limits of the resources set aside, and definition of the measures' amount as comprehensive of all due social contributions; c) possible participation of employees in the financing of the social contribution up to the 25%; d) in case of use of the measures, provision of a compulsory additional social contribution to be set at a rate not exceeding three times the rate of the social contribution itself; e) establishment of the funds within the I.N.P.S., to be managed with the help of social partners; f) achievement, limited to the year 1997, of higher net contributory revenue totalling 150 billions of lire*".

[10] On that occasion, in addition to explicitly provide for the "*creation of specific funds financed by a social contribution amounting to at leats 0.50% the gross wage*", the "experimental" nature of the new provisions had been stated, by coining the famous formula "*in the waiting for a systematic reform of social shock absorbers*" (*http://www.senato.it/service/PDF/PDFServer/BGT/00300716.pdf*).

Six months after the entry into force of Law no. 662/1996, by the Memorandum of Understanding on the banking sector signed on 4th June 1997, the Government and the social partners had formally committed to resort to "paragraph 28" to address "*a radical restructuring of the sector in a logic of efficiency and international competitiveness*". However, the Memorandum's approval had not produced an immediate result: more than six months later, not only any collective agreement had been signed, but the Parliament had intervened again to facilitate an alternative solution for the management of redundancies in the banking sector, exceptionally authorizing the delivery of voluntarily early retirement incentives from supplementary pension funds, in the waiting of the establishment of sectoral funds under "paragraph 28" (art. 59 paragraph 3 Law no. 449/1997) [11].

Two months later, on 28th February 1998, two "twin" collective agreements had been finally signed for the constitution of the "*Solidarity Fund for income support, employment and reskilling of bank employees*" [12] and the "*Solidarity Fund for income support, employment and reskilling of cooperative bank employees*" [13]. These agreements, which have represented the first implementation of "paragraph 28", have provided the model for both the Solidarity Funds and the Bilateral Solidarity Funds, as they have shaped in fact all collective agreements signed pursuant either to Law no. 662/1996 or to Law no. 92/2012.

Among the founding principles of the new STWS established by the twin agreements, the first and most important was that which delimited its scope: recipients of the benefits provided by the two funds were, respectively, "*the employees of the banks, even belonging to banking groups and associations of banks, who apply the national collective labor agreements of the banking sector and their complementary agreements*" and "*the employees of all employers, even belonging to banking groups in the cooperative banking system, applying the national collective labor agreements for cooperative, rural and artisan banks and its complementary agreements*" (arts. 3).

The criterion of the national collective labor agreement applied had prevailed over the exogenous criterion normally used by the I.N.P.S. to classify employers according to their economic sector of activity, as the result of the settlement of a practical issue arisen from the outsourcing practices adopted by banks[14]. The new-born undertakings resulting from

[11] *http://www.parlamento.it/parlam/leggi/97449l08.htm#legge*.
[12] *https://www.abi.it/DOC_Lavoro/Relazioni-sindacali/Fondo-di-solidariet%C3%A0/tmp986282754053_0Accordo_Istituzione_Fondo_ex_lege_662.96.pdf*.
[13] *http://www.fabibcc.it/wp-content/uploads/documenti/DOC_000017.PDF*.
[14] As specified in I.N.P.S. Circular letters no. 193/2000 and no. 194/2000, for the purpose of determining the scope of the two funds reference shall be made "*to the collective contractual arrangement applying to the employees concerned, the economical sector and the social security classification of the employer's activity not being relevant*". To serve this

the outsourcing of activities formerly carried out in-house by banks, while continuing to apply the national collective labor agreement of the banking sector belonged to different economic sectors, already included in the scope of the C.I.G. scheme. That was the case, in particular, of software firms, classed in the industrial sector by the I.N.P.S. and therefore covered by the C.I.G., who had found themselves to be subject to a double contribution regime (Gallo, 2001).

Accepting the proposal formulated by Executive Committee Director of the banking Solidarity Fund, the Ministry of Labor and Social Security, on the basis of a questionable interpretation of the "*true purpose of Law no. 662/1996*" [15], had paradoxically exempted such firms from the payment of C.I.G.S. and Mobility contributions: not only the problem of double contribution had not been eliminated, to the extent that it remained with respect to the C.I.G.O. benefit (that represented a substantial duplication of the benefit provided by the funds in the event of short-time work or temporary suspension of the working activity); what is most significant, the experimental regime reserved by "paragraph 28" to the areas excluded from STWS had been turned from residual to predatory, *i.e.* potentially capable to erode the scope of the C.I.G. statutory scheme.

As a corollary of the criterion of the national collective labor agreement applied was the criterion subordinating the access to the fund's benefits to the respect of the procedures set down therein to regulate the introduction of changes in the working conditions or the reduction of employment levels (art. 8) [16]; in case of redundancy, the criteria for selecting workers to be made redundant were instead directly specified (art. 9) [17].

---

purpose, employers were required to issue to the I.N.P.S. an official declaration indicating the national collective labor agreement applied.

[15] See Note from the Ministry of Labor and Social Security of 23rd April 2001 and I.N.P.S. Circular letter no. 100/2001.

[16] More precisely, the access to the three different types of benefits provided by the funds was conditional: in the case of the financial contribution to the funding of reskilling programs, to "*the compliance with the contractual procedures regulating any process suitable to affect the working conditions of the employees*" (art. 8 paragraphs 1 letter a); in the case of income support for short-time work or temporary suspension of the working activity, to "*the compliance with the contractual procedures regulating any process affecting the working conditions of the employee and/or having a negative impact on employment levels, as well as with the procedures set down by the law, if provided*" (letter b); finally, the access to the extraordinary income-support measure was conditional "*to the compliance with the legal and contractual procedures regulating processes having a negative impact on employment levels*" (letter c).

[17] Pursuant to article, 5 paragraph 1, Law no. 223/1991, the identification of redundant workers shall first concern, compatibly with the technical and organizational needs of the employer, the workers who are eligible for retirement. The identification of further workers to be made redundant shall take place by adopting, as a priority, the criterion of the greater proximity to the fulfilment of the requitements to retire. Whenever the number of such workers be greater than the number of redundancies, priority shall be given in first place to the voluntary choice of the workers, taking into account, subsequently, the workers' family burden.

As regard the funds' provisions, they consisted of three measures. Among these is worth to mention as first the financial contribution to the funding of reskilling programs (art. 6, paragraph 1, letter a) [18], which has been taken up by the Fornero Reform (see art. 11 paragraph 3 letter. c) of Law no. 92/2012), the second and third provision being, respectively, that of "*specific income support to employees involved in short-time work or temporary suspension of the working activity*" (letter b) and that of "*extraordinary income support...to employees involved in early retirement incentivising procedures*" (letter c).

The latter benefit was reserved to workers missing up to sixty months to the fulfilment of the minimum requirements established by the legislation in force for the acknowledgement of a retirement pension. The benefit's amount was established in order to equal the amount of the future retirement pension and could be paid to the worker for a maximum of five years, during which the due social contribution to retirement funds was also granted (art. 6 paragraph 4); alternatively, the worker could opt for the payment of a lump sum equal to the 60% of the virtual benefit value, calculated according to the official discount rate in force at the time of claim, without the provision of any social contribution (art. 6, paragraph 2).

The design of the new scheme was completed by its distinctive funding system.

First, it need to be accounted for the social partners' decision to charge the new social contribution, set down by "paragraph 28" at a 0.50% rate, only on the gross wage of the workers employed under open-ended contracts, in the context of a labour market characterized by the increasing use of atypical work (arts. 7 paragraph 1, letter a) [19].

Secondly, the latter contribution, denominated "ordinary contribution", was intended exclusively to cover the fund's "*management and administrative costs*", as well as the costs of the so called "*ordinary measures*", *i.e.* the wage replacement allowance for the participation in reskilling programs and the income support allowance provided in case of short-time work or working activity suspension. The latter two benefits were granted to workers according to the principle of "*proportionality*" laid down in arts. 10 of the twin agreements. According to such principle, the first benefit could be granted up to the total amount of the ordinary contribution paid by each employer, while the second benefit, as well as the combination of

[18] The collective agreement of the cooperative banking sector differed from the collective agreement of the banking sector by the specification that reskilling programs may be implemented "*at the enterprise level, as well as at provincial, regional and/or interregional level*".

[19] See on this point Gottardi and Renga (1999), who stress in particular the increasing use of training and work experience contracts (*contratti di formazione e lavoro*).

the both, could not lead to an expense exceeding twice the ordinary contribution paid (paragraphs 3 and 4). In the last two cases, the payment of the due social contribution was also granted (art. 7 paragraph 1, letter b); only with respect to the short-time work compensation allowance an additional contribution, amounting to 1.5% the gross wage, was also due in case of use.

The funding of the extraordinary measure remained up to the employer, required to pay, in case of use, "*an extraordinary contribution... corresponding to the amount needed to cover the cost of the benefit...and the social contribution due to retirement funds*" (art. 7 paragraph 3). Only the collective agreement of the cooperative banking sector envisaged a solidarity mechanism in the event of insolvency of an employer: for this purpose, the Executive Committee had been given the power to raise an additional contribution to be shared among all other employers.

The rule which anchored the value of the extraordinary benefit to the conditions (*i.e.* the official discount rate) existing at the date of conclusion of redundancy procedures was designed to allow employers to calculate the exact cost of labour force downsizing programs and to plan their implementation over the funds lifecycle, originally set in ten year (arts. 18).

With the aim of reducing the costs borne by employers, both agreements of the banking and cooperative banking sectors had also established a special, shared Registry of extraordinary benefit recipients, conceived to encourage their re-employment at the same time preventing possible abuses (arts. 13): the extraordinary benefit was in facts incompatible with any income deriving from a working activity carried out on behalf of a competitor of the former employer (arts. 12 paragraphs 1).

Given the relative simplicity of the funds' financial mechanisms, the twin agreements allowed for the suspension of the obligation to pay ordinary contribution "*in case of achievement of sufficient financial resources to ensure, at a steady state, the granting of benefits according to the needs of the economic sector*"[20].

Another important principle was that of "*concurrence*" between ordinary benefits and other measures of active and passive labour market policy already provided by the Law (artt. 6 paragraphs 1, point 1 letter a) and b). Such principle had been notably embedded in the rule which prescribed, in case of success of workers' reskilling programs, the gradual

[20] Art. 7 paragraph 4 of the banking sector collective agreement and art. 7 paragraph 5 of the cooperative banking sector collective agreement. The suspension of the obligation to pay ordinary contribution had to be approved by the funds' Executive Committees (arts. 5 paragraphs 1 letters d).

reimbursement of part of the benefits received by the employer as a condition to access to further measures provided by the funds (arts. 10, paragraphs 7). In the opinion expressed on the schemes of Decrees for the funds' establishment on 30th August 1999, the Italian Council of State had advocated the strengthening of such a mechanism, suggesting that priority should be given to co-financed programs. The Ministry of Labour and Social Security had yet not followed the suggestion, confirming the priority and shift rules between firms set down in the twin collective agreements[21].

Whilst the early retirement incentive and the new "reskilling" allowance had represented, respectively, the *raison d'être* and the main innovation introduced by the twin agreements of 28th February 1998, it is indeed significant that the social partners had decided to include, among the measures granted by the funds, also a benefit modelled on the C.I.G., though its provision not being prescribed by Law no. 662/1996.

Such measure accorded the 60% of lost wage[22], plus the related social contributions, to employees affected by "*short-time work or temporary suspension of the working activity*" (arts. 6, paragraphs 1 points 1 letters b) as a result of "*restructuring processes and/or crisis situations ... and/or firm's reorganization, downsizing or transformation of the business activity*" (arts. 3 paragraphs 1). The benefit's duration was established to vary between a minimum of 37 hours and 30 minutes and a maximum of 18 months, to be subdivided into 3 periods of 6 months each in a 3 years span (arts. 11, paragraphs 2 and 7).

Finally, the regulation of the remaining aspects of the new STWS had been deferred to the "*criteria and procedures established for the C.I.G., whenever applicable*".

The social partners were indeed aware of the "*particularly critical aspects involved in the implementation*" of the short-time work allowance, so that in order to verify the appropriateness of such an instrument with respect to the "*specific nature of the banking industry*" a dedicated discussion session had been scheduled (arts. 11 paragraphs 2-3). The sequel of the banking sector's Solidarity Fund, finally established by I.M.D. no. 158/2000[23], provides in fact the best example and explanation of such "critical aspects"[24].

---

[21] Pursuant to articles 10, paragraphs 1, 2 and 6, benefits' claims should be processed according to their chronological order, and, in cases of multiple applications by a same employer, conditional to the acceptance of the claims filled by other employers.

[22] The wage replacement rate and the maximum amount of the benefit were, respectively, lower and higher than their equivalent for the C.I.G. (see arts. 11 paragraphs 5-6 of the agreements and I.N.P.S. Circular letter no. 16/1998).

[23] The Solidarity Fund of the cooperative banking sector had also been established by I.M.D no. 157/2000. Both Decrees had introduced no substantial changes to the rules set down by social partners in the twin collective agreements, but only completed the funds' administrative architecture starting from their Executive

First of all, in response to the strong acceleration of the reorganization and concentration processes that had reshaped the Italian banking system in the 2000s, the deadline of both sectoral funds had been extended beyond the 10 years in order ensure continuity in the payment of extraordinary benefits[25].

Secondly, a final judgment of (in)compatibility between the C.I.G. and the "*specific nature of the banking industry*" had been officially formulated on the occasion of the approval of the second delegation to the Government for the reform of STWS. At a meeting held on 20th June 2007 the social partners had taken a clear stand against the "*dreadful extension*" of the C.I.G. scope to banks, considered to be "*unable to face and manage the effects of the ongoing concentration processes, beyond constituting a serious obstacle to the continuity and functionality of the Solidarity Fund*" of the sector.

More in particular, the extension of the C.I.G. regulation would have represented "*an excessively burdensome measure for both workers and banks, in financial terms as well as in terms of management, since its use is not consistent with the needs of the banking sector*"[26]. Far from claiming the C.I.G. extension, workers' and employers' organization had rather urged the Government to restore the original early retirement incentives taxation regime, unfavourably modified by Law no. 248/2006[27].

While the new taxation regime introduced by the legislator had made the cost of early retirement incentives unbearable for employers[28], an additional problem was represented by the "burdens without benefits" paradox of unemployment insurance schemes afflicting the

---

Committees: the requirements for the validity of the sessions had been established, and an I.N.P.S. representative, provided with advisory capacity, had been included within the members (arts. 3 paragraphs 3 I.M.D. no. 157 and I.M.D. no. 158/2000). Lastly, the members appointed by the social partners had been required to possess "*specific expertise and long experience in the field of labor and employment*" (paragraphs 1). The Government had also intervened to reshape some procedural and sanctioning aspects, notably prescribing the signing of a firm level collective agreement as a necessary requirement to access to all funds' provisions (arts. 6 paragraphs 2), and exacerbating the consequences of the loss of the right to the extraordinary benefit as a result of the failure to report the establishment of a new employment relationship: such infringement would entail the "*return of the sums unduly received, comprehensive of the due interest and the revaluation of capital*" and "*the reset of social contribution*" paid (arts. 11 paragraph 9).

[24] Differently from the regulation of the Solidarity Fund of the banking sector, the regulation of the Solidarity Fund of the cooperative banking sector has been not modified prior to the collective agreement signed on 30th October 2013 to perform adaptation to the Fornero Reform, transposed into I.M.D. no. 82761/2014.

[25] The funds' deadline had been extended till 30th June 2020, respectively by I.M.D. no. 226/2006, transposing the collective agreement signed on 5th May 2005, and by I.M.D no. 41/2008, transposing the collective agreement signed on 31st May 2005.

[26] *https://www.abi.it/DOC_Lavoro/Relazioni-sindacali/Fondo-di-solidariet%C3%A0/tmp1182415296864_9FondoSolidariet_Accordo20giugnoO7.pdf*.

[27] *http://www.camera.it/parlam/leggi/062481.htm*.

[28] It should be noted that the fund's Executive Committee, at the meeting held on 24th January 2001, had also officially admitted the possibility for employees to claim extraordinary benefits on a voluntary basis: *http://www.iacoviello.it/D/Contratti_Collettivi/Accordi_Nazionali/Fondo_Esuberi/2001_01_24_FondoSolidarieta.pdf*.

banking sector. Banks, as all private employers, were in fact obliged by the Law to contribute to the financing of the State unemployment insurance scheme, although their employees, at that time, were not withdrawing any benefit from it, being instead benefitting of the extraordinary measures provided by the sectoral Solidarity Fund. The same employers, who were also liable to pay the ordinary contribution to their respective Solidarity Fund, weren't typically use to claim neither the short-time work allowance, so that they didn't profit at all from the participation in the funds themselves, which continued to accumulate unutilised financial resources[29].

The problem of the so-called "lying sums" had been addressed in the Memorandum of Understanding on Labor Market and Employment signed on 16th December 2009 by the social partners, which had laid the basis for the reform of the Solidarity Fund of the banking sector[30]. In addition to prolong the suspension of the obligation to pay ordinary contribution (art. 3) [31], workers' and employers' organizations had decided to "empty" the fund by promoting "*appropriate measures to facilitate the use, from the part of the employers and on behalf of the workers, of the sums derived from ordinary contribution and still lying in the Fund*". More specifically, the social partners had decided to give priority to reskilling programs, that the National Collective Labor Agreement signed on 8th December 2007 had already identified as a strategic tool for the management of banking system transformation[32].

The 65% of the Fund's total resources had been consequently reserved to the financing of the wage replacement allowance for the participation in reskilling programs (art. 2). Only the 15% of "lying sums" had been allocated to the funding of the income support allowance provided in case of short-time work or temporary suspension of the working activity, which social partners had anyway tried to make more attractive by augmenting the

[29] Unlike the Executive Committee of the Solidarity Fund of former employees of insurance companies in winding up procedures (see Paragraph 3), the Executive Committee of the Solidarity Fund of the banking sector had voted the suspension of the obligation to pay ordinary contribution for the first time in 2008 (Del. 21.01.2008, I.N.P.S. Message no. 1909/2008). The obligation to pay had been suspended throughout the year 2009 (Del. 20.11.2008, I.N.P.S. Message no. 27492/2008).

[30] *https://www.abi.it/DOC_Lavoro/Relazioni-sindacali/Fondo-di-solidarietà/126103996387031_c__documents_and_settings_d.pdf*. The Memorandum of Understanding had been transposed into I.M.D. no. 51635/2010 and I.M.D. no. 180/2012.

[31] See Del. 13.01.2010 and I.N.P.S. Message no. 2779/2010. The suspension of the obligation to pay ordinary contribution had been prolonged for the whole year 2011 (Del. 14.01.2011, I.N.P.S. Message no. 3336/2011), 2012 (Del. 10.01.2012, I.N.P.S. Message no. 2890/2012), 2013 (Del. 17.12.2012, I.N.P.S. Message no. 770/2013) till the implementation of the Fornero Reform (Del. 24.06.2014, I.N.P.S. Message no. 5969/2014).

[32] See art. 66, paragraph 3, of the National Collective Labor Agreement of the banking sector - Middle managers and professional areas - of 8th December 2007, recalling at this regard the joint statement of the European social partners of the banking sector on Lifelong Learning of December 2002.

benefit's maximum amount, by eliminating the threshold of 37 hours and 30 minutes for its claim and by increasing its maximum duration (art. 4).

The remaining 20% of the "lying sums" had been finally destined to the creation of a new "emergency section" of the Solidarity Fund, having as target redundant workers failing to qualify for extraordinary benefits (art. 5). Such section had been conceived to provide former employees a supplementary unemployment benefit for a maximum period of 24 months, convertible into a hiring subsidy in case of re-employment - exclusively under an open-ended contract - by another employer of the banking sector[33]. Moreover, the recipient failing to find a new job after the benefit's termination could be enrolled in an outplacement program for a further period of 12 months (art. 6).

The cost of the latter measure was meant to be shared between the Fund's new emergency section, the applicant employer and the National Paritarian Inter-professional Vocational Training Fund of banking and insurance sectors, established by the National Inter-sectoral Collective Agreement of 8th January 2008 and authorized by M.D. 16th April 2008.

Through the latter measure a principle of "solidarity", thought limited, had been first introduced in the Solidarity Fund's scheme: by such principle the single employer was liable to support only half the cost of the measure, whose funding was expected be ensured, at a steady state, by ordinary contribution[34].

Even the principle of "concurrence" between the measures provided by the Solidarity Fund and the other public and private measures of labor market policy had been further developed: on the side of passive policies, through the proposal of a stronger integration with the State unemployment insurance scheme; from the side of active policies, by providing for a strong synergy with the newly established National Paritarian Inter-professional Vocational Training Fund. Finally, for the implementation of outplacement programs, a convention-based performance-related compensation scheme had been set in

[33] The supplementary benefit was meant to allow the unemployed person to reach: the 80% of the lost wage, with a ceiling of € 2.200, for wages up to € 38.000; the 70% of the lost wage, with a ceiling of € 2.500, for wages between € 38.000 and € 50.000; the 60% of the lost wage, with a ceiling of € 3.500, for wages higher than € 50.000.

[34] See art. 1 paragraph 1, letter b), and art. 6, paragraph 5, of I.M.D. no. 51635/2010, which had amended the Fund's Regulation by transposing the content of the Memorandum of Understanding. The same Decree had also given the Executive Committee the duty to establish rules of precedence and rotation, as well as limits to the resources each employer could withdraw from the emergency section of the Fund (art. 1 paragraph 1 letter a). Priority should be anyway given to claims filled by bankrupt firms or by firms subject to winding up procedures (art. 6, paragraph 6).

place. It is worth observing that such a scheme represented, at that time, an absolute novelty with respect to the Italian experience[35].

The Funds' reform process had been completed, after a brief conflict interlude between the social partners[36], with the signing of two Framework Agreements on 8th and 20th July 2011. Scope of these agreements was the enhancement of the "*historical architecture*" and the "*most qualifying aspects*" of the Solidarity Fund through the enhancement of ordinary measures, conceived as instruments of choice to prevent redundancies and to establish stronger synergies with other existing public and private instruments[37].

In such a perspective the provision of income support for short-time work or temporary suspension of the working activity had been brought back to the model of Defensive Solidarity Agreements, that the Fund concurred to finance by granting workers a supplementary benefit amounting to 30% of the lost wage (article 10 paragraph 4)[38].

No income support was instead provided in case of Expansive Solidarity Agreements (art. 10 paragraph 8), whose signing was nevertheless encouraged though promotion of possible synergies with the newly established "*Fund for the support of the employment in the banking sector*"[39], in charge for the provision of hiring incentives.

The latest version of the Solidarity Fund's regulation before the Fornero Reform had thus been approved by I.M.D. no. 67329/2012.

By the 30th October 2013 collective agreement[40], signed just before the expiry of the official term given by Law no. 92/2012, the social partners have subsequently adapted the

---

[35] To promote and facilitate the signing of firm level agreements for the use of the Fund's resources by the end of June 2010, the Memorandum of Understanding had resolved the issuing of a notice, as well as the approval of a general model for the agreements. An evaluation of the results of the measures introduced by the Memorandum of Understanding had also been planned by the 31st October of the same year.

[36] The rising costs of extraordinary benefits for the employers had led the Italian Association of Banks (Associazione Bancaria Italiana – ABI) to threaten the cancellation of the Solidarity Fund together with the 24th January 2001 agreement, by which it had been agreed to allow voluntary benefit claiming by the employees. For an overview of the legislation responsible for the augmented costs of early retirement incentives see attachment to the ABI Letter of notice sent to the trade unions on 7th April 2011: *http://www.unisinubi.it/lettere/2011/Lettera%20disdetta%20fondo%207-4-11.pdf*.

[37] *https://www.abi.it/DOC_Lavoro/Relazioni-sindacali/Fondo-di-solidariet%C3%A0/FondoSolidarieta_AccordoQuadro_8_luglio_2011.pdf*.

[38] To serve this purpose, the new paragraph 3 of art. 10 had for the first time introduced provisions to regulate the distribution of working-time reductions or working activity suspensions, that could only be allowed "*on a daily, weekly or monthly basis*" (on the model of art. 5 paragraph 1 Law no. 236/1993, as amended by art. 6 paragraph 2 Law no. 608/1996).

[39] The Fund, managed through Enbicredito bilateral body, had been established by the 31st May 2012 collective agreement: *http://www.fabimilano.it/wp-content/uploads/2012/06/ACCORDO-FONDO-OCCUPAZIONE-CREDITO-REGOLAMENTO.pdf*.

[40] Collective Agreement 30th October 2013 between FEDERCASSE, FABI, FIBA-CISL, FISAC-CGIL, SINCRA-UGL CREDITO and UILCA: *http://www.fiba.it/nazionale/documenti/esodati/normativa/bcc-accordo-fondo-esuberi-e-modifiche*.

regulation of the Solidarity Fund of the cooperative banking sector to the new requirements set down by the legislator. On the occasion, an "emergency section" and an income support measure in case of Defensive Solidarity Agreements, on the model of the banking sector, have also been introduced[41]. On the other hand, the delay in the adaptation of the Solidarity Fund of the banking sector, via collective agreement signed on 20th December 2013[42], is certainly explained by the conflict arisen between social partners and culminated with the unilateral rescission of the National Collective Labor Agreement from the employers' association[43], but also by the attempt to take a different path to achieve adaptation to the Reform.

On the occasion of the official hearings on the reform Bill, the employers' association had expressed its preference for the "pure" bilateral governance model and suggested an amendment to expressly allow to "*transform the existing funds in bilateral funds*" maintaining "*the collection of contributions and the payment of benefits*" up to the I.N.P.S.

According to the employers' association, the transition to the "pure" bilateral model would have resulted in "*clear advantages*" compared to the model of Solidarity Funds, overly bureaucratized; also in view of the objectives of the reform, it would have been paradoxical to deny the choice of the model to be adopted from the social partners of a sector that had "*demonstrated excellence in the management of their own welfare system*"[44].

Even after the approval of Law no. 92/2012, workers and employers' organizations of the banking sectors had been considering the adoption of the "alternative model" provided by article 3 paragraph 14 to perform adaptation to the Reform. Such a possibility had in facts been left open as art. 3 paragraph 42 of Law 92/2012 had not specified the way funds formerly established under "paragraph 28" had to be adapted to the Reform; moreover, an

---

[41] On the model of the banking sector, a "*Fund for the promotion of better and more stable employment relationships, for the increase of employment levels and job mobility*" had also been established, as provided for in the National Collective Labor Agreement renewed on 21st December 2012 (art. 12*):* *http://www.fisac-cgil.it/wp-content/uploads/2014/09/regolamentofocbcc.pdf*.

[42] Collective Agreement 20th December 2013 between ABI, DIRCREDITO-FD, FABI, FIBA-CISL, FISAC-CGIL, SINFUB, UGL CREDITO and UILCA:
https://www.abi.it/DOC_Lavoro/Relazioni-sindacali/Fondo-di-solidariet%C3%A0/FondoSolidarita_VerbaleAccordo_20_12_2013.pdf.

[43] Rescission had been formalized on 16th September 2013: *http://www.abi.it/DOC_Lavoro/Contratto-collettivo/Testi-e-accordi/Ccnl%20impiegati/Lettera%20alle%20OSL%20disdetta%20ccnl%2019-1-12.pdf*.

[44] Quotations are extracted from the document presented by the ABI General Director Giovanni Sabatini during the official hearing hold in front of the XI Committee for Public and Private Labor Affairs of the Chamber of Deputies: *https://www.abi.it/Documents/Mercatodellavoro.pdf*, p. 4.

Opinion issued by the Ministry of Labour and Social Security on 24th January 2013 had supported a fairly broad interpretation of the notion of "*settled bilateral systems*"[45].

According to the aforementioned Opinion, to be allowed to opt for the "alternative model" it would have been sufficient to have established at least one bilateral body before the entry into force of the Reform. The social partners of the banking sector could therefore rely on Enbicredito – operating since 1999 – to perform adaptation under art. 3 paragraph 14. Such a possibility had been officially submitted on 30th September 2013 to the Ministry of Labour and Social Security by the trade union U.I.L.C.A., which had solicited an Opinion on the issue[46]. An official answer has never been given[47], and three months later social partners have abandoned the strategy finally opting for the "spurious" bilateral model.

The Bilateral Solidarity Funds drawn from the collective agreements of 30th October and 20th December 2013[48] did not deviate much from the historical models established in the respective sectors, except for the level of the ordinary contribution rate, significantly lowered from 0.50% to 0.20% and 0.36%, and for the elimination of non-compete clauses. The focus must therefore move on the choices made by the Ministry in transposing the Funds' regulations, by respectively I.M.D. no. 82761/2014[49] (for the cooperative banking sector) and I.M.D. no. 83486/2014[50] (for the banking sector).

Both the adaptation agreements had left the funds' scope unchanged, specifying that they shall included all banks "*regardless of the number of workers employed*" or, erroneously, "*even with fewer than 15 employees*"[51]. Differently from the past, the problematic "dual system" of

---

[45] http://www.lavoro.gov.it/temi-e-priorita/attivita-ispettiva/focus-on/Interpello/Documents/n.3-2013.pdf.

[46] www.uilca.it/genfile.php?id=7680.

[47] It is plausible to believe the absence of a response from the Ministry – given the circumstances equivalent to a negative response – be due to the many critical aspects that the substantial "privatization" of former Solidarity Funds would have entailed. It is worth observing at this respect that even the mere transfer of financial resources between funds would have in fact configured an abnormal transfer from the State to a private entity.

[48] The "*Solidarity fund for reskilling, employment promotion and income support of the workers of the banking sector*" had not changed its name, as lastly modified by the Framework Agreement of 8th July 2011, while that of cooperative banks had been renamed "*Solidarity fund for the promotion employability, employment and income support of the workers of the cooperative banking sector*".

[49] http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2014-10-10&atto.codiceRedazionale=14A07681&elenco30giorni=false.

[50] http://www.gazzettaufficiale.it/eli/id/2014/10/23/14A08168/sg;jsessionid=nUCobwFCUaHJ27PPLLIM0g__.ntc-as3-guri2b.

[51] See respectively arts. 2 of the banking and cooperative banking sectors' collective agreements. The banking sector collective agreement had also extended the scope of the fund's provisions to executives, whilst that of cooperative banking had continued to exclude them from the wage replacement allowance for the participation in reskilling programs, as well as from the newly introduced income support allowance in case of Expansive Solidarity Agreements (art. 7 paragraph 4).

STWS had been eliminated, by stating the newly established Bilateral Solidarity Fund scheme not to apply "*to the employees of the firms belonging to economic sectors of activity already covered by the C.I.G. legislation*"[52].

Surprisingly, in the process of transposition of the banking and cooperative banking sector collective agreements the Government had decided to adopt a different criterion for the determination of the Funds' scope, with respect to the criterion adopted just a month before for the transposition of the insurance sector collective agreement (see below, Paragraph 3). The second and fourth Decrees establishing Bilateral Solidarity Funds have in fact resumed the criterion of the national collective labor agreement applied, stating the new regulation to concern "*companies already falling*" within the scope of former Solidarity Funds (arts. 2, paragraphs 1).

The improper formula "*already falling*", that could sound like the simple preservation of the *status quo ante*, can be in fact interpreted as a deferment to the criterion adopted by the former Solidarity Funds' Regulations. An indirect confirmation of such interpretation is contained in art. 3 paragraph 1 of the Decree establishing the Bilateral Solidarity Fund of the cooperative banking sector, where the criterion of the national collective labor agreement applied is also used for the composition of the Executive Committee: with a regulatory technique which differed from the one inaugurated for the insurance business sector and subsequently applied to the banking sector, where the stipulating parties of the 30th October and 20th December 2013 collective agreements had been recalled, a more "dynamic" reference to the signatories of the respective national collective labor agreement have been introduced.

Both Regulations of the Bilateral Solidarity Funds of the banking and cooperative banking sectors have also confirmed the criteria for the identification of redundant workers (arts. 8), as well as the benefits' claiming procedures (arts. 7).

By replicating the interventions already made on the regulation laid down in the collective agreement of the insurance business sector, the Government has eliminated the possibility of suspending the obligation to pay ordinary contribution[53] and made the

[52] See art. 2 paragraph 1 letter a) of the banking sector collective agreement, which called for the necessity of an official declaration from the firms.

[53] See arts. 6, respectively paragraphs 6 and 5, of the collective agreements of banking and cooperative banking sectors, not transposed into the funds' respective Regulations.

income support allowances for short-time work or temporary suspension of the working activity a "clone" of the C.I.G. benefits[54].

The solidarity principle has been confirmed as regards extraordinary measures and extended to emergency measures, although the rules for its implementation have not been concomitantly specified[55].

Among aspects which could have been better regulated is worth to mention the liaising between Bilateral Solidarity Funds' provision and the other legal or contractual measure of active and passive labour market policy: in the case of the cooperative banking sector, synergies with the lifelong learning and vocational training system have certainly not been enhanced, as the firm's possibilities to claim the wage replacement allowance for the participation in reskilling programs have in fact been halved[56]; with respect to the banking sector, it has been instead stated that, in case of concurrence with statutory measures, including namely unemployment benefits, "*all the fund's provisions shall be reduced correspondingly*" (art. 5, paragraph 6).

In the latter perspective the measures provided by the emergency section of former Solidarity Funds have been reconfigured in both collective agreements of 30th October and 20th December 2013 as unemployment supplementary benefits[57]. However, while

---

[54] Confront arts. 10 paragraphs 2 of the collective agreement and the Decree establishing the Bilateral Solidarity Fund of the cooperative banking sector: in addition to what had been already stated on the occasion of the establishment of the Bilateral Solidarity Fund of the insurance business sector (see below, Paragraph 3), the Government has neither allowed the expansion of the eligible hypothesis of short-time work or working activity suspension, as it is clear from the elimination of the word "*also*" from art. 5, paragraph 1, letter a), point 2 of the collective agreement. Even a more incisive intervention has been made on art. 10 paragraph 2 of the banking sector collective agreement: art. 10 paragraph 2 of I.M.D. no. 83486/2014 has provided that, in case of Expansive Solidarity Agreements, workers shall be accorded the most favourable treatment between the C.I.G. and the newly established benefit. I.M.D. no. 83486/2014 has also denied social partners the possibility to deviate from the C.I.G. regulation with respect to the benefit's duration: see art. 10 paragraph 5, which has not transposed the limits set by art. 10 paragraph 4 of the banking sector's collective agreement.

[55] See art. 4 paragraph 1 letter m) of the collective agreement of cooperative banking sector, not transposed. To the extent that art. 3, paragraph 26, Law no. 92/2012 prohibits Bilateral Solidarity Fund to pay benefits in case of financial resources shortage, I.M.D. no. 82761/2014 has also revised another of the traditional institutions of the Solidarity Funds' system, by precluding the possibility of increasing the ordinary contribution rate to cope with extra needs in the context of "*local projects promoted by the employers' federations and considered of strategic importance with respect to the objectives of the cooperative banking system*" (art. 4 paragraph 1 letter l) and art. 6 paragraph 1 letter. a) of the 30th October 2013 collective agreement; confront art. 5 paragraph 1 letter. i) of the 28th February 1998 collective agreement).

[56] See arts. 9 paragraphs 3, respectively, of the collective agreement and the Decree establishing the Bilateral Solidarity Fund of the cooperative banking sector, allowing for the benefit's withdrawal "*up to the half of the amount of the ordinary contributions payed…and taking into account management and administrative costs*".

[57] As already mentioned with regard to unemployment benefits, the social partners of the banking sector, in a minutes statement attached to the 20th December 2013 Collective Agreement, has advocated legislative changes to allow the statutory unemployment benefit to be accorded even in case of consensual termination

transposing the cooperative banking sector collective agreement, the Government has excluded the benefit's convertibility into a hiring incentive. Such decision appears to be in contradiction with that of enabling short-time work income support even in case of Expansive Solidarity Agreements[58]. I.M.D. no. 82761/2014 has furthermore allowed three possible uses of the latter measure, including two specific hypothesis of "concurrence": with the statutory unemployment benefit, in case of suspension of the working activity pursuant to art. 3 paragraph 17 of Law 92/2012 (art. 10 paragraph 2); with the contribution established by Law no. 863/1984, in case of short-time work following the signing of an Expansive Solidarity Agreement (paragraph 4).

The synergy with Defensive Solidarity Agreements has not been equally developed, the Ministry of Labor and Social Policies having even refused to transpose into Decree the general principles laid down by social partners at this regard[59]. The relative privilege of Expansive on Defensive Solidarity Agreements has thus represented one of the most paradoxical outcome of the Fornero Reform's implementation, considering the expansion of the workforce being outside the purpose of the funds designed by Law no. 92/2012, even according to its latest version[60].

We could also conclude the case of the cooperative banking sector to have determined the transformation of the list of provisions contained in art. 3, paragraphs 11-32, Law no. 92/2012, from exhaustive to non-exhaustive, opening Bilateral Solidarity Funds to new purposes. If we instead believe that article 3, paragraph 42, of Law no. 92/2012, by setting down dedicated, even if not detailed provisions for the adaptation of former Solidarity

---

of the employment relationship, in order to allow its integration with the extraordinary benefit provided by the Bilateral Solidarity Fund.

[58] See arts. 5 paragraphs 1 letter a), point 3) and point 2), respectively, of I.M.D. no. 82761/2014 and I.M.D. no. 83486/2014.

[59] Art. 5, paragraph 1, letter a), point 2 of the cooperative banking sector agreement had stated the Fund to provide "*as a matter of course…to the financing of specific provisions on behalf of workers concerned by short-time work or working activity temporary suspension…even in concurrence with provisions or income support measures and/or incentives set down in the Law and/or national collective agreements*"; art. 10 paragraph 2 stated the ordinary benefit to be "*correspondently reduced in the event of concurrence with the measures set down in Law and/or collective agreements*". I.M.D. no. 86761/2014 has eliminated in both quoted articles any reference to the "*Law*"; nevertheless, art. 10 paragraph 5 still provide that "*the amount of the benefit referred to in paragraphs 2, 3 e 4, comprehensive of the possible concurrence with public or contractual income support measures, cant not exceed the 80% of the gross monthly wage which would have been paid for the lost working hours or working days*".

[60] The latest version of art. 3, paragraph 11, of Law 92/2012, allowed Bilateral Solidarity Funds to "*ensure workers an additional protection with respect to the provision accorded by the Law in case of job loss, or with respect to the C.I.G.*". To serve the purpose, funds shall provide "*supplementary benefits, in terms of amounts or durations, with respect to the benefits provided by the Law in the event of termination of the employment relationship, or supplementary benefits, in terms of amount, with respect to the C.I.G.*" (art. 3 paragraph 32 Law no. 92/2012, as modified by art. 251, paragraph 1, letter. c) of Law no. 228/2012).

Funds, has put them in an exceptional position, we are not in condition to give any definitive answer.

2. The second model: the experience of the insurance business sector

The first Solidarity Fund of the insurance business sector had been established, upon the initiative of the legislator, to provide an alternative to the special "mandatory outplacement" system set down in arts. 10 and 11 Law no. 39/1977 on behalf of former employees of insurance firms, authorised to offer compulsory insurance against civil liability in respect of the use of motor vehicles and craft, who were undergoing winding up procedures.

Law no. 140/1999, art. 4 paragraph 2, had set down provisions to facilitate, through Solidarity Funds, the implementation of voluntary redundancy plans for the workers who had been rehired by the liquidator in compliance with legal obligations[61]. The procedure laid down at the latter scope differed significantly from that of I.M.D. no. 477/1997, its activation being mandatory and not left to the initiative of social partners. Law no. 140/1999 had more precisely given the Government a time limit of 120 days from its entry into force to issue a Decree regulating the subject matter, after consultation with the trade unions; among them, the signatories of the "Pact for Employment" of 24th September 1996 between the Government and the social partners had been recalled.

Given the above, the singularity of the "*Solidarity Fund for former employees of insurance firms in winding up procedures*", established by I.M.D. no. 351/2000 following the collective agreement of 26th July 1999[62], had to do with the design of its scope: as specified by the I.N.P.S. itself, the fund included all "*insurance firms operating in Italy, regardless of their denomination, regularly established and authorized to provide insurance services in compliance with the legislation in force*"…"*regardless the type of insurance sold*"[63].

---

[61] *http://www.parlamento.it/parlam/leggi/99140l.htm*.

[62] The text of the agreement is attached to the National Collective Labor Agreement ANIA of 17th September 2007 (see attachment no. 17/A): *http://www.cgilverona.it/file/CCNL%20ANIA%20personale%20non%20Dirigente%20del%2017.09.2007.pdf*.

[63] See INPS Circular letters no. 124/2001 and no. 170/2001: *http://www.inps.it/Circolari/Circolare%20numero%20124%20del%2014-6-2001.htm*; *http://www.inps.it/bussola/visualizzadoc.aspx?sVirtuAlURL=/circolari/Circolare%20numero%20170%20del%207-9-2001.htm*.

Put in other words the Solidarity Fund of insurance firms was the sole, compared to all Solidarity Funds born out of "paragraph 28", not being reserved to a single firm or anchored to a given national collective labor agreement, having instead been extended by Decree to cover an entire sector of economic activity.

To determine the firms being subject to the obligation to contribute to the fund, the I.N.P.S. had consequently relied on its own system of classification of economic activities, the Statistical Social Security Code (*Codice Statistico Constributivo* – CSC). Such criteria had implied supplementary pension funds, as well as insurance independent agents, being included in the fund's scope, since they were classed with the same Statistical Social Security Code of insurance undertakings. The problem had been only partially solved by asking firms to produce a declaration aimed at self-certifying the exercise of the insurance business.

In fact, as reported by Gallo (2001), it had happened that some local I.N.P.S. headquarters had requested even independent insurance agents to produce such declaration, having extended the concept of "*workers employed by insurance firms*" to insurance agencies not distinguishing between "agents" and "employees". The issue had been definitively solved by I.N.P.S. Message no. 158/2001, which had expressly excluded insurance agencies from the fund's scope.

Even more significant was the fact that, within its scope, the Solidarity Fund of insurance undertakings had established a regime of full solidarity: the ordinary contribution for the financing of the fund was due by all employers of the business sector and used to grant benefits to any of them, regardless the amount of contribution payed and taking into account only the number of claims filed (art. 5 I.M.D. no. 351/2000). The contribution rate had been set to 0.50% of the employees' gross wage, employers being charged the 100% of the contribution during the first three years of life of the fund; subsequently, employees and employers would have been charged, respectively, the 25% and the 75% of the contribution. As a further evidence of the larger mutual scope of the fund, the ordinary contribution was due on the wages of the entire workforce, including workers employed under fixed-term contracts (even if they were excluded from the funds' provisions, see I.N.P.S. Circular letter no. 170/2001).

According to the purpose of Law no. 140/1999, the fund had been conceived to provide two types of supplementary benefits, with respect to severance pay, to workers accepting a voluntary redundancy offer: a lump sum equal to 3 years of the last gross wage,

or, for workers close to retirement, a lump sum amounting to the 60% of the yearly gross wage multiplied for the missing years, up to a maximum of 5, plus the related social contribution (art. 6 I.M.D. no. 351/2000). A more favourable regime (65% of the last gross wage for a maximum of 7 year) had been reserved to workers having already been outplaced to another firm by the liquidator. In alternative to the aforesaid benefits the latter workers could claim the full refund of the accommodation costs for a maximum of 3 years, within the limit of 7 years, in the event of reemployment by another insurance firm located in a different Italian city (art. 7).

Besides voluntary early retirement incentives and hiring incentives, the fund participated in the financing of reskilling programs, even in concurrence with national and European funds, on behalf of the former employees of insurance firms in winding up procedures (arts. 6 and 7).

The Executive Committee of the fund had been accorded the responsibility to choose the partner in charge for the management of reskilling programs and to provide guidance for their implementation (art. 4 paragraph 1 letter f). In compliance with such guidelines, training courses might have been activated by the employers' organization[64] as well (art. 6 paragraph 4). Finally, even the National Bilateral Body for Vocational Training in the Insurance business sector[65], established by the 18th December 1999 Collective Agreement, had been accorded the power to "*promote and facilitate the experimentation of training activities, also with regard to reskilling needs of former employees of insurance firm in winding up procedures*" (art. 1 of the Statute).

The considerable cost of the income support measures provided by the fund, although offset by the strict selectivity of its target, does not seem to have represented an obstacle neither on the way of full solidarity among business operators, nor with respect to the possible suspension of the obligation to contribute, that in fact the Fund's Executive Committee had been regularly voting[66].

---

[64] National Association between Insurance Undertakings (Associazione Nazionale fra le Imprese Assicuratrici – ANIA).

[65] Ente Bilaterale Nazionale per la Formazione Assicurativa – ENBIFA.

[66] The obligation to contribute had been suspended for the whole years 2004 (Del. 17.12.2003, I.N.P.S. Circular letter no. 35/2004), 2005 (Del. 26.11.2004, I.N.P.S. Circular letter no. 163/2004) and 2006 (Del. 12.12.2005, I.N.P.S. Message no. 42006/2005), and again from 1st January 2007 till the deadline of the fund, originally stipulated for the 14th December 2007 (Del. 28.05.2007 and 26.09.2007, I.N.P.S. Message no. 14020 and no. 24684/2007). By Del. no. 23 of 13.12.2010, the Executive Committee of the fund had prolonged the suspension till 31.12. 2010 (I.N.P.S. Message no. 3334/2011). The obligation to pay, restored from 1st January 2011, had been again suspended from June to December (Del. 16.06.2011, I.N.P.S. Message no.

The deadline of the fund, originally planned after 7 years, had been moved to 31st December 2012 on the occasion of the negotiations for the renewal of the National Collective Labor Agreement the insurance business sector of 18th July 2003[67]. Besides extending the fund's life, social partners had decided to establish an additional "*Fund for supporting the income and the employment of the workers of the insurance firms*"[68] conceived to facilitate restructuring and reorganization processes of the insurance business sector.

According to its original design, even the latter fund had been meant to deliver essentially voluntary early retirement incentives: notwithstanding art. 16 of the National Collective Agreement, prescribing, in case of redundancy, to consider a plurality of possible remedies included "*flexible working time arrangements, solidarity agreements, use of part-time contracts and temporary posting of workers to other companies of the group*", the sole provision envisaged in the guidelines for the establishment of the new fund was in facts an "extraordinary benefit" for workers close to retirement. Unlike the sums paid to former employees of insurance firms in winding up procedures, the latter benefit, targeting workers missing no more 5 year to the fulfilment of the minimum requirement to retire, was payed in monthly instalments equal to the amount of the future pension treatment[69].

The collective agreements of 9th and 10th October 2009[70] had subsequently included among the fund's provisions "ordinary measures" designed on the model of the banking ad cooperative banking sector Solidarity Funds, thus giving to the newly renamed "*Solidarity Fund for income support, employment and reskilling of the employees of insurance firms*", established by I.M.D. no. 33/2011[71], its final shape.

Unlike the fund dedicated to former employees of insurance firms in winding up procedures, the scope of the new fund, more similar to the prototype of Solidarity Funds,

---

14285/2011), to be finally restored from January to December 2012 pursuant to the Fornero Reform (art. 5 paragraph 1 I.M.D. no. 68157/2013, I.N.P.S. Message no. 4207/2013).

[67] On the basis of the 12th July 2007 Collective Agreement, M.D. no. 49263/2009 had temporary moved the deadline of the fund to 31st December 2010; I.M.D. no. 229/2010 had subsequently extended the term till 31st December 2011. Finally, following the 14th December 2011 Agreement, I.M.D. no. 68157/2012 had moved the funds' deadline to 31st December 2012.

[68] See attachment no. 10 to the National Collective Labor Agreement of insurance undertakings of 17th December 2007.

[69] The social contribution due on the benefit's amount was granted to workers for a maximum of five years, while the benefit itself was granted till the effective date of retirement (art. 5 paragraph 2 I.M.D. no. 33/2011). The Fund had been made reliable for the risk of possible unfavourable changes in the pension legislation, by granting continuity in payments to pension reforms victims (paragraph 3). Finally, in alternative to the benefit, workers could opt for a lump sum equal to 65% of the virtual benefit amount (paragraph 4).

[70] http://www.fiba.it/nazionale/documenti/200/doc282.

[71] http://www.gazzettaufficiale.it/eli/id/2011/03/30/011G0071/sg.

was limited to the "*firms applying the sectoral National Collective Labor Agreement*" (art. 2); the ordinary contribution, raised on the gross wage of the sole workers employed under open-ended contracts, (art. 6 paragraph 1 letter a), was essentially meant to finance ordinary benefits and the fund's operational costs; employers were made liable to bear the entire cost of the extraordinary benefits delivered by the Fund, and the access to ordinary benefits was granted according to the principle of proportionality between contribution payed and benefit claimed.

Finally, face to the small number of ordinary benefits' claims, the obligation to pay ordinary contribution had been suspended from April 2012 till December 2013[72].

Through the Collective Agreement of 20th May 2013 the social partners of the insurance business sector has been the firsts to perform adaptation to Law no. 92/2012[73]. The following I.M.D. no. 78459/2014[74], by introducing substantial changes to the regulation laid down by social partners, had made in transposing some fundamental choices needed to complete the reform itself. More precisely, art. 3 of I.M.D. no. 78459/2014 had set a precedent that seemed intended to rebuild the system of Bilateral Solidarity Funds on new foundations, by modifying the criteria at the basis of their scope.

The social partners' choice to anchor the new "*Bilateral Inter-sectorial Solidarity Fund for income support, employment and reskilling of the employees of insurance undertakings and related services*", just like its immediate predecessor, to the scope of the corresponding National Collective Labor Agreements (art. 3 paragraph 1 of the agreement), was also intended to exclude from the fund's scope insurance firms belonging to banking groups as well as to the Poste Italiane Group (se below, Paragraph 4). To serve a similar purpose, a special regime, allowing firms applying the aforementioned national collective labor agreements only to a part of the workforce, to voluntarily opt for the newly established Bilateral Solidarity

---

[72] Del. 02.04.2012 and 31.01.2013, I.N.P.S. Message no. 2697/2013.

[73] Collective Agreement of 20th May 2012 between ANIA, AISA, FIBA-CISL, FISAC-CGIL, FNA, UILCA and SNFIA: *http://www.ania.it/export/sites/default/it/pubblicazioni/normativa-e-manuali-ania/Relazioni-industriali/Fondi/Accordo-Fondo-di-solidarieta-ANIA-AISA-OO.SS.-20.5.13.pdf*.
On the occasion of the renewal of the National Collective Labor Agreement of insurance undertakings on 7th March 2012, the signatories had decided to establish two bilateral commissions at national level with the mandate to study in deep the theme of STWS in the context of the labour market reform ongoing process, concomitantly advocating the preservation of their own system. In the meantime, by registered letter send on 26th November 2012, the employers' organization AISA (Associazione Italiana Società di Assistenza) and the trade unions of the workers of insurance auxiliary services had asked to be admitted to the insurance undertakings' fund, in view of the adaptation to the Fornero Reform.

[74] *http://www.lavoro.gov.it/Strumenti/normativa/Documents/2014/DI784592014_fondisolidarieta.pdf*.

Fund[75], had been also provided in order to meet the peculiar clauses of the employers associations' statutes[76].

In the transposition process, the Ministry of Labour and Social Policies has decided to extend the fund's scope to all insurance undertakings and related services (art. 3 paragraph 1 of the Decree), including firms belonging to insurance groups and performing auxiliary activities, consequently to their classification with the same Statistical Social Security Code of the parent company (paragraph 2). The voluntary participation in the Fund by the employers' associations, on behalf of their employees, had also been envisaged (paragraphs 3 and 4).

The deviation from the criterion of the national collective labor agreement applied, with respect to the determination of the fund's scope, had in turn brought about the problem to determine which procedures firms should apply in order to be admitted to the benefits[77]. Law no. 92/2012 had neither expressly regulated the issue nor deferred it to collective agreements and/or secondary legislation. The solution adopted by I.M.D. no. 78459/2014 has been that of indirectly recalling the procedures laid down in the national collective labor agreements mentioned in the 30th May 2013 Collective Agreement. It is worth observing that, differently from the procedures laid down in the C.I.G.O. legislations, the former procedures need to end up with the signature of an agreement with the trade unions (art. 9 paragraph 2 of the collective agreement and art. 8 paragraph 2 of the Decree).

In addition to putting an exogenous criterion of classification at the basis of the newly established Fund, I.M.D. no. 78459/2014 has stated other important principles.

On the one hand, the social partners' decision to include in the fund's scope even firms up to 15 employees has been confirmed (art. 3 paragraph 1). On the other hand, one of the pillars of the former system of Solidarity Funds – *i.e.* the possibility to suspend the obligation to pay ordinary contribution – has been eliminated (confront art. 7 paragraphs 4-5 of the collective agreement, non transposed).

---

[75] Under such regime, the admission to the Fund was conditional upon the submission of a joint request from the employer and the trade unions to be approved by the Executive Committee (art. 3 paragraph 2 of the collective agreement and art. 3 paragraph 4 of the Decree).

[76] The statutes of both employers' organizations allowed them to negotiate with trade unions on behalf of the employers, as well as employer to negotiate of their own.

[77] The Regulation of the Solidarity Fund of former employee of insurance firms in winding up procedures - applying to all undertaking of the insurance business sector regardless the collective agreements applied - had not regulated the issue, due to the singularity of the benefits provided (which could be claimed "*by registered letter addressed to the liquidator*" (art. 8 paragraph 1 I.M.D. no. 351/2000).

Moreover, as a result of a strict interpretation of art. 3 paragraph 31 Law no. 92/2012, any latitude has been left to social partners with regard to the benefit's design, in terms of amount, duration and modulation of income support in case short-time work or temporary suspension of the working activity.

By the exercise of discretion social partners had decided – and the Decree has confirmed – to lower the ordinary contribution rate from 0.50% to 0.30%, concomitantly augmenting the rate of the additional contribution due on the benefit in case of use, by substituting the former upper bound with a new lower bound (1.50%) and by establishing a lower ceiling (from 2 to 1,4 times the total amount of the ordinary contribution payed during the last quarter) for the benefit's claims by each firm.

As to the measures provided, the Fund does not cover supplementary unemployment benefits; the Fund has nevertheless virtually granted, limited to the years 2014-2015, the 30% of the income support measure established in case of working activity suspension under art. 3 paragraph 17 of Law 92/2012 (art. 11 paragraph 4 of the Decree).

By a significant intervention, the Ministry of Labor and Social Policies has finally eliminated the eligibility criterion laid down in the collective agreement excluding from benefits the workers employed under fixed-term contracts (confront art. 5 paragraph 1 letter d) of the collective agreement), while confirming their exclusion from the ordinary contribution (confront art. 7 paragraph 1 letter a) of the Decree).

3. The third model: "corporate" Solidarity Funds

About half of former Solidarity Funds were in fact corporate funds: this was the case of the "*Fund for the pursuit of active policies of income support and employment on behalf of the employees of Ferrovie dello Stato S.p.A.*"[78], the "*Solidarity Fund for income support of former employees of the Autonomous Administration of State Monopolies*"[79] and the "*Solidarity Fund for income support, employment and reskilling of the employees of Poste Italiane S.p.A.*"[80].

With respect to such funds, it may be argued that the implementation of "paragraph 28" had produced an outcome definitively consistent with the original purposes of Law no.

[78] Established by Decree no. 54/1998 of the Ministry of Transports and Navigation on the basis of the 21th May 1998 Agreement.
[79] Established by I.M.D. no. 88/2002 on the basis of the 24th January 2001 Agreement.
[80] Established by I.M.D. no. 178/2005 on the basis of the 18th July 2001 and the 17th December 2003 Agreements.

662/1996, intended to provide income support measures on behalf of the employees of "*bodies and State and private companies operating in the public utilities services*" before providing for "*categories and areas of economic activity not served by social shock absorbers*"; note also that the aforementioned funds had been established by the majority of bodies and companies already listed in art. 29 of Bill no. 2372/1996, on behalf of whose employee the temporary extension of the C.I.G.S. had been originally planned.

At this point of the analysis it must be clarified that the legislator's intervention, trough Law 662/1996, had not been conceived in the view of a more or less systematic reform of labor welfare but rather in the framework of the budgetary manoeuvre for the year 1996, aimed at achieving convergence on the "Maastricht criteria" in order to allow Italy the participation in the Euro zone[81]. In such a context the provision of experimental passive labor market policies had been essentially conceived to cushion the implementation of the processes of liberalization, privatization and restructuring of State assets resolved by the Government, who was looking for a less expensive alternative to early retirements schemes to allow for downsizing of former State companies.

The need for a different management policy of redundancies was keenly felt, in particular, with respect to the former State Railways Body (Ente Ferrovie dello Stato), which had constituted both the main beneficiary of early retirement schemes and the main target of the political debate on the occasion of Law no. 662/1996 approval[82]. As reported by some law scholars (Romei, 1999), there would have been at the same time a strong trade unions' opposition to the extension of the C.I.G. to the rail transport sector[83].

The compromise solution had thus consisted in the creation of a corporate fund as a result of an "unorthodox" procedure, if compared to "paragraph 28". The path had been initiated by the tripartite Agreement signed on 2nd December 1997[84], by which the management of Ferrovie dello Stato S.p.A. and the representatives of the relevant trade unions had resolved the creation of a "*bilateral fund with the purposes of art. 2, paragraph 28, of*

---

[81] In order to bring the *deficit*/G.D.P. ratio below 3% Law no. 662/1996 had even raised the famous "*extraordinary contribution for Europe*" (the so called "eurotax", see art. 3 paragraph 194). The establishment of the Solidarity Funds within the I.N.P.S. could be thought itself to have represented a trick to improve the State financial balances: this seems to be in fact the most plausible explanation for the directive principle aimed at the "*achievement of higher net income contribution for at least 150 billion of Lire for the year 1997*" (art. 2 paragraph 28 letter f).

[82] See stenographic records of the meetings held on 3rd and 11th November 1996: *http://leg13.camera.it/docesta/313/15804/documentotesto.asp?PDL=2372&leg=13&tab=5*.

[83] Note that the C.I.G.S. had already been extended to the employees of railway's auxiliary, complementary and related services by art. 25 paragraph 2 Law no. 412/1991.

[84] *http://trasporti.usb.it/fileadmin/archivio/trasporti/foto_manifestazione/CONTRATTI/CCNL_e_norme_applicative_ferrovieri/Operai_e_Impiegati/1997_12_02_Verbale_integrativo.doc*.

the Law 12.23.96 no. 662". The Government had concomitantly committed to present an amendment to the budget law - the future art. 59, paragraph 6, Law n. 449/1997[85] - in order to exempt F.S. S.p.A. employees from the coeval pension reform.

The Collective Agreement signed on 21st May 1998 had thus provided for the establishment of the fund, that in the framework of the renewal of the National Collective Labor Agreement of F.S. employees the parties had already included among contractual institutions for human resources management[86]. The Agreement of 21st May 1998 traced out the agreement signed few months before by the social partners of the banking sector, save for two significant variants: beside having its scope restricted to a single firm, the F.S. S.p.A. fund had been configured as a special section of the rail workers' pension fund established by the Giolitti Government in 1908[87].

Such an arrangement, indeed consistent with the provision of art. 59, paragraph 6, Law no. 449/1997[88], had been in fact conceived as an interim solution in the "*waiting for the achievement of an agreement valid for the entire transport sector*" (art. 3). The 21st May 1998 Collective Agreement itself had been transposed in a rather unusual way, by a Decree of the Ministry of Transports and Navigation issued that same day[89].

The lifecycle of the F.S. S.p.A. fund had been planned in four years (art. 15) according to an Understanding attached to the 21st May 1998 Collective Agreement (art. 8): such

---

[85] "*In order to promote the reorganization and restructuring of Ferrovie dello Stato Spa, in view of the restructuring and development of the rail transport system, by collective agreement to be concluded with the trade unions within three months from the date of entry into force of the present Law, a bilateral fund is established with the aims set out in Article 2, paragraph 28 of Law 23 December 1996, no. 662. Upon expiry of one year from the date of entry into force of the present Law, and, subsequently, on an annual basis, an evaluation of the effects on employment levels of the measures implemented shall be carried out…; to the recipients of the latter measures, the requirements laid down by earlier regulations for the access…to retirement shall apply for a maximum period of four year. The Government will report the evaluations results to the competent parliamentary Committees*".

[86] Art. 72 letter D of the Agreement signed on 6th February 1998 for the renewal of the National Collective Labor Agreement of F.S. S.p.A. employees: *https://www.studioborriero.it/old/modules/CCNL/uploads/131-06-02-1998%20 %20ferrovie%20dello%20stato.pdf*.

[87] Art. 1 Law no. 418/1908.

[88] Unlike "paragraph 28", art. 59 paragraph 6 Law no. 449/1997 referred to a "*bilateral*" fund sharing "*the purposes*", and therefore not necessarily the nature, of Solidarity Funds. For an assessment of the relationship between the two different provisions see Magri (1999).

[89] In the case at hand the transposition, not required by art. 59 paragraph 6 Law no. 449/1997, had consisted of a simple deferment to the 21st May 1998 Collective Agreement from Decree no. 54/1998 of the Ministry of Transport and Navigation. The latter Ministry was also in charge for the appointment of both the Fund's Executive Committee and an Arbitration Commission, competent to decide upon appealed decisions and composed by three university professors proposed by the signatories (art. 4 paragraph 2 of the collective agreement). The Fund's Rules of Procedure had been also approved on 17th November 1998 but not transposed. As to the significance of transposition in the case at hand see Magri (1999), who, while questioning the appropriateness of both the timing and the type of Decree chosen to perform it, argues "transposition" itself having risen to a general institution in the field of experimental income support schemes.

document had laid down the procedures and the timing for the implementation of the company's reorganization process in view of the adoption of a proper downsizing plan, which would have been agreed with the trade unions on 20th November 1998.

The subsequent evolution of the Fund had not kept pace with the changes occurred in the rail transport sector and in the related bargaining system as a result of the gradual implementation of both the European regulations and the Italian administrative decentralization policies[90]. The Government had played a leading role in managing the impact on employment levels of both processes, by promoting the "*Pact on consultation policies and new labor relations for the transformation and European integration of the transport system*" signed with the social partners on 23rd December 1998[91].

Art. 4.3 of the Pact had envisaged the establishment of one or more Solidarity Funds for the transport sector in the framework of the reform of STWS schemes. Plausibly also because of the failure of the latter reform, such intention had not been followed up. The project of collective bargaining restructuring had been instead more successful. One year later, the tripartite Understanding signed on 23rd November 1999 had laid the groundwork for a single national collective labor agreement of the rail transport sector applicable to a plurality of undertakings beside F.S. S.p.A. The project had been fulfilled on 16th April 2003 with the signature of the National Collective Labor Agreement of rail transport sector, which would have later incorporated even the new "single" National Collective Labor Agreement of rail linked industries[92].

Art. 12 of the new national collective labor agreement had thus addressed the issue of workers' income support, by creating a joint commission in charge to make proposals for the establishment of a Solidarity Fund "under paragraph 28". While waiting for such fund to be established, the F.S. S.p.A. fund had been reconfigured as a company welfare scheme.

By Understanding 21st November 2007 and Memorandum of Understanding 30th April 2009 the restructuring process of collective bargaining system had been completed, providing for the merging of the national collective labor agreements of rail and local

---

[90] Legislative Decree no. 422/1997 had delegated to Regions and local Institutions functions and tasks concerning local public transport included railways, pursuant to art. 4 paragraph 4 Law no. 59/1997 (so called "Bassanini Act"); by the reform of Part II Title V of the Constitution of the Italian Republic (Constitutional Law no. 3/2001) the subject matter had been devolved to the Regions' exclusive legislative competence (art. 117 Cost.).

[91] *http://www.coordinamentorsu.it/doc/norme98/981223al.htm*.

[92] See Agreement 19th November 2005. The "single" National Collective Labor Agreement of rail related industries had already incorporated the National Collective Labor Agreement of State Railways' contract workers (see Memorandum of Understanding of 27th July 1995) and the National Collective Labor Agreement of railway sidings' operators (see Agreement 26th January 1995).

public transport sectors into the new "single" National Collective Labor Agreement of mobility, aimed at covering all public transport services on roads, railways and inland waters.

The latter agreement, finally signed on 30th September 2010, did not contain any reference to the establishment of a Solidarity Fund but only a vague commitment to "*identify the most appropriate instruments to govern employment trends and income support measures on behalf of workers*…", without mentioning "paragraph 28" any more. The idea of setting up a Solidarity Fund seemed in fact to have been completely abandoned after the Government had tried to perform it in the local public transport sector, without success[93].

Given the absence, till the eve of the Fornero Reform, of players other than F.S. S.p.A. active on the railway transport market at national level[94], and considered the provision of exceptional short-time work compensation measures on behalf of workers of rail linked industries[95], the F.S. S.p.A. fund had definitively evolved and consolidated as a group scheme, useful not only to manage redundancies but also to support employee turnover policies.

The Collective Agreement of 15th May 2009, transposed by Decree no. 510/2009 of the Ministry of Transport and Navigation and confirmed by a supplemental collective agreement dated 20th July 2012 (art. 9), had finally "normalized" the F.S. S.p.A fund, providing for its transfer within the I.N.P.S. [96] and making it very similar to the model of the banking sector. Moreover, considered the failure to use both ordinary benefits provided by the fund, the parties had also resolved, after the lowering of the contribution rate and the subsequent suspension of the obligation to contribute itself, and before performing

---

[93] Art. 1 paragraph 303 Law no. 244/2007, by a redundant statement, had "extended" the experimental regime of Solidarity Funds to the local public transport sector, which was anyway already included in the scope of "paragraph 28" ("*bodies and State and private companies operating in the public utilities services*").

[94] The company "Nuovo Trasporto Viaggiatori S.p.A.", founded on 11th December 2006, has started operating on the high-speed Naples-Milan railway on 28th April 2012.

[95] I.M.D. no. 32534/2003, pursuant to art. 41 paragraph 1 Law no. 289/2002 (Budget Law 2003), had temporarily extended C.I.G.S. and Mobility benefits, together with the financial obligation to contribute to the scheme, to the employees of the cooperatives working under contract with F.S. S.p.A., excluded from statutory unemployment benefits pursuant to D.P.R. no. 602/1970. The provisions had been confirmed for the following years but their recipients, like all beneficiaries of exceptional STWS, had been exempted from the payment of ordinary contribution.

[96] Art. 43 Law no. 488/1999 had in the meantime abolished the former F.S. pension fund and concomitantly established a new, analogous fund within the I.N.P.S.: consequently, even the F.S. Solidarity Fund should have been transferred to the Institute. The latter Institute had nevertheless objected the lack of both a legislative provision expressly prescribing for such transfer, and a ministerial decree pursuant to "paragraph 28", to preclude the possibility for the fund to be taken in charge. The solution had been laid down in an agreement signed on 4th June 2010, by which the I.N.P.S. had established with F.S. Group a contractual relationship for the provision of benefits.

adaptation to the Fornero Reform, to spend the fund's lying sums for the delivery of extraordinary payments to workers who had been penalized by changes introduced in the requirements to retire[97].

The fund's architecture, its regulation and, what is most important, its scope, have been finally confirmed by the Collective Agreement signed on 30th July 2013[98] and transposed by I.M.D. no. 86984/2015, pursuant to art. 3 paragraph 42 Law no. 92/2012. This has meant not only allowing for corporate Bilateral Solidarity Funds, but also giving up from the intention to establish a single Bilateral Solidarity Fund of the whole transport sector, whose workers are to date covered by three more different funds:

- The new Bilateral Solidarity Fund of the public transport sector, established by I.M.D. no. 86985/2015 after the Collective Agreements of 8th July 2013[99], which covers the workers of "*public transit transport and navigation services on inland and lagoon waters, with the exception of the companies already included in the scope of previously established Bilateral Solidarity Funds and the companies exercising high-speed rail transport*". Pursuant to art. 26 paragraph 7 Lgs. D. no. 148/2016, the fund's scope, originally limited to undertakings larger than 15 employees, has been recently extended to comprise firms with more than 5 employees by Collective Agreement 10th December 2015[100] and I.M.D. no. 97510/2016;
- The Bilateral Solidarity Fund of air transport and airport services, established by Collective Agreement 27th June 2013 and I.M.D. 95269/2016 as a result of the adaptation, pursuant to art. 3 paragraph 44 Law no. 92/2012, of the former "*Special fund for income support, employment and reskilling of the workers of air transport services*", established under art. 1-*ter* Law-Decree no. 249/2004, converted into Law 291/2004;

[97] The ordinary contribution for the financing of the fund, initially set at a rate of 0.75% the gross wage of all F.S. employees, had been first reduced by 2/3 pursuant to the Collective Agreement of 11th November 2001 and then suspended from 1st July 2005 as resolved in the Collective Agreement of 23rd June 2005. As of 31st December 2012 the fund had in stock 130.886.226 euros destined to the provision of ordinary benefits, which were anyway left untaken. With the Collective Agreement of 24th June 2013 the F.S. Group and the trade unions had consequently decided to destine the 95% of such resources to a newly established section of the fund, aimed at delivering "*extraordinary measures of social solidarity*".

[98] Collective Agreement 30th July 2013 between F.S. Group, FILT-CGIL, FIT-CISL, UILTRASPORTI, UGL TRASPORTI, FAST-FERROVIE and ORSA FERROVIE.

[99] Collective Agreement 8th July 2013 between ASSTRA, ANAV and FILT-CGIL, FIT-CISL, UILTRASPORTI, UGL TRASPORTI and FAISA CISAL.

[100] Collective Agreement 10th December 2015 between ASSTRA, ANAV and FILT-CGIL, FIT-CISL, UILTRASPORTI, UGL FNA and FAISA CISAL.

- The new Bilateral Solidarity Fund of the maritime sector (SOLIMARE), established by Collective Agreement 24th March 2014 [101] and I.M.D. no. 90401/2015. Pursuant to art. 26 paragraph 7 Lgs. D. no. 148/2016, the fund's scope, originally limited to undertakings larger than 15 employees, has been recently extended to comprise firms with more than 5 employees by Agreement 30th November 2015[102] and I.M.D. no. 95933/2016.

A second and last "corporate" Solidarity Fund providing a STWS[103] was that of Poste Italiane S.p.A.

Even the Italian State Posts (Ente Poste Italiane), whose planned transformation into a joint stock company had been postponed by Law no. 662/1996 itself[104], had been benefitting from the special regime already destined to banks by art. 59 paragraph 3 Law no. 449/1997, which had temporarily turned supplementary pension funds into social shock absorbers[105]. By Collective Agreement 18th July 2001, a "paragraph 28" procedure had been initiated for the creation of a corporate Solidarity Fund within the Social Insurance Institute for Post, Telegraph and Telephone employees (Istituto Postelegrafonici – I.POS.T.); four years later, after the merging of the I.POS.T. into the I.N.P.S., such fund had been established within the latter Institute by I.M.D. no. 178/2005, alike all other Solidarity Funds.

Unlike other Solidarity Funds, the fund of Poste Italiane S.p.A. did not envisage any proportionality mechanisms for the provision of benefits: differently from the F.S. Group fund, the fund's scope was in fact excluding companies owned by the parent company, the latter being therefore the only recipient[106]. Given this premise, main innovation brought

---

[101] Collective Agreement 24th March 2014 between Confitarma, Fedarlinea, Federimorchiatori and FILT-CGIL, FIT-CISL and UILTRASPORTI.

[102] Agreement 30th November 2015 between Confitarma, Fedarlinea, Federimorchiatori, Assorimorchiatori and FILT-CGIL, FIT-CISL and UILTRASPORTI.

[103] The Solidarity Fund for income support of former employees of the Autonomous Administration of State Monopolies (see Righetti, 2002) had been in fact exclusively providing early retirement incentives. Having completed its mission, the fund has not been renewed beyond its deadline, lastly set on 31st July 2014.

[104] See art. 2 paragraph 27 Law no. 662/1996, which had extended by one year the term already established by art. 1 paragraph 2 of Law-Decree no. 487/1993, converted with modifications into Law no. 71/1994.

[105] See above Paragraph 2. The extension of such special regime on behalf of post employees had been provided by 40 paragraph 6 Law no. 448/1998.

[106] The payment of the additional contribution due on the funds' ordinary benefits in case of use was nevertheless provided for, as well as the possibility to suspend the obligation to pay the ordinary contribution for the financing of the fund itself. The latter obligation had been suspended for the whole years 2008 (Del. 18.12.2007 and I.N.P.S. Message no. 30507/2007), 2009 (Del. 05.02.2009 and I.N.P.S. Messages no. 3223/2009) and 2010 (Del. 03.03.2010 and I.N.P.S. Message no. 10660/2010), and again from April 2012 till December 2013 (Del. 19.03.2013 and I.N.P.S. Message no. 6337/2013).

about by the adaptation to the Fornero Reform has consisted in the extension of the fund's scope to the whole Poste Italiane Group.

The Collective Agreement signed on 26th June 2013[107] had specified the fund's lying sums to be reserved on behalf of the employees of Poste Italiane S.p.A. (Art. 2 paragraph 4) and controlled companies to be entitled to draw ordinary benefits up to the amount of the ordinary contribution paid (art. 1 paragraph 2). In the transposition process I.M.D. no. 78642/2014 has eliminated both clauses but also resolved to exclude from the fund's scope the companies derived from controlled companies as a result of corporate transactions (art. 2 paragraph 2).

If the Ministry decision not to transpose the limits agreed by the parties may be justified by the purpose of imposing a regime of full solidarity at least within a same business group, its consequences turn to be paradoxical on a systematic point of view. Such limits, although formulated in discriminatory terms only in respect of controlled companied, were in fact nothing but a variant of the principle of proportionality, valid for most of Bilateral Solidarity Funds established to date. It follows that an insurance company belonging to the Poste Italiane Group, as for example Poste Vita or Poste Assicura S.p.A., is to date accorded a more favourable treatment compared to any other insurance company, which can benefit from the provisions of the Solidarity Fund of the insurance business up to, respectively, 1 time and 1.4 times the contribution paid during the previous quarter, as regards the wage replacement allowance for the participation in reskilling programs and the short-time work allowance. Moreover, in place of an objective criteria such as the principle of proportionality, to regulate the access to the benefits provided by the Poste Italiane Group Bilateral Solidarity Fund the Executive Committee has been accorded the power to make largely discretionary "*priority assessments*" [108].

Law no. 92/2012 does not seem to encompass the idea of corporate Bilateral Solidarity Funds, as they are not expressly mentioned and, even before that, since the true purpose of the Law appears to be, on the whole, that of fostering the emergence of the broadest possible solidarity system allowed under the category of contractual welfare. Such an

[107] Collective Agreement 27th July 2013 between Poste Italiane S.p.A. (also on behalf of Postel S.p.A., Postelprint S.p.A., Docutel S.p.A., Posteshop S.p.A., Postecom S.p.A., Poste Vita S.p.A., Poste Assicura S.p.A., Poste Tributi S.C.p.A., Poste Tutela S.p.A., Egi S.p.A., Postemobile S.p.A., Poste Energia S.p.A., BancoPosta Fondi s.g.r.) and SLC-CGIL, UIL-POSTE, FAILP-CISAL, CONFSAL Comunicazioni and UGL Comunicazioni. The fund has been renamed "*Solidarity Fund for income support, employment, retraining and reskilling of Poste Italiane Group employees*".

[108] Confront art. 9 paragraph 2 of the collective agreement and art. 9 paragraph 1 of the Decree.

interpretation has pervaded the adaptation process of craft undertakings' Bilateral Funds, traditionally organized on a regional basis and, because of the reform, compelled to merge into a single national fund.

By the same logic same, the adaptation of former corporate Solidarity Funds should have provided the occasion to achieve a more ambitious outcome, such as the establishment of an inter-sectoral Bilateral Solidarity Fund of mobility and a Bilateral Solidarity Fund of postal services. Such an outcome would have been in turn consistent with both the true purpose of Law no. 90/2012 and the full liberalization of postal and domestic passenger transport services by rail, implying the presence of a plurality of private companies capable to compete for the award of public service contracts. The establishment of Bilateral Solidarity Funds larger than previous Solidarity Funds should have been finally conceived in order to avoid, as far as possible, the multiplication of management and administrative costs. Once and agreement on the contribution rate being reached, the merging of more corporate funds would have been easy by virtue of the principle of proportionality, which implies each company to have its own virtual account.

To achieve such an aim, it would have been indeed necessary for the Government to take an active role, much similar to the role already played in the late '90 with respect to Solidarity Funds. However, even if the scenario called for with regard to the postal and transport services came true, there would continue to exist anomalies in the labor welfare system that only an upstream legislative intervention could solve. This refers to the fact that the competitors of companies like Poste Italiane S.p.A. or Trenitalia S.p.A., belonging to Poste Italiane and F.S. groups, are subject to a different social security regime from that applied to the former State companies. Companies like Nexive – offering postal and express delivery services – or Nuovo Trasporto Viaggatori – the second high-speed rail passenger carrier – are in fact classed by the I.N.P.S. into the industrial sector, and, having more than 15 employees, are subject both to the C.I.G.O. and the C.I.G.S. scheme. As a result, these companies bear a labor cost which is significantly higher than those beared by former monopolistic companies, who have maintained their original exceptional social security classification. The difference in the contribution rate is, respectively 2.7 and 2.4 percentage points as regard the ordinary contribution, and ranges between 7.5 to 13.5 points as regards the additional contribution due in case of use.

On the other hand, Trenitalia and the Poste Italiane S.p.A. are virtually penalized, with respect to the C.I.G.S. scheme, since they can't rely on the State financial contribution for

the funding of short-time work allowance in case of severe crisis, firm's restructuring, reorganization or reconversion. Nevertheless, the past experience of corporate Solidarity Funds has shown that any short-time work compensation allowance has ever been delivered by the funds themselves. Even in the light of the latter evidence, it is finally plausible to infer the access to benefits for these companies to be almost automatically granted in case of claim to their own "corporate" fund.

Anomalies of this kind, resulting in an out-and-out distortion of the competition, could have been resolved by extending the C.I.G. scheme to the former State companies, while liquidating corporate Solidarity Funds or reconverting them into supplementary schemes for the provision of unemployment benefits pursuant to art. 3, paragraph 32 Law no. 92/2012. This would have meant nothing but returning to both the legislator's original purpose, with respect to Law no. 662/1996, and to the essential function of Solidarity Funds, established to manage structural redundancies.

The only alternative would have been represented by a reform meant to erode the scope of the C.I.G. scheme in favour of Bilateral Solidarity Funds, even by the mere reinterpretation of the notion of "industry" adopted by the I.N.P.S.

CHAPTER III

THE GOVERNANCE OF THE C.I.G. THROUGH COLLECTIVE BARGAINING

1. What relationship between C.I.G. regulation and collective agreements?

Since the C.I.G. has become a statutory short-time work compensation scheme, its regulation is to be found entirely and solely in primary and secondary legislation, as well as in the administrative practice.

This regulation has been recently reordered in the framework of the "Jobs Act" and is now mainly codified in Legislative Decree no. 148/2015, which has abrogated long standing pieces of legislation such as the Legislative Decree of the Lieutenant of the Realm no. 788/1945 and the Legislative Decree of the Provisional Head of the State no. 869/1947 (save for art. 3), as well as the special legislation for the construction sector (Law no. 77/1963). Moreover, pursuant to art. 16, paragraph 6, of Lgs. D. no. 148/2015, a new Decree providing the criteria for the examination of C.I.G.O. claims has been issued by the Ministry of Labor and Social Policies (no. 5442/2016). Finally, by Circular letter no. 139/2016, the INPS has provided an assessment of the administrative practice on the subject matter, with the aim of establishing "*unique and standardized criteria for claims examination*".

In such a context, it must be noted that art. 46 paragraph 2, letter b) of Lgs. D. no. 148/2015, by abrogating art. 3 L. no. 427/1975, has abolished the "Provincial Commissions for the Wage Supplementation Fund" (*Commissioni Provinciali per la Cassa Integrazione Guadagni*), which had long acted as the main governance body of the C.I.G.O. scheme.

Such Commissions, competent to decide upon C.I.G.O claims, were in facts tripartite and paritarian bodies composed by three representatives of the public authorities, three representatives of the relevant trade unions and three representatives of the relevant employers' organizations at Province level.

The role of social partners, who were significantly accorded the majority of the Commission's members, had on occasion proven to be determinant in the decision upon

C.I.G.O. claims, as it is evidenced by the legal disputes assessed in Chapter IV and originated from the appeal of the Commissions' decisions by the I.N.P.S. By way of rebuttal, we infer the concern of avoiding such legal disputes, or even any possible disagreement between the I.N.P.S. and the social partners, to be plausibly at the origin of the legislator's choice to abolish the Provincial Commission themselves.

Provided that the role played by Provincial Commission will be object of assessment in Chapter IV, for the purpose of the analysis carried out in the present chapter it is sufficient to account for the fact that, as a result of the abolition of these bodies, social partners have to date been deprived of any role with respect to the management of C.I.G.O. scheme. Nevertheless, we argue a role for social partners in the broader governance of the scheme being still possible through collective bargaining, to the extent that the contractual regulation of the institutions for working time arrangement is capable to both indirectly and directly affect the assessment of eligibility conditions for C.I.G.O. benefits and, even before that, to influence the benefits' claim rate by providing workable alternatives for the management of short-time work and working activity suspensions. Moreover, as it will be clear after reading the following paragraph, most of national collective labor agreements whose scope coincide with that of the C.I.G. contain specific clauses at the latter respect.

As regard the assessment of eligibility conditions, the pivotal element is to be found in the principle of "*prior exhaustion of contractual possibilities for working time reduction*" already trasposed among directive principles and criteria laid down in Law no. 183/2014, which had delegated the Government to reform short-time work compensation schemes (art. 1 paragraph 2 letter a) no. 3).

Such principle, surprisingly not implemented neither by Lgs. D. no. 148/2015 nor by M.D. no. 5442/2016 or I.N.P.S. Circular letter no. 139/2016, is nevertheless still applied in the practice as evidenced in both civil and administrative courts case-law: see among the most recent T.A.R. Piemonte, Ruling no. 380/2015, analysed in Chapter IV, quoting the Turin Provincial Commission statement that, to be eligible for the C.I.G.O., the employer shall use "*all the allowed organizational and contractual devices*" before filing for benefit.

The principle affirmed by the Provincial Commission of Turin in the case at hand is indeed broader than that transposed into Law no. 183/2014, and closer to a correspondent eligibility criterion already established for the C.I.G.D.

Art. 2 paragraph 8 I.M.D. no. 83473/2014 had in fact provided that "*in order to benefit from the C.I.G.D. the firm shall have previously utilised all ordinary flexibility instruments, including*

annual leave left untaken". The "ordinary flexibility instruments" had been listed by way of example in the Note no. 5425/2014 of the Ministry of Labor and Social Policies ("*annual leave left untaken and annual leave accrued, other leaves, working time accounts, etc.*"), which had included among them "*even contractual institutions*". The Regional Administrative Court of Apulia (T.A.R. Puglia Ruling no. 443/2015) has recently ruled such criterion, transposed into the Regional tripartite framework agreement of 1st February 2013 (point 5.1.2. letter a), to be legitimate.

Finally, the principle laid down with respect to the C.I.G.D. is in turn much more similar to its equivalent stated in the German law system with respect to the ordinary *Kurzarbeitergeld* scheme.

More precisely, art. 96, paragraph 4, Book III of the German Social Code defines as "unavoidable", and therefore eligible for support under the ordinary *Kurzarbeitergeld* scheme, a fall in the working activity "*when all reasonable measures have been taken in an enterprise to prevent the occurrence of the fall itself*". Among such measures are expressly mentioned "*the enjoyment of paid annual leave, whole or divided, in so far as workers' priority wishes with regard to the enjoyment of leave do not constitute an obstacle*" (n. 2) and "*the use, weather in full or in part, of all working time adjustment measures allowed in the enterprise*" (n. 3). A well-known working time adjustment institution is that of *Arbeitszeitsalden*, the German working time account on which overtime hours are credited and turned into compensatory rest periods. Note that this institution is identified in the study of Boeri and Brücker (2011a and 2011b) as a possible, more efficient substitute for *Kurzarbeitergeld*.

Against this background, it appears clear that principles and criteria such as the "prior exhaustion of contractual possibilities for working time reduction" as well as the adoption of "all allowed contractual devices" might at large embrace all latitudes allowed by the law system in the arrangement of working time (and not only), and consequently, according to the principles governing the relationship between collective and individual bargaining, substantiate a form of referral to collective agreements.

In the following two paragraphs we will explicitly explore this perspective through the analysis of the contractual regulation of both legal and contractual institutions allowing for working time adjustment, with respect to the C.I.G.O. regulation. Such an analysis, to the best of the Author's knowledge, has never been carried out before.

Before starting the analysis, two premises must be nevertheless done with respect to the Italian institutional framework, as regards the nature and the effects of collective agreements' provisions in general and the regulation of working time.

As first, it must be accounted for the fact that the Italian national law and collective bargaining system, as assessed by the majority of law scholars and settled case-law, distinguish between "normative", "mandatory" and "managerial" functions of collective agreements (Giugni, 2002), and consequently between normative, mandatory and managerial clauses and agreements. Collective agreements' normative clauses directly contribute to the regulation of individual employment relationships, whilst mandatory clauses regulate the relationships between the signatories of the collective agreement themselves either at national, territorial or firm level (Court of Cassation, Ruling no. 530/2003). Among the latter category are to be distinguished managerial collective agreements, intended to adopt certain measures of human resource management typically in case of redundancies. Both mandatory and managerial clauses and agreements are therefore capable to indirectly affect individual employment relationships as they establish rules and procedures for the management of collective issues (Constitutional Court, Ruling no. 268/1994 and no. 344/1996).

In such a theoretical framework the provisions reported in the following Table 1 are examples of mandatory clauses whose implementation may result in firm level managerial collective agreements, whilst the provisions reported in the subsequent Table 2 constitute a peculiar case of normative clauses, usually neglected in the Italian juridical literature.

Secondly, in order to get the foreign reader introduced to Italian regulation of working time, a short, preliminary description of the institutions referred to in the following two paragraphs, including their original and translated denomination, is provided below[109].

- **Annual leave (*ferie*):** it is a legal institution grounded in art. 36 of the Italian Constitution ("*Workers have the right to a weekly rest day and paid annual holidays. They cannot waive this right*"). The institution's regulation is to be found in art. 2109 of the Italian Civil Code ("*The employee has the right...to an annual period of paid leave, possibly uninterrupted, to be enjoyed at the time the employer shall establish, taking into account the firm's needs and the interests of the employee. The duration of this period shall be established by law, by custom or ex aequo et bono*") and in art. 10 Lgs. D. no. 66/2003

[109] As a futher premise, we put forward that the actual regulation of working time is to be found in Lgs. D. no 66/2003 and subsequent modifications, which represents the result of the transposition of Directives no. 104/93 and no. 34/2000 (now Directive no. 88/2003) into the Italian law system.

("*Without prejudice to the provisions of article 2109 of the Civil Code, the employee is entitled to an annual period of paid leave of at least four weeks. This period, except otherwise provided by collective bargaining…should be enjoyed for at least two weeks in a row, in the event of the worker's request, during the year where hours of leave were accrued, and for the remaining two weeks within the 18 months following the end of the accruance period*").

- **Annual working time reduction leaves (*permessi a titolo di Riduzione dell'Orario di Lavoro – R.O.L.*)**: it is a contractual institution whose origins are to be tracked back to the so called "Scotti Memorandum of Understanding", a tripartite agreement between the Government and the social partners signed on 22nd January 1983. In the Memorandum, a 20 hours-per-year working time reduction had been agreed, deferring its implementation to collective bargaining. Such working time reduction has been implemented in the form of a paid leave that can be managed both individually and collectively. To date, the number of annual working time reduction hours of leave ranges between 24 and 76 depending upon the national collective agreement, *i.e.* the economic sector of activity and the workers' category. As also acknowledged in the Note of the Italian Ministry of Labor and Social Security of 27th June 2007, the latter agreements usually defer the regulation of the institution to the firm level.
- **Flexible working time schedule (*orario flessibile, plurisettimanale o multiperiodale*):** art. 3, combined with art. 4 of Lgs. D. no. 66/2003, provide for the working time schedule to be possibly calculated as an average on a reference period of different length. More precisely, art. 3 paragraph 2 establishes that, the normal working time being 40 hours per week, collective bargaining may provide for a shorter duration and for the working time itself to be "*calculated as an average over a reference period not exceeding 12 months*". Art. 4 defer to collective bargaining the power to set down the maximum weekly working time (paragraph 1), allowing for its calculation as an average on a reference period not exceeding 12 months face to "*objective or technical reasons or face to reasons that are inherent to the work organization, specified in…collective agreements*" (paragraph 4). From the calculation of working time as an average it stems the additional wage components for overtime not being due or been remunerated at a lower rate, thus implying a reduction in the costs borne by employers. Under flexible working time

schedule workers are typically granted the same wage both in the exceedance periods and in periods of short-time work.

- **Former public holidays leave (*ex festività o festività soppresse*):** it is a contractual institution consisting of 32 hours of paid leave accorded to workers in substitution of the holidays no longer included in the Italian official list of celebrations been acknowledged a civil status as a result of the provisions of art. 1 Law no. 54/1977.
- **Make up time (*recupero*):** it is a contractual institution allowing for lost working hours due to interruption, stops and short-lasting suspensions of the working activity, both unplanned and planned, to be made up at a later time through prolongation of the working time, without additional costs for the employer.
- **Working time account (*banca delle ore o banca ore*):** the contractual institution of "*banca delle ore*" represents the Italian equivalent of a working time account. Its regulation is to be found in collective agreements, as acknowledged by the I.N.P.S. in Circular letter no. 39/2000.

2. The collective and individual management of legal and contractual institutions for working time arrangement in the place of C.I.G.

It may be noted that in most of national collective labor agreements signed by the trade unions belonging to the three main Italian confederation (CGIL[110], CISL[111] and UIL[112]), whose scope coincides with that of the C.I.G., is reproduced, with significant variants, a specific provision allowing the use of certain legal and contractual institutions in alternative to the C.I.G. (Table 1):

Table 1: collective management of certain legal and contractual institutions in alternative to the C.I.G. (selection of national collective labor agreements' clauses)

Agricultural, zootechnical products and food processing cooperatives, art. 34.	"*For the term of the present national collective labor agreement the parties agree that, in case of crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is appropriate to identify measures to reduce, as far as possible, the social consequences of a lower workforce utilization.* *In the framework of the meetings established by legal procedures to deal with the situations referred to above, in accordance with the technical, organizational and economic needs of each*

[110] Confederazione Generale Italiana del Lavoro, http://www.cgil.it/.
[111] Confederazione Italiana Sindacato Lavoratori, https://www.cisl.it/.
[112] Unione Italiana del lavoro, http://www.uil.it/.

	single firm and without prejudice to the autonomy of the parties at firm level in assessing its feasibility, the possibility of collective management of the annual working time reduction leaves, the former public holidays leaves...and the annual leave left untaken...will be considered. *Moreover, in the event of crisis of temporary nature, the parties at firm level, if necessary, will allow for additional working time reductions by resorting to…other institutions to be identified at firm level.* *In the framework of the renewing of the present agreement, the parties will proceed with the evaluation of the results of these measures…of their degree of diffusion and their consequences…to assess the opportunity of a consolidation of the provisions referred to in the previous paragraph with respect to the subsequent collective agreements*"; "*This is without prejudice to the possibility, according with the different business needs, to resort to the legal institutions of the C.I.G....and Solidarity Agreements*"; "*The parties do not intend to charge cooperatives the workers' wage in the cases of working activity reduction eligible for wage supplementation under applicable laws, nor consequently to limit the employers' right to file for the C.I.G. in accordance with the legislation in force or the future legislation*".
Food processing industries, art. 38.	"*For the term of the present national collective labor agreement…the parties agree that, in case of crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is appropriate to identify measures to reduce, as far as possible, the social consequences of a lower workforce employment.* *In the framework of the meetings established by legal procedures to deal with the situations referred to above, in accordance with the technical, organizational and economic needs of the single firm and without prejudice to the autonomy of the parties at firm level in assessing its feasibility, the possibility of collective management of the annual working time reduction leaves, the former public holidays leaves... and the annual leave left untaken...will be considered.* *In the framework of the renewing of the present agreement, the parties will proceed with the evaluation of the results of these measures…of their degree of diffusion and their consequences…to assess the opportunity of a consolidation of the provisions referred to in the previous paragraph with respect to the subsequent collective agreements*"; "*This is without prejudice to the possibility, according with the different business needs, to resort to the legal institutions of the CIG...and Solidarity Agreements*".
Small and medium food processing industries (CONFAPI), arts. 25 and 26.	"*The annual working time reduction leaves, even cumulated with the former public holidays leaves, will be used as a priority in the case of working time reduction or working activity suspension due to force majeure events and temporary market downturns*"; *"The parties agree that the procedures, established by the legislation in force, for the examination of redundancy situations due to firms' crisis, restructuring, reorganization or reconversions, will be aimed at searching for solutions that, taking into account business needs, will be able to reduce the negative impact on employment levels*"; *Moreover, in the event of both ordinary and extraordinary C.I.G. claims, the parties will consider, as a priority, the possibility to resort to all working time reductions allowed on a contractual basis*; *A comprehensive evaluation of the results of these measures may be carried out in the framework of the meeting of the* [sectorial] *Observatory".*
Tobacco processing industries, art. 14.	"*For the term of the present national collective labor agreement the parties agree that, in order to reduce the consequences on employment levels of the severe market and production crisis of the sector, without prejudice to the possibility to resort to the legal institutions of Solidarity Agreements and C.I.G.…and in accordance with technical and organizational needs, a temporary and reversible working time reduction may be implemented through collective management of annual working time reduction leave; beyond the foregoing, a further, temporary and reversible working time reduction may be implemented with the consequent reduction of the workers' wage.* *The aforementioned collective management and resort to working time reductions will be achieved through the activation, by the firm, of a dedicated bargaining procedure".*
Construction cooperatives, art. 4.	"*Without prejudice to the possibility to resort, with respect to the different business needs, to the legal institution of C.I.G…and Solidarity Agreements…the parties agree that, in case of temporary market downturn, crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is opportune to act in order to reduce, as far as possible, the social*

	consequences of a lower workforce utilization. *To serve this purpose, in the framework of the meetings established by legal procedures to deal with the situations referred to above, the parties shall consider, in accordance with the technical and organizational needs of each single firm, the possible collective management of:* *- leaves in general, and of the annual working time reduction leaves;* *- the annual leave left untaken…* *- the public holidays allowance…;* *- the allowance provided for the former public holiday of 4th November;* *- part-time contracts, with the consequent augmentation of their share with respect to full time-contracts*".
Mining, quarrying and processing of stone materials industries, art. 43; Small and medium mining, quarrying and processing of stone materials industries (CONFAPI, art. 77, CONFIMI, art. 81); Small and medium industrial manufacturers of bricks and concrete elements (CONFAPI and CONFIMI, art. 82).	"*Without prejudice to the possibility to resort, with respect to the different business needs, to the legal institution of C.I.G…and Solidarity Agreements… the parties, on a pilot basis and for the term of the present national collective labor agreement, agree that, in case of crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is opportune to act in order to reduce, as far as possible, the social consequences of a lower workforce utilization.* *To serve this purpose, in the framework of the meetings established by legal procedures to deal with the situations referred to above, the parties shall consider, in accordance with the technical and organizational needs of each single firm, the possible collective management of the annual working time reduction leaves…as well as of the former public holidays leaves… and the annual leave left untaken.* *In the framework of the renewing of the present agreement the parties will proceed with the evaluation of the results of these experimental measures, of their degree of diffusion and their consequences…to assess the opportunity of a consolidation of the provisions referred to in the previous paragraph with respect to the subsequent collective agreements*".
Wood, furniture and forestry industries, art. 25.	"*In the event of C.I.G.O. or C.I.G.S. claims, the firm, limited to the workers concerned, will resort to collective management of* [working time accounts] *leaves, subject to prior adequate information on the applicable rules in force*".
Small and medium wood, furniture and forestry industries (CONFAPI and CONFIMI), art. 25.	"*In case of situations for which the intervention of the C.I.G. is needed, or other situations requiring a working time reduction or a firm's working activity suspension, the collective management of working time accounts leaves shall be disposed*".
Metalworking industries of 20th January 2008 (CONFINDUSTRIA-FIOM-FIM-UILM), Section IV, Title III, art. 2.	"*Without prejudice to the possibility to resort, with respect to the different business needs, to the legal institution of C.I.G…and Solidarity Agreements…the parties agree that, in case of temporary market downturn, crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is opportune to act in order to reduce, as far as possible, the social consequences of a lower workforce utilization.* *To serve this purpose, in the framework of the meetings established by legal procedures to deal with the situations referred to above, the parties shall consider, in accordance with the technical and organizational needs of each single firm, the possible collective management of the annual working time reduction leaves as well as the annual leave left untaken…and the public holiday allowance…*".
Metalworking industries of 5th December 2012 (CONFINDUSTRIA-FIM-UILM), Section IV, Title III, art. 2.	"*Without prejudice to the possibility to resort, with respect to the different business needs, to the legal institution of C.I.G…and Solidarity Agreements…the parties agree that, in case of temporary market downturn, crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is opportune to act in order to reduce, as far as possible, the social consequences of a lower workforce utilization.* *In case of suspension of the working activity, the collective management of working time accounts and annual leaves left untaken may be disposed subject to prior examination with the representatives of the relevant trade unions at firm level…*".
Small and medium metalworking industries (CONFAPI-FIOM-FIM-UILM) of 25th January 2008, Chapter V, art. 25.	"*Without prejudice to the possibility to resort, with respect to the different business needs, to the legal institution of C.I.G…and Solidarity Agreements…the parties agree that, in case of temporary market downturn, crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is opportune to act in order to reduce, as far as possible, the social consequences of a lower workforce utilization.* *To serve this purpose, in the framework of the meetings established by legal procedures to deal with the situations referred to above, the parties shall consider, in accordance with the technical and organizational needs of each single firm, the possible collective management of the annual*

	working time reduction leaves as well as the annual leave left untaken…and the public holiday allowance…".
Small and medium metalworking industries (CONFAPI-FIOM) of 23rd July 2013 Chapter V, art. 25; Metalworking cooperatives, Section IV, Title III, art. 2.	"*Without prejudice to the possibility to resort, with respect to the different business needs, to the legal institution of C.I.G…and Solidarity Agreements…the parties agree that, in case of temporary market downturn, crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is opportune to act in order to reduce, as far as possible, the social consequences of a lower workforce utilization.* *In case of suspension of the working activity, the collective management of working time accounts and annual leave left untaken may be disposed subject to prior examination with the representatives of the relevant trade unions at firm level…".*
Small and medium metalworking industries (CONFIMI-FIM-UILM) of 1st October 2013, art. 23.	"*Without prejudice to the possibility to resort, with respect to the different business needs, to the legal institution of C.I.G…and Solidarity Agreements…the parties agree that, in case of temporary market downturn, crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is opportune to act in order to reduce, as far as possible, the social consequences of a lower workforce utilization.* *To serve this purpose, in the framework of the meetings established by legal procedures to deal with the situations referred to above, the parties shall consider, in accordance with the technical and organizational needs of each single firm, the possible collective management of the annual working time reduction leaves and the annual leave left untaken*".
Ceramic and refractory industry, Part IV.	"*The Parties agree on the need for the management of employment consequences of firm's restructuring, reorganization and reconversion, as well as of technological innovations, to be inspired by the principle of reducing the social impact of redundancies, compatibly with firms' competitiveness requirements".* *To serve this purpose, without prejudice to the possibility to resort, with respect to the different business needs, to the legal institution of C.I.G…and Solidarity Agreements…the Parties, on a pilot basis and for the term of the present national collective agreement, agree that, in case of crisis, firm's restructuring, reorganization or reconversion leading to redundancies, it is opportune to act in order to reduce, as far as possible, the social consequences of a lower workforce utilization.* *In the aforementioned cases, the Signatories shall envisage the possibility to resort to collective management of annual working time reductions and working time accounts…to part–time working as well as to appropriate retraining initiatives and to further working time reductions through Solidarity Agreements.* *More specifically, in the framework of the meetings established by legal procedures to deal with the situations referred to above, in accordance with the technical and organizational needs of each single firm and compatibly with its economic condition, the possibility to resort to collective management of annual working time reduction leaves, of…* [flexible working time schedule] *as well as of former holidays leaves…and annual leave left untaken will be exanimated by the management and the representatives of the relevant trade unions at firm level. In the framework of such meetings the representatives of the relevant trade unions at firm level may play a proactive role in the identification and in the design of income support measures on behalf of workers benefitting of…*[STWS] *or affected by other situations of reduced working activity.* *The possible resort to further, temporary and reversible working time reductions through Solidarity Agreements, beside taking into account the type of working activity and the homogeneity and fungiblity of the workers, requires the costs to be balanced with equivalent wage reductions. The resort to incentives and support measures provided by the legislation in force may dampen the economic burden on workers*".
Textile industries, Memorandum of understanding no. 3; Small and medium footwear industries (CONFAPI), Memorandum of understanding no. 7; Toy industries, Memorandum of understanding no. 1;	"*The parties believe an efficient system of social shocks' absorbers, encompassing a broad range of possible measures, be necessary to accompany the restructuring processes of the sector...* *In this context the parties agree on the opportunity to resort to such measures according to the firm's economic condition, to the market perspectives and to the need to reduce at minimum the social consequences…*[of redundancies] *and the shedding of firms' human capital*" *To serve this purpose, the resort to different legal institutions, such as Solidarity Agreements, and to contractual institutions, such as the collective management of working time reductions, annual leave and former public holidays leaves, as well as the resort to part-time work, shall be encouraged*".

Industrial laundries, Memorandum of understanding no. 2[113]; Eyewear industries, Memorandum of understanding no. 1; Industrial manufacturers of umbrellas, art. 10; Industrial manufacturers of pens and brushes, Memorandum of understanding no. 1.	
Chemical and pharmaceutical industries, Part IV.	"*With respect to the extent of redundancies, to the type of working activity and to the homogeneity and fungibility of the workers, the management and the representatives of the relevant trade unions at firm level may agree to implement a temporary and reversible collective working time reduction by resorting, both for shift and non-shift workers, to:* *- all leaves provided on a contractual basis;* *- annual leave left untaken, working time accounts and annual working time reduction leaves…*"; "*In the view of preventing and creating the conditions to contain redundancies, the management and the representatives of the relevant trade unions at firm level may conceive reskilling arrangements on behalf of workers needing to learn new skills in order to be employed in their firm as well as outside their firm.* *The parties identify the temporary switch to part-time of the workers concerned as the instrument of choice to implement reskilling, compatibly with the firms' organizational needs*".
Leather industries, art. 8.	"*In case of structural firm's crisis implying redundancies, in relation to the extent of redundancies themselves, to the type of working activity and to the workers' homogeneity and fungibility, the management and the representatives of the relevant trade unions at firm level may agree to resort to legal institutions intended to reduce the negative impact on employment levels, in the following order: Solidarity Agreement…part-time work and C.I.G.…*".
Small and medium chemical industries and similar (CONFAPI) – chemistry, leather and related sectors of activity, Minutes statement attached to arts. 12 and 40.	"*The parties believe the consequences of restructuring and reorganization processes to be managed, taking into the business need, in order to reduce the social impact of redundancies especially for those workers who are not adequately covered by support measures provided by the legislation in force.* *The choice is between all compatible contractual institutions (part-time, both horizontal and vertical, former public holidays leaves, annual leaves and flexible working time schedule) and legal institution (Solidarity Agreements, C.I.G.O and C.I.G.S., posting of workers, etc.) not resulting in a loss of efficiency or competitiveness of the firm.* *In this sense a prompt response to the crisis requires the arrangement for the resort to the institutions referred to above to imply a reduction in the timing of procedures established by the law.* *The parties agree that preventive measures such as reskilling of workers whose tasks have become obsolete, and lifelong learning, may create the conditions to limit the risk for these workers to be shed from the productive cycle, and that reskilling may be implemented through temporary and unremunerated working time reduction, compatibly with the firm's organizational, productive and economical needs, resorting to any State funding provided by the law.* *The parties engage in evaluating, in the framework of the Bilateral Commission, the experiments carried out within the national territory and consistent with the present Declaration, spreading awareness at territorial level.* *In addition, the parties believe contractual institutions such as flexible working time schedule, fixed-term contracts, horizontal and vertical part-time contracts…may provide useful even in order to limit the resort to overtime work*"; "*In case of working time reduction of working activity suspension with resort to C.I.G.O. or C.I.G.S., as well as in any case of partial or total suspension of the working activity, annual leaves will be primarily taken up to their full amount, without prejudice to any annual leave*

[113] On 19th June 2013 a "*Memorandum of understanding on working time and the management of fluctuations in the productive activity*" conceived to provide guidelines for firm level collective bargaining has been signed.

	schedule previously defined".
Industrial manufacturers of glass, Chapter III.	"*The parties, in the knowledge that crisis events, firms' restructuring, reorganizing and reconversion processes implying a negative impact on employment levels must be closely monitored, agree on the opportunity to take action in order to provide guidance and to preserve both firms and employment in a way – without prejudice to the specific technical and organizational need of each single firm and to the autonomy of the parties at firm level – able to contribute to the identification of possible solutions to reduce the social impact* [of the situations referred to above]. *To meet the objective stated above, the parties, without prejudice to the possibility to resort, in relation to the different needs of firms and workers, to the legal institutions of Solidarity Agreements…C.I.G.…part-time contracts…and further measures, indicates to the management and the representatives of the relevant trade unions at firm level the following instruments and pathways, that need to take into account the technical and organizational needs of the single firms:* *1) collective management of annual working time reduction leaves. Subject to the assessment of the extent of redundancies, of the type of working activity and of the workers' homogeneity and fungibility, the management and the representatives of the relevant trade unions at firm level may consider the implementation of a temporary and reversible working time reduction by resorting, both for shift and non-shift workers, to:* *- all leaves provided on a contractual basis;* *- annual leave and annual working time reduction leaves left untaken…*; *2) further working time reductions through solidarity agreements as provided by the legislation in force.* *In the framework of the National Observatory, the experiments carried out within the national territory will be evaluated, spreading awareness at territorial level.*

The analysis of the clauses reported in Table 1 evidences that they share both a common, "typical" shape (*i.e.* they seem to be modelled from a same matrix) and a clear experimental nature. In the case of the food processing sector it is also specified the consolidation of such clauses in future national collective labor agreements to be subject to the prior evaluation of their outcomes.

To the best of our knowledge, any assessment involving the evaluation of the diffusion and the consequences of the implementation of the above reported clauses has been carried out to date by the social partners. Nevertheless, such clauses are suitable to take new relevance as a consequence of the possible reconsideration of the criterion of "*prior exhaustion of the contractual possibility of working time reduction*" in the framework of the STW reform's implementation.

It must be pointed out that, with respect to the C.I.G.O., such a criterion is actually not made explicit neither in the primary and secondary legislation, nor in any Circular letter of the I.N.P.S. or the Ministry of Labour and Social Policies. The practice of applying the criterion to the examination of the C.I.G.O. claims is in facts attested only in the rulings of both civil and administrative Courts. Among the former, the Court of Bergamo has recently ruled the practice to be legitimate from a common sense point of view and on the

basis of art. 2 of the Italian Constitution, which requires the fulfilment of the mandatory duties of political, economic and social solidarity (Ruling 30/05/2013).

As it emerges from the account of the facts and especially from the quotations of the parties' statements reported in the Ruling, the criterion of the prior exhaustion of annual leaves, as applied by the I.N.P.S., does not provide, as under the German legislation, an element to qualify the events of working time reduction or working activity suspension eligible under the scheme, but rather establish an additional eligibility criteria not made explicit by the law.

More precisely, the criterion stated in article 96, paragraph 4, points 3 and 4, Book III of the German Social Code helps to qualify as "unavoidable" the contraction of the working activity which constitutes the specific condition for the intervention of *Kurtzarbeitergeld*, taking into account, with respect to annual leaves, even the workers' wishes.

Provided that, in the Italian case, the aforesaid practice has been established in the absence of specific legal provisions, we can question whether, and to what extent, the criterion of the "*prior exhaustion of the contractual possibility of working time reduction*" can be interpreted as a substantial, indirect referral to the provisions set down in collective agreements, an interpretation that would give social partners the power to (re)shape the criterion itself. More in particular, we can question whether the provisions contained in the above reported clauses, their possible amendment as well as the possible introduction of new, *ad hoc*, provisions expressly intended to offset, limit or redesign the criteria of prior exhaustion of the contractual possibilities of working time reduction, would be suitable to have any effect in the context of the C.I.G.O. claims' examination. Note that such a device, allowing for a derogation of the criteria laid down in M.D. no. 83473/2014 through firm level collective agreements, has already been put in place with respect C.I.G.D. in Apulia Region.

By regional tripartite framework agreement 14th January 2014 the parties have agreed that "in the event of a working time reduction the prior exhaustion of annual leave can be derogated only by agreement signed by all the parties…".

It is significant to observe that some of the clauses reported in Table 1 expressly state the resort to the C.I.G. not being precluded, according with the principle that the choice among the different measures provided under national law shall be consistent with the "*the different technical, organizational and economical needs of each single firm*". In the case of the National Collective Agreement of agricultural, zootechnical products and food processing

cooperatives, it is even specified that the parties do not intend to limit the employers' right to claim the C.I.G. nor charging firms the cost of workers' income support in case of short-time work or working activity suspensions which are eligible under the scheme.

Even more significant is the fact that, in the national collective labor agreements of constructions and related sectors of activity (manufacturers of cement, lime and plaster, mining, quarrying and processing of stone materials craft undertakings and industrial manufacturers of bricks), with the sole exception of construction cooperatives, clauses such as those reported in Table 1 are absent, being instead expressly stated that, as it will be reported in the following Table 2, firms "*are required*" to file for the C.I.G.

With respect to latter cases, in the absence of decentralized collective agreements providing otherwise, we can question whether and to what extent the criterion of the national Collective labor agreement applied shall be considered in the context of the C.I.G.O. claims' examination, with the effect of limiting the exercise of discretion by the Provincial Commissions and the I.N.P.S. Even with respect to national Collective labor agreement not prescribing the resort to the C.I.G. and/or not precluding the resort to suitable alternatives or leaving the decision to the employer, it would be difficult to imagine the exercise of discretion to go so far as to question the appropriateness of the employers' choice within different alternative measures in relation to the specific technical, organizational and economic need of the single firm. The problem arises mainly with respect to the C.I.G.O. eligibility criteria, in whose assessment settled case-law has acknowledged to the administrative authority an almost unlimited discretion[114].

In the light of the foregoing, it is even more significant to observe that the clauses reported in Table 1 typically concern the causes of short-time work or working activity suspension eligible under the C.I.G.S. scheme (crisis, firms' restructuring, reorganization or reconversion); on the other hand, only a minority of national collective labor agreements regulate the collective management of legal and contractual institutions and/or the identification of additional institutions at firm level to cope with the situations

[114] See Council of State, Ruling no. 4084/2013, reaffirming the principle that "*the judicature of a C.I.G. denial decision is limited by the broad technical discretion which characterises the appraisal of a crisis situation under art. 1 l. no. 164/1975 by the insurer, whose choices can be the subject of judicial review only if clearly illogical, manifestly inconsistent, unreliable or biased due to obvious misrepresentations of the facts*". With specific regard to the C.I.G.O., see also Council of State, Ruling no. 454922/2000, according to which "*the positive, as well as the negative decision on the admission to the C.I.G.O…does not automatically follow the appraisal of the cause of the working time reduction or working activity suspension – which is anyway left to the technical discretion of the competent body – but also implies an appraisal, of a discretionary nature, involving the balancing of economic and social policy interests. This dual profile of discretion, in accordance with principles long observed, confines the judicature out of the latitude enjoyed by the administrative authority in relation to such appraisals, unless they do appear manifestly unreasonable or biased due to obvious misrepresentations of the facts*".

corresponding to the causes of short-time work or working activity suspension eligible under the C.I.G.O. scheme. Among the latter the National Collective Labor Agreement of the small and medium food processing industries (CONFAPI) contains an "atypical" clause identifying, besides an hypothesis of "*collective flexibility*", an hypothesis of "*individual flexibility*" (art. 24 paragraphs 1 and 2):

"*In order…to reduce the C.I.G. utilization, the management and each single employee may agree to resort to individual flexibility, beside collective flexibility…for a minimum of 40 hours on annual basis. The hours worked shall be made up, as a priority, during the periods for which the C.I.G. is claimed or else during the periods of lower production intensity, as identified by the management, usually whithin the next 12 months and no later than 31st December of the following year, unless otherwise agreed between the management and the employee and save for abnormal rates of absence from work for such periods*".

It is instead designated as "collective" – despite the fact that it does not imply any information, consultation or bargaining procedure involving the trade unions but only the "*prior adequate information on the applicable rules in force*" to the single employees concerned – the use of working time accounts' leaves, limited to redundant workers, in alternative to the C.I.G., referred to in another "atypical" clauses of the National Collective Labor Agreement of the wood industry.

At this point of the analysis it is necessary to reach agreement as to the significance, in operational terms, of "individual" and "Collective" management of the mentioned legal and contractual institutions: we shall as first distinguish whether leaves are taken in order to satisfy the workers' personal needs or the firms' technical, organizational and economical needs; in the latter case, we may further distinguish between "individual" and "Collective" flexibility depending upon whether the leaves' management is directly negotiated between the employer and the individual workers or else any information, consultation or bargaining procedure involving the representatives of the relevant trade unions is provided.

It should be noted that, in general, the regulation of contractual institution such as the annual working time reduction leaves, the former public holidays leaves, as well as of the annual leaves themselves, it is already designed in order to allow their collective management or at least their individual management compatibly with the business needs. Moreover, virtually all national collective labor agreements explicitly allow the parties at firm level to set down different rules for the management of the above mentioned institutions, through simple meeting as well as in the framework of specific understandings and agreements. Among different options, it is worth to mention the possibility to use the

annual working time reduction leaves to lower the number of weekly working hours from 40 to 39[115].

In practice, beside the shortening of working time on a daily or weekly basis, the annual working time reduction leaves are usually used, together with the former public holidays leaves, to cover pre-holidays periods and, more generally to cover planned firms' closing dates and plants' down times, events that are typically not eligible for compensation under the C.I.G.O. scheme. The same institutions are instead not always usable in place of the C.I.G.O. to cover non-planned events, first of all with respect to new recruits: since leave hours are accumulated as time goes by, workers recruited during the year are expected to have less leave hours, and just-recruited workers are expected to have a zero balance on their accounts. Whilst before the *Jobs Act* such employees could benefit, on the occurrence, of the C.I.G.O. scheme, after the introduction of a new eligibility criteria by art. 1 paragraph 2 of D.Lgs. no. 148/2015 workers are required to have a minimum 90 days of seniority in order to be admitted to income support, save for "*objectively unavoidable events in the industrial sector*". In all other eligible cases, it is therefore plausible to expect the employees having less than 90 days of seniority to be sent on unpaid leaves: an hypothesis that, together with the case of short-lasting interruptions' management, contributes to reopen the issue of the legitimacy of working time reduction or working activity suspension in the absence of C.I.G.O. income support.

It should be noted, however, that the possible systematic use of both "Collective" and "individual" flexibility prior or in place of the C.I.G.O. is liable in itself to bring about practical problems, regardless the solution given to the above mentioned theoretical issue.

The design of the C.I.G.O. before the Jobs Act had been conceived to give employers the broadest flexibility in choosing the employees to be suspended or to work short time, subject only to the condition of ensuring their return to full-time work once the transitory turbulence in the firms' activity be terminated (as well as subject to the condition of informing the representatives of the relevant trade unions).

[115] National Collective Labor Agreement of agricultural, zootechnical products and food processing cooperatives, art. 27; National Collective Labor Agreement of food processing industries, art. 30; National Collective Labor Agreement of small and medium food processing industries (CONFAPI), art. 23 paragraphs 2-4; National Collective Labor Agreement of rubber and plastics industries, art. 8; National Collective Labor Agreement of chemical and related industries (CONFAPI) – ceramic and glass, art. 12; National Collective Labor Agreement of industrial laundries, art. 44; National Collective Labor Agreement of industrial manufacturers of glass, art. 15.

The "flexibility logic" accounted for the absence of seniority requirements, and, primarly, for the absence of any obligation to specify the criteria used for the selection of the workers to be made temporary redundant, as well as for the absence of any obligation to apply rotation.

With respect to the original C.I.G.O. design, the criterion of the prior exhaustion of the contractual possibility of working time reduction, combined the new seniority requirement introduced by the Jobs Act, is likely to bias the selection of the workers according with their respective leaves accounts, and even, trickily, according with their *status* of European or non-European citizen: on behalf of the latter many national collective labor agreements provide in facts a more favourable rule allowing leaves' accumulation in order to enjoy an uninterrupted period of absence from work for purpose of family reunification in the country of origin[116].

Such biases are at same time likely to undermine both firms' needs, by reducing flexibility in the use of the scheme[117], and workers' needs, by generating discriminations via indirect effects on the freedom to enjoy one's rest time. And whether the systematic use of "Collective flexibility" reopens the theoretical issue of the effects of collective settlements, the systematic use of "individual flexibility" on the basis of a "voluntary" agreement between the management and the single worker escapes even to any possibility of control or observation, insofar as the phenomenon is completely invisible to official statistics. It would be therefore desirable to envisage and implement a specific monitoring program, and furthermore to provide, in the light of its results, for the establishment of rules, limits and criteria in the framework of the national law and/or collective bargaining system.

---

[116] National Collective Labor Agreement of agricultural, zootechnical products and food processing cooperatives, art. 35; National Collective Labor Agreement of food processing industries, minutes statement attached to art. 35; National Collective Labor Agreement of constructions, art. 75; National Collective Labor Agreement of mining, quarrying and processing of stone materials industries, minutes statement attached to arts. 72, 83 and 95; National Collective Labor Agreement of small and medium mining, quarrying and processing of stone materials industries (CONFAPI and CONFIMI), minutes statement attached to art. 22; National Collective Labor Agreement of mining, quarrying and processing of stone materials craft undertakings, art. 75; National Collective Labor Agreement of small and medium industrial manufacturers of bricks and concrete elements (CONFAPI and CONFIMI), art. 24; National Collective Labor Agreement of metalworking industries, Section IV Title III, minutes statement attached to art. 10; National Collective Labor Agreement of eyewear industries, minutes statement attached to arts. 76, 86 and 95; National Collective Labor Agreement of industrial manufacturers of pens and brushes, minutes statement attached to arts. 83, 89 and 97; National Collective Labor Agreement of industrial net manufacturers, minutes statement attached to art. 84.

[117] The scheme's flexibility of use is also lowered by the new requirement, introduced by art. 15 paragraph 1 Lgs. D. no. 148/2015, to include, in the C.I.G.O. application, the names of the workers concerned by short-time work or working activity suspension.

Within national Collective agreements actually in force, only that of metalworking industries contains an objective criterion on the issue at hand, in the form of an upper bound to the number of annual working time reduction leaves that may be managed collectively (Sec. IV, Tit. III, art. 5). This criterion appears in facts conceived to limit the management's power by safeguarding the workers' needs, provided that the contractual regulation of all institutions allowing for working time adjustment margins, as amended by the separate agreement of 5th December 2012, seems on the whole designed to face peaks rather than falls in the production.

In the context of the simultaneous increase of the number of daily and weekly hours that may be worked under flexible working time schedule, as well as of the number of overtime hours employees may be asked to work under the provision of the so called "free quotas"[118], is in fact provided for the decrease (from 7 to 5) of the number of annual working time reduction leaves that may be collectively managed, face to the correspondent augmentation (from 1 a 3) of those that can be denied to workers whithin the calendar year.

Moreover, a new clause introduced by the separate agreement[119] allows for the scheduling of annual leaves and annual working time reduction leaves to be a function of the flexible working time schedule adopted by the firm. By this principle employees unwilling or unable to work over 40 hours per week during the exceedance periods are expected to take their paid leaves during the periods of short-time working, opting instead for unpaid leaves[120].

Once again, the possibility to resort to unpaid leaves appears to be the fulcum for the lever of the worker's "free will" to rest upon: the worker can thus agree the division of annual leaves into parts to be worthwhile. Provided that, according to a recent opinion issued by the Ministry of Labor and Social Policies on the relationship between C.I.G. and annual leaves, the division of the latter does not appear to be appropriate to renew the

[118] Such contractual institution allows the management to request employees, subject to a minimum notice period of 24 hours other than in cases of urgency, to exceed the limit of the normal hours of work without informing the representatives of the relevant trade unions at firm level and even in derogation from the arrangements or agreements signed by the latter.

[119] The same clause has been introduced by the Agreement of 13th May 2013 renewing the National Collective Agreement of metalworking cooperatives (Section IV, Title III, art. 5).

[120] A similar provision, that however does not explicitly mention unpaid leaves, is contained in the National Collective Labor Agreements: of the toys industries (minutes statement attached to art. 35); of industrial laundries (minutes statement attached to art. 46); of eyewear industries (minutes statement attached to art. 34); of industrial manufacturers of umbrellas (minutes statement attached to art. 28).

worker's physical and mental capabilities[121], it must be noted that an issue of protection of the workers' health and safety is also risen by the possible "structural" use of compensatory rests periods accumulated on working time accounts or accrued in the context of other flexible working time arrangements.

Unlike institutions such as annual leaves, annual working time reduction leaves and former public holidays leaves, whose accumulation is simply the result of the passage of time, compensatory rest periods result in fact from overtime work. The premise for the use of the latter institution in place of the C.I.G. is consequently the adoption of an organizational model "structurally" based on overtime work, whose possible negative impact on workers' health and safety is not accounted for in the literature on short-time work compensation schemes[122].

Provided that the sustainability of an organizational model based on the systematic use of overtime work can be questioned non only in terms of health and safety, but also in terms of work-life balance, it must be noted that the regulation of the contractual institution of working time accounts ("*banca ore*") is actually designed so as to compensate, at least in part, the sacrifice that workers have been asked to make in certain periods of the year with a greater freedom in managing the rest periods thus accrued.

To date virtually all national Collective labor agreements regulate this institution and defer its implementation to decentralized agreements, to be typically negotiated at firm but also at territorial level. Some national Collective labor agreements assign to working time accounts specific functions of work-life balance, such as: to constitute a reserve of hours of leave at the disposal of working mothers and fathers during the first months of life of their child[123]; to allow workers the observance of religious holidays other than those recognized

[121] In the Opinion no. 19/2011 the Ministry of Labor and Social Policies has given ruling in case of access to the C.I.G. in the presence of untaken annual leaves, stating that the employer can ask workers to postpone annual leaves only in cases of 100% working activity suspension, provided that short-time work makes however necessary to reintegrate worker's psychophysical energies: it follows that the division of annual leaves to be used as compensation for short-time work is equally not appropriate to serve the true purpose of the annual leave institution.

[122] Note that several national collective labor agreements set a higher upper bound to overtime work for smaller firms compared to larger firms, and that such circumstance may result in a form of discrimination of the former in the access to the C.I.G. scheme.

[123] National Collective Labor Agreement of agricultural, zootechnical products and food processing cooperatives, art. 29 paragraphs 11-12; National Collective Labor Agreement of food processing industries, art. 31 paragraphs 14-15.

by the civil calendar[124]; to constitute, together with annual leave and the annual working time reduction leaves, a reserve of hours of leave to allow non-European citizens to enjoy an uninterrupted period of absence from work for purpose of family reunification in the country of origin[125]. It can be also interpreted as more favourable to the personal needs of the workers the rule that provides for the confluence into working time accounts of annual working time reduction leaves or former public holiday leaves[126] left untaken[127]: some national collective labor agreements provide for working time accounts to be funded exclusively from the latter category of leaves[128].

As a consequence of the institute's configuration as a work-life balance instrument at the disposal of the worker – to whom some national collective labor agreements confer

---

124 National Collective Labor Agreement of agricultural, zootechnical products and food processing cooperatives, art. 28-*bis* paragraph 5; National Collective Labor Agreement of food processing industries, art. 30-*bis* paragraph 5.

125 National Collective Labor Agreement of industrial manufacturers of bricks and concrete elements, arts. 83 and 88. See also National Collective Labor Agreement of agricultural, zootechnical products and food processing cooperatives, art. 35; National Collective Labor Agreement of food processing industries, minutes statement attached to art. 35; National Collective Labor Agreement of construction industries, art. 75; National Collective Agreement of mining, quarrying and processing of stone materials industries, minutes statement attached to arts. 72, 83 and 95; National Collective Labor Agreement of small and medium mining, quarrying and processing of stone materials (CONFAPI and CONFIMI), minutes statement attached to art. 22; National Collective Labor Agreement of mining, quarrying and processing of stone materials craft undertakings, art. 75; National Collective Labor Agreement of small and medium industrial manufacturers of bricks and concrete elements (CONFAPI and CONFIMI), art. 24; National Collective Labor Agreement of metalworking industries, Section IV Title III, minutes statement attached to art. 10; National Collective Labor Agreement of eyewear industries, minutes statement attached to arts. 76, 86 and 95; National Collective Labor Agreement of industrial manufacturers of pens and brushes, minutes statement attached to arts. 83, 89 and 97; National Collective Labor Agreement of industrial manufacturers of nets, minutes statement attached to art. 84.

126 The national collective labor agreements of the textile, clothing, leather and footwear sectors provide for the confluence into working time accounts of the former public holidays leaves only: see National Collective Labor Agreement of textiles industries, art. 38; National Collective Labor Agreement of footwear industries, art. 36; National Collective Labor Agreement of eyewear industry, art. 40; National Collective Labor Agreement of industrial manufacturers of umbrellas, art. 31; National Collective Labor Agreement of leather industries, art. 36-*bis*; National Collective Labor Agreement of industrial manufacturers of nets, art. 37; National Collective Labor Agreement of industrial manufacturers of pens and brushes, art. 42. Are significantly excluded from the scope of such provisions "*the firms where a different, collective management of former public holidays leaves has been agreed, or where the latter are used to implement working time schedules aimed at utilising the production capacities to a larger extent*".

127 National Collective Labor Agreement of industrial manufacturers of bricks and concrete elements, art. 33; National Collective Labor Agreement of small and medium industrial manufacturers of cement, lime and plaster (CONFAPI and CONFIMI), art. 33; National Collective Labor Agreement of wood, furniture and forestry industries, art. 25; National Collective Labor Agreement of small and medium wood, furniture and forestry industries (CONFIMI and CONFAPI), art. 25.

128 National Collective Labor Agreement of mining, quarrying and processing of stone materials industries, art. 12; National Collective Labor Agreement of small and medium mining, quarrying and processing of stone materials industries (CONFAPI and CONFIMI), art. 15; National Collective Labor Agreement of industrial manufacturers of bricks and concrete elements, art. 10; National Collective Labor Agreement of small and medium industrial manufacturers of bricks and concrete elements (CONFAPI and CONFIMI), art. 16.

even a "*right to the effective individual enjoyment of working time accounts hours of leave*"[129] – virtually all national collective labor agreements set down limits to the individual management of rest periods with the aim of safeguarding the firms' needs. Such limits take the form of: an upper bound to the number of overtime hours that may be credited to working time accounts[130], percentage ceilings to the contemporary absence from work of the employees belonging to the same production unit[131], deadlines within which leaves can be taken[132] and minimum notice periods for their claim[133]. Some national collective agreements, finally, establish priority rules for leaves claim[134].

---

[129] National Collective Labor Agreement of industrial laundries, art. 44. The National Collective Labor Agreement of small and medium chemical and related industries (CONFAPI, art. 12 – abrasive products) also provides for "*quarterly meetings aimed at monitoring the development of working time accounts and at examining the reasons that may have repeatedly precluded their individual management, in order to take action to favour the latter utilisation*".

[130] For example: the first 8 hours only (National Collective Labor Agreement of industrial manufacturers of umbrellas, art. 31); alternatively, the first 8 or 16 hours only, respectively in case of part-time and full-time work (National Collective Labor Agreement of eyewear industries, art. 40; National Collective Labor Agreement of industrial manufacturers of pens and brushes, art. 42); 32 hours (National Collective Labor Agreement of toys industries, art. 37; National Collective Labor Agreement of leather industries, art. 36-*bis*; National Collective Labor Agreement of industrial manufacturers of nets, art. 37; National Collective Labor Agreement of textiles industries, art. 38; National Collective Labor Agreement of footwear industries, art. 36); the 30% only (National Collective Labor Agreement of metal and non-metallic ores processing industries, art. 22); the 50% only (National Collective Labor Agreement of rubber and plastics industries, art. 8).

[131] For example: maximum 3% of the workforce (National Collective Labor Agreement of toys industries, art. 37; National Collective Labor Agreement of industrial laundries, art. 44; National Collective Labor Agreement of eyewear industries, art. 40; National Collective Labor Agreement of industrial manufacturers of umbrellas, art. 31; National Collective Labor Agreement of leather industries, art. 36-*bis*; National Collective Labor Agreement of industrial manufacturers of nets, art. 37; National Collective Labor Agreement of industrial manufacturers of pens and brushes, art. 42; National Collective Labor Agreement of textiles industries, art. 38).

[132] For example: within 12 months (National Collective Labor Agreement of agricultural, zootechnical products and food processing cooperatives, art. 28-*bis* paragraph 6; National Collective Labor Agreement of food processing industries, art. 30-*bis* paragraph 4); within the 31st December of the next year (National Collective Labor Agreement of cement, lime and plaster industries, art. 33 paragraph 4 no. 3; National Collective Labor Agreement of ceramic and refractory industries, art. 21; National Collective Labor Agreement of rubber and plastics industries, art. 8; National Collective Labor Agreement of small and medium chemical and related industries – ceramic and glass, art. 12; National Collective Agreement of metal and non-metallic ores processing industries, art. 22; National Collective Labor Agreement of toys industries, art. 37; National Collective Labor Agreement of industrial producers of umbrellas, art. 31; National Collective Labor Agreement of leather industries, art. 36-*bis*; National Collective Labor Agreement of industrial manufacturers of nets, art. 37; National Collective Labor Agreement of industrial manufacturers of pens and brushes, art. 42; National Collective Labor Agreement of textiles industries, art. 38), with the possibility to extend the term further 6 months (National Collective Labor Agreement of small and medium cement, lime and plaster industries CONFAPI and CONFIMI, art. 7) or 12 months (National Collective Agreement of chemical and pharmaceutical industries, art. 8; National Collective Labor Agreement of small and medium chemical and related industries – abrasive products, art. 12); within 18 months (National Collective Labor Agreement of small and medium chemical and related industries – rubber and plastics, art. 12).

[133] At least 2 days/48 hours: National Collective Labor Agreement of cement, lime and plaster industries, art. 33 paragraph 4 no. 2; National Collective Labor Agreement of small and medium cement, lime and plaster industries (CONFAPI and CONFIMI), art. 7; National Collective Labor Agreement of toys industries, art. 37; National Collective Labor Agreement of eyewear industries, art. 40; National Collective Labor Agreement of leather industries, art. 36-*bis*; National Collective Labor Agreement of industrial manufacturers of nets, art. 37; National Collective Labor Agreement of textiles industries, art. 38. At least 5 days: National Collective Labor Agreement of small and medium chemical and related industries (CONFAPI) – rubber and plastics,

These limits clearly represent, to date, an obstacle to the use of working time accounts in place of the C.I.G., outside situations where such use is expressly provided for[135]. It is equally clear that removing or redesigning such limits would result in a distortion of the true purpose of the institution, homologating the latter to flexible working time schedule.

Significantly, the resort to the institution of flexible working time schedule, regulated by virtually all national collective labor agreements, is typically not provided among the measures typically listed in the clauses reported in Table 1: nevertheless, in the National Collective Labor Agreement of footwear industries the parties state that "*the implementation of flexible working time schedules is also aimed at reducing the resort to the C.I.G. and to overtime work, as well as at consolidating employment levels*" (art 33 paragraph 3); similarly, in the National Collective Labor Agreement of small and medium textiles industries (CONFAPI) the possible adoption of flexible working time schedule is conceived to "*discourage the structural use of overtime, to reduce the resort to the C.I.G., and to prevent anomalous phenomena of production decentralization*" (art. 32 paragraph 3)[136].

It is also significant that many national collective labor agreements of the textiles, clothing, leather and footwear sectors (hit by a structural crisis since 2003), together with

---

art. 12. At least 10 days other than in cases of priority: National Collective Labor Agreement of industrial laundries, art. 44.

[134] For example, the National Collective Labor Agreement of metalworking industries, as amended by the separate agreement of 5th December 2012, gives priority to leaves requested for the purposes of studies, and, with respect to migrant workers, for the purpose "*to comply with all the bureaucracy that their condition entails, as well as to observe religious holidays*" (Section IV Title III art. 5). The National Collective Labor Agreement of industrial laundries provides for the period of leaves to be agreed between the worker and the management according to the following order of priority:

- "*parental leaves;*
- *unpaid educational leaves;*
- *main religious holidays;*
- *additional sick leaves*".

[135] The National Collective Labor Agreement of metal and non-metallic ores processing industries, art. 22, expressly allows for the collective management of working time accounts' hours of leave, subject to arrangements with the representatives of the relevant trade union at firm level. Similarly, the National Collective Labor Agreement of chemical and pharmaceutical industries (art. 8) and the National Collective Labor Agreement of small and medium chemical and related industries (CONFAPI, art. 12 – rubber and plastics) provide that "*between the management and the representative of the relevant trade unions at firm level and/or at territorial level, in the framework of a dedicated meeting, different uses* [of working time accounts' hours of leave], *in relation to periods of lower production intensity, may be agreed*". The National Collective Labor Agreement of mining, quarrying and processing of stone materials craft undertakings, art. 34-*bis*, encourages the individual enjoyment of working time accounts' hours of leave during the periods of lower production intensity or cyclical fall in the production, by according workers additional hours of leave amounting to 4% of the number of hours credited to the working time account.

[136] Similar statements are also contained in the National Collective Labor Agreement of industrial manufacturers of umbrellas (art. 28) and in the National Collective Labor Agreement of leather industries (art. 37).

the National Collective Labor Agreement of constructions cooperatives, establish a connection between STW and employment contracts, suggesting the "structural" use of *part-time* contracts as an alternative to the C.I.G. More generally, the National Collective Labor Agreement of small and medium chemical and related industries – leather tunning and similar, equates "*flexible working time schedules, fixed-term contracts, horizontal and vertical part-time contracts…etc.*", stating that all these institutions may "*also"* serve the purpose of limiting the use of overtime work. In another way, the national collective agreements of cement, lime and plaster producers contain a declaration precluding the possibility for the firms' to resort to flexible working time schedule "*to make up for understaffing and/or organizational deficiencies*".

At this point of the analysis it can be questioned whether, in the view of the C.I.G. authorization, the "*exhaustion of the contractual possibility of working time reduction*" shall be assessed within the organizational model adopted by the entrepreneur, or else if the exercise of discretion by the competent bodies shall go so far as to challenge the choice of the organizational model itself, *i.e.* the choice of the working time system and the contractual forms under which the workers are employed. At the latter respect it must be accounted for the fact that, among provisions which have not been codified in Lgs. D. no. 148/2015, is that concerning "overstaffing". According to the abrogated art. 6 Lgs. D. P.H.S. no. 869/1947, the C.I.G.O. benefit was not due "*to the workers recruited or maintained in surplus with respect to the firm's needs, whose task or maintenance on payroll giving rise to shifts or working time reduction…*".

Finally, we observe that the list of institutions contained in the "typical" clauses reported in Table 1 includes "annual leaves left untaken" but not also "annual leaves accrued", included instead in the list of "*ordinary flexibility instruments*" laid down by the Ministry of Labor and Social Policies in Note. no. 5425/2014.

In the light of such evidence we can further question whether the use of annual leaves in place of C.I.G.O. be compatible with the true purpose and with the statutory regulation of both institutions, that shall not be considered as fungible instruments of working time adjustment.

The Court of Cassation has recently ruled that the fundamental purpose of annual leave is not only that of reintegrating the worker's psychophysical energies, but also that of allowing him to develop his own non-professional interests, both moral and material,

personal and social[137]. Article 2109 of the Civil Code, as interpreted by settled case-law, gives the employer the right to schedule unilaterally the periods during which leave can be taken, on the basis of the firm's organizational needs and taking into account the workers' interests as well[138]. The same article requires employers to communicate in advance the periods during which leave can be taken: as specified by the case-law, such communication shall be made with a notice that "*according to the principles of fairness and good faith, allows the worker to organize his rest time in a convenient way*"[139].

Even before addressing the problem of ensuring that the workers' interests are safeguarded, it is evident that the principle of "annual leave planning" – stated in virtually all national collective labor agreements[140] – combined with the statutory principle requiring an adequate period of notice – that settled case-law has configured as an "*absolutely insurmountable limit*" [141] – are liable to enter into conflict with the C.I.G.O. regulation, which does not allow working time reductions and working activity suspensions to be planned in advance. In other words, a situation eligible for support under the C.I.G.O. scheme should not, by reason of its characteristics, represent, on a strict view, a situation that can be dealt with through collective or individual management of annual leaves.

Significantly, the latter issue has not been relevant to the decision of the Court of Bergamo in Ruling 30/05/2013, since the principle of adequate notice had not been invoked by the applicants. It is equally significant that the Court, called upon to decide on the alleged violation, by the employer, of the collective agreements reached in the framework of the benefit's claiming procedures, has based its decision on the content of the collective agreements themselves, which in the case at hand had not explicitely

---

137 Cassazione Civile, Sezione Lavoro, Ruling, no. 28428/2013.

138 See among the most recent: Cassazione Civile, Sezione Lavoro, Ruling no. 25159/2014; Cassazione Civile, Sezione Lavoro, Ruling no. 18166/2013.

139 Tribunale di Monza 09/02/2012; Tribunale di Milano 12/12/2005; Tribunale di Milano 02/02/1996.

140 See the clauses on "*working time annual planning*" contained in the national collective labor agreements of the food processing industries, as well as the clauses on the "*evolution of the production activity*" (National Collective Labor Agreement of clothing industries, art. 26) providing for both communications from the management and joint yearly, half-yearly and quarterly meetings aimed at assessing "*the periods of expected augmentation and reduction of the contractual working hours in the framework of fexible working time schedules, toghether with the estimation of the expected number of hours; the scheduling of collective holidays and the related procedures; the period during which leaves can be takes*" with the significant specification that ("*in case of temporary working time reductions the parties shall refer to the legislation in force*"). Note, finally, that in the constructions sector the process of annual planning of working time schedules and leave periods, deferred to territorial level collective bargaining, shall take expressly into account wheather conditions that may determine fluctuations in the businnes activity (National Collective Labir Agreement of constructions industrial undertakings, art. 38 paragraph 3 letters a) and i); National Collective Labor Agreement of constructions craft undertakings, art. 42 paragraph 2 letterds a) and f); National Collective Labor Agreement of constructions small and medium industrial undertakings (CONFAPI and CONFIMI), art. 39 paragraph 2 letters a) and i).

141 Tribunale di Milano 12/12/2005.

addressed the issue of the relationship between C.I.G.O. and annual leaves. And indeed, as a proof of the fact that the timing of events and the content of collective agreements are likely to play a fundamental role in determining the possible fungibility between C.I.G.O. and annual leave, it can be alleged that a ruling of the Court of Milan had already qualified as "anti-trade unionist conduct" the unilateral reform, by the employer, of the firm level agreements on collective leaves and working time reductions "*where, as in the case at hand, the firm in need of a temporary suspension of the production may resort to the C.I.G.O.*"[142]. More recently, the Court of Milan has ruled the management's decision to force employees to take their annual leave, while waiting for the C.I.G.S. to be authorized and without notice, to be unlawful, since, pursuant to art. 2109 of the Civil Code, the periods during which leave can be taken must be scheduled by the employer taking into account the workers' interests as well, and must be communicated with a notice allowing workers to organize their free time in a convenient way [143].

A different matter is the *ex post* imputation to annual leaves and annual working time reduction leaves of the hours of absence from work during the days of plant closure once the C.I.G.S be authorized[144], also justified by the concern to avoid placing an undue burden on the insurance scheme[145]. With respect to the C.I.G.O., the possible conversion of hours of suspension into hours of leave must be anyway individually notified to the single employees concerned, even in the presence of a firm level collective agreement: this because such a conversion implies the obligation to stay available for returning to work, incumbent on the employee under the C.I.G.O. scheme, to cease to exist[146].

The possibility to easily recall employees back to work is a key element of the design of the C.I.G.O. institution which is also supported by empirical evidences. It must be observed in facts that the difference between the number of supplementation hours requested and the number of supplementation hours effectively utilised by the firms, called in bureaucratic jargon "draught" of the C.I.G., is typically a positive magnitude and provides a good pictures, at the same time, of the difficulty of predicting both the developement of working time reductions/working activity suspensions and the probability

142 Pretura di Milano 11/07/1989.
143 Tribunale di Milano 21/01/2005.
144 Pretura di Milano 25/06/1991.
145 Pretura di Milano 02/11/1989.
146 Cassazione Civile, Sezione Lavoro, 08/02/1988, n. 1329.

for a suspended employee/an employees on short-time work to be recalled[147]. It follows that the possibility to easily recall the employee back to work plays a key role in containing the insurance's costs.

In the light of the foregoing it appears evident that the management of annual leave can not allow employers the same flexibility of the C.I.G.O., if it is to adhere to the law. It is also evident that, if the true purpose of the C.I.G.O. is that of easing the wage burden of employers in difficulty situations the legislator consider worthy of protection, to require employers, in such situations, to pay annual leave to workers results in frustrating the function of the institution itself.

At this respect it is finally worth analysing a last category of institutions in relation to the C.I.G.: that of paid educational and vocational training leaves, regulated by virtually all national collective labor agreements but never mentioned in the "typical" or "atypical" clauses we have examined in the present paragraph. In some national collective agreements is even expressly ruled that "*if hours spent in training fall within a working time reduction or a working activity suspension, the employees shall retain the right to wage supplementation under the law*"[148].

The management of vocational training leaves, both individual and collective, could notwithstanding be capable of providing a virtuous partial alternative to the C.I.G. in the framework of a broader and more ambitious reform of both short-time work compensation schemes and life-long learning policies. As it is clear that the purpose of the contractual provisions last mentioned is that of avoiding to place an additional cost burden on firms undergoing economic and financial difficulties, it also plausible to assume, in general, the cost burden of paid vocational training leaves for firms to constitute a relevant obstacle (if not the main obstacle) to the spread of vocational training.

It is significant, at this respect, that the National Collective Labor Agreement of chemical and pharmaceutical industries, while expressly providing for the possible resort to

---

147 According to data provided by the General Statistical Actuarial Coordination (*Coordinamento Generale Statistico Attuariale*) of the I.N.P.S., the "draught" of the C.I.G.O. for the year 2014 was 50,12%, which means that almost half of the supplementation hours authorized by the Institute has not been actually used by firms (and therefore has not been paid by the insurance).

148 National Collective Labor Agreement of mining, quarrying and processing of stone materials industries, art. 44 last paragraph; National Collective Labor Agreement of mining, quarrying and processing of stone materials craft undertakings, art. 58 paragraph 8; National Collective Labor Agreement of small and medium mining, quarrying and processing of stone materials industries (CONFAPI, art. 45 last paragraph, and CONFIMI, art. 49 last paragraph); National Collective Labor Agreement of industrial manufacturers of bricks and concrete elements, art. 37 paragraph 10; National Collective Labor Agreement of small and medium industrial manufacturers of bricks and concrete elements (CONFAPI and CONFIMI), art. 55 paragraph 10; National Collective Labor Agreement of wood, furniture and forestry industries, art. 45 last paragraph; National Collective Labor Agreement of small and medium wood, furniture and forestry industries (CONFIMI and CONFAPI) art. 38 last paragraph.

reskilling arrangements to cope with redundancies, indicates as the instrument of choice "*the temporary switch to part-time of the employment relationship of the workers concerned*". Even more explicitly the National Collective Labor Agreement of small and medium chemical and related industries – leather tanning and similar, allows for reskilling arrangements to be implemented "*through temporary and unremunerated working time reduction*".

Against this background it may be questioned whether allowing National Paritarian Inter-professional Vocational Training Funds, on the model of the anti-crisis legislation[149], not only to finance vocational training courses, but also to reimburse the workers' wage, could substantiate a possible reform strategy capable at the same time to reduce the costs of the C.I.G. scheme and to promote employees' reskilling. To serve such purpose the legislator could have taken inspiration from the models of *Kurzarbeit mit Qualifizierung* and *Qualifizieren staat entlassen*, two schemes utilized in Austria and Germany during the Great Recession. An "Italian" quite similar model has been provided by Solidarity Funds, as analysed in the previous chapter. The institution of the "*contribution to the funding of reskilling programs*" designed by the twin-agreement of 28th February 1998 and established under art. 2 paragraph 28 Law no. 662/1996 consisted in fact of an out-and-out income support benefit, provided to employees because of their participation in vocational training programs. Since the attendance at training courses would result in *de facto* reduction of the working time or suspension of the working activity, it has been argued that the social partners of the banking sector have introduced "*a new case, unknown to the C.I.G. scheme*" (Pandolfo and Marimpietri, 2001). As it has been accounted for in the previous chapter, the new institution had been taken up by all collective agreements signed under "paragraph 28" and had been utilized, in practice, much more than the simple income support measure modelled on the C.I.G. scheme. Such institution has jet not been enhanced neither from the Fornero Reform nor by the Jobs Act, which have respectively taken up and consolidated the model of Solidarity Funds to provide income support to firms excluded from the scope of the C.I.G.

More precisely, while art. 3 paragraph 31 of Law no. 92/2012 has provided for the survival, in form of an optional measure, of the contribution to the financing of reskilling programs, paragraphs 13 and 15 of the same article have deferred social partners the decision on the possible confluence, into Bilateral Solidarity Funds and "alternative" Bilateral Solidarity Funds, of a part of the funding contribution or even of the entire

[149] Art. 19 paragraph 7 Law-Decree no. 158/2008, converted into Law no. 2/2009.

sectorial National Paritarian Inter-professional Vocational Training Fund (no collective agreement has to date implemented the provision).

There is fundamental reason for which the reform of STWS, in the framework of the *Jobs Act*, should have been coupled with the reform of lifelong learning and vocational training policies. Without training, and especially without training *on the job*, the rotation between workers under the C.I.G. scheme, promoted by the legislator, is in facts destined to be little practiced and workable. Moreover, the new discipline introduced by Lgs.D. no. 81/2015, allowing workers to be assigned to different tasks in case of firm's crisis or restructuring, and more generally, allowing employers greather flexibility in allocating labour within the firm, far from promoting functional flexibility as a response mechanism to negative shock, it is more likely to result in "structural" demotion.

3. The management of interruptions, stops and short-lasting suspensions of the working activity and the contractual institution of "make up time" (*recupero*)

A second category of contractual provisions that is worth analysing, with specific regard to the C.I.G.O., is contained in the clauses regulating the management of interruptions, stops and short-lasting suspension of the working activity and the institution of "make up time" (*recupero*), traditionally found in all Italian national collective labor agreements.

The analysis of such clauses need to be carried out with respect to both the institution of the C.I.G.O. and the legal form of the employer's power to shorten the working time or to suspend the working activity.

As reconstructed by Lenti (1979), the configuration of the latter power and its relationship with the institution of the C.I.G.O. by the Italian juridical literature have been influenced, in different historical periods, from the state of art of the "*power relationships between capital and labor*", as well as from the social sensitivity of the different law scholars.

According to the periodization proposed by the cited author, during a first phase, from the end of the 40ies to the beginning of the 60is, characterized by a "*repressive*" economic development model, such a relationship was not at issue and the C.I.G.O. was configured as a trilateral, social insurance relationship linking the employer (as the insurance's buyer), the I.N.P.S. (as the insurer) and the employee (as the insured person), where the insured risk consisted of the possibility, for the latter, to "*see his earning expectation and capacity reduced*

or nullified because of the phenomena referred to in art. 5 l.d. P.h.S. 12th August 1947, no. 869" (p. 561).

Only at a second stage, since the mid-60ies, law scholars have been concerned with providing for limits to the employer's power to shorten working time or suspend the working activity, by resorting to the institution of *mora credendi* parallel to the configuration of the C.I.G.O. as a bilateral insurance relationship between the employer and the I.N.P.S. intended at insuring the risk, for the latter, "*to have to suspend the working activity or to shorten the working time in such a way…not to free him from the obligation to provide remuneration pursuant to art. 1206 c.c.*"(p. 561-562).

During the 70ies the majority of Italian law scholars had adopted the latter approach, which some authors thought to be deriving from the configuration of the employee's main obligation in terms of placement of one's work effort at the disposal of the employer, and not in terms of effective work performance (p. 562 and references cited therein). It follows that both the difficulty and the impossibility of the work performance form a part of the entrepreneurial risk and are consequently not liable to free the employer from the obligation to pay the wage to employees. More in particular the concept of entrepreneurial risk had been configured, by an influential ruling of the Court of Milan[150], so as to include even fortuitous events attributable to the enterprise[151]. In the case at hand the Court had taken the assembly line as an example: as its adoption for the organization of production is not inevitable, the entrepreneur, together with the advantages, must take responsibility of the disadvantages such an organization entails. It comes by this way to assert that the fluctuations in the firm's production activity are a dependent variable of the organizational model adopted and are therefore ultimately determined by its choice from the entrepreneur.

Whether the ruling of the Court of Milan may be thought to have marked the highest point in the protection of employee interests over "capital", an "armistice" had been subsequently reached on grounds of a doctrinal opinion, endorsed by settled case-law, configuring the C.I.G.O. special legislation as an exception to the general rule of law governing the employer's power to shorten the working time and to suspend the working

[150] Pretura di Milano of 27/02/1972, Lisi Saverio and other vs. Alfa Romeo S.p.A.
[151] For the theoretical analysis of such legal category see Barassi (1957).

activity[152]. It is against this background that we need to situate and assess the contractual clauses on the management of interruprion, stops and short-lasting suspension of the working activity.

With respect to interruptions due to force majeure events[153] most of national collective labor agreements set a total daily threshold[154] – ranging from 30 minutes in the constructions sector[155] to 50 minutes in the food processing sector[156] and 60 minutes in the remaining sectors – up to which it is provided for such events not to affect wages[157]; above the threshold it is always provided that, whenever the employer requires the employee to be present at the workplace, the latter has the right to be remunerated for all hours of presence, being specifed in some cases that he may be assigned to different tasks[158]; in the remaining cases, the provisions of national collective labor agreements differ as illustrated in the following Table 2:

Table 2: management of interruptions, stops and short-lasting suspensions of the working activity (selection of clauses from national collective labor agreements)

Food processing industries, minutes statement attached to art. 36.	"[the regulation of interruptions, stops and short-lasting suspensions of the working activity] *does not preclude the Firm to file for the C.I.G. pursuant to the legislation in force*".
Small and medium food processing industries (CONFAPI), art. 28;	"[the regulation of interruptions, stops and short-lasting suspensions of the working activity] *does not preclude the Firm to file for the C.I.G. pursuant to the legislation in force; in such case, workers shall be entitled to receive the C.I.G. compensation*

[152] As lastly reaffirmed by the Council of State (Ruling no. 8129/2010), the institution of the C.I.G. "*operates as an exception to the contractual balance with respect to the obligation to remunerate the worker, which the community takes in charge…*".

[153] Also called "standstills" (*soste*) in the constructions sector: see National Collective Labor Agreement of constructions industrial undertakings, art. 8; National Collective Labor Agreement of constructions craft undertakings, art. 11; National Collective Labor Agreement of constructions cooperatives, art. 49; National Collective Labor Agreement of small and medium constructions industrial undertakings (CONFAPI and CONFIMI), art. 8.

[154] The following national collective labor agreements do not provide any threshold: wood, furniture and forestry industries, art. 67; small and medium chemical and related industries (CONFAPI) – rubber and plastics, art. 39; toys industries, art. 82; footwear industries; industrial laundries; leather industries; industrial manufacturers of nets; industrial manufacturers of pens and brushes.

[155] National Collective Labor Agreement of constructions industrial undertakings, art. 8; National Collective Labor Agreement of constructions craft undertakings, art. 11; National Collective Labor Agreement of constructions small and medium industrial undertakings (CONFAPI and CONFIMI), art. 8; National Collective Labor Agreement of constructions cooperatives, art. 49.

[156] National Collective Labor Agreement of agricultural, zootechnical products and food processing cooperatives, art. 33; National Collective Labor Agreement of food processing industries, art. 36; National Collective Labor Agreement of small and medium food processing industries (CONFAPI), art. 28.

[157] The clause has been interpreted by the Court of Voghera (30/04/1981 and 08/05/1991) as not precluding the possibility for the employer to send the employee home.

[158] National Collective Labor Agreement of toy industry, art. 82; National Collective Labor Agreement of eyewear industry, art. 72; National Collective Labor Agreement of industrial manufacturers of umbrellas, art. 69; National Collective Labor Agreement of leather industries, art. 75.

Chemical and pharmaceutical industries, art. 33.	*only*".
Tobacco processing industries, art. 18.	"*Whenever, due to adverse weather conditions or other force majeure events, the working activity not being possible to start, to workers regularly present at the workplace an allowance, equal to 2 hours of work, will be paid. Such allowance is not due if workers have been promptly informed*".
Constructions industrial undertakings, arts. 8 and 9; Constructions small and medium industrial undertakings (CONFAPI and CONFIMI), arts. 8 and 9; Constructions cooperatives, arts. 49 and 50.	"*In case of stops due to adverse weather conditions, the worker, if asked by the employer, is required to be present on the construction site for the entire duration of the stops themselves.* *For the period spent on the construction site the worker has right to the C.I.G. benefit pursuant to the legislation in force…* *Whenever the stop or the stops last more than 2 hours in the day, for the entire period of staying on the construction site, included the first 2 hours, the firm is required to pay the worker the difference between the C.I.G. benefit and the wage he would have received if he had worked*" "*In cases of working time reduction or working activity suspension, if the C.I.G. eligibility criteria under the legislation in force are met, firms are required to promptly file for the benefit*"
Constructions craft undertakings, art. 11;	"*In case of stops due to adverse weather conditions the worker, if asked by the employer, is required to be present on the construction site for the entire duration of the stops themselves.* *For the period spent on the construction site the worker has right to the C.I.G. benefit pursuant to the legislation in force…* *Whenever the stop or the stops last more than 2 hours in the day, for the entire period of staying on the construction site, included the first 2 hours, the firm is required to pay the worker the difference between the C.I.G. benefit and the wage he would have received if he had worked*"
Mining, quarrying and processing of stone materials industries, art. 82.	"*The management of working time reductions or working activity suspensions is deferred to the rules set down in the Interconfederal Collective Agreements of 30th March 1946 for the North and of 23rd May 1946 for the South of Italy according to which, in case of working time reduction or working activity suspension resolved by the firm or the competent authorities, the monthly basic wage…and exceptionally…*"[the additional pay elements of] *salary weighting and* [the so called] *third element if provided, will not be curtailed. In case of resort to the C.I.G., the firms will integrate the benefit up to the entire amount of the worker's monthly wage (basic wage, salary weighting and third element)*";
Mining, quarrying and processing of stone materials small and medium industries (CONFAPI and CONFIMI), art. 50.	"*In case of short-time work or working activity suspension due to adverse weather conditions, firms shall file for the C.I.G.O., constructions section, within the time limits laid down in the law*";
Industrial producers of cement, lime and plaster, arts. 36 and 37; Small and medium industrial producers of cement, lime and plaster, (CONFAPI and CONFIMI), arts. 56 e 57.	"*A worker being present at the workplace and not being able to start the working activity by reason of circumstances beyond his control, or, after having started, being forced to interrupt the working activity for more than 60 minutes of definitively, shall be entitled, in each week cycle, to receive the wage for all lost hours of work up to the amount of 1/4 of the weekly working time scheduled for the production unit or site.* *Whenever the worker being instead asked by the employer to remain at his disposal, he will be entitled to receive the wage for all hours of presence, even in case of inactivity*"; "*In the above referred cases and whether the eligibility conditions set down in the law being met, firms are required to file for the C.I.G.*"
Industrial producers of bricks and concrete elements, art. 73; Small and medium industrial producers of bricks and concrete elements (CONFAPI and CONFIMI), art. 53.	"*The firm shall meet the provisions of the present article, without prejudice to the possibility to file for the C.I.G., whose benefit, whenever accorded, can't be cumulated with the sums paid to workers by the firms itself*";

Wood, furniture and forestry industries, arts. 88 and 105.	"Intermediate" workers[159] and white collars: "*In case of short-time work or working activity suspension resolved by the firm or the competent authorities, the worker's wage shall not be curtailed, save for the deduction of what he has received on the same basis from social insurances Institutes.* *In case of C.I.G. intervention – both ordinary and extraordinary – the worker is entitled to receive the benefit*".
Wood, furniture and forestry small and medium industries (CONFAPI and CONFIMI), art. 83.	Intermediate workers: "*In case of short-time work or working activity suspension resolved by the firm or the competent authorities, the worker's wage shall not be curtailed, save for the deduction of what he has received on the same basis from social insurances Institutes*"
Industrial producers of rubber and plastics, art. 33; Leather tanning industries, art. 32.	"*The management of short-time work or working activity suspensions is deferred to the legislation and the Inter-confederal collective agreements in force.* *Whenever the above referred rules provide for any sum to be paid from the firm, this cant be cumulated with the C.I.G. benefit*"
Chemical and related small and medium industries (CONFAPI), art. 39 – plastics and rubber.	"*- whenever the firm sending workers home, a C.I.G. claim shall be filed relatively to the hours of work that may not be made up for*; *- whenever the firm requiring workers to be present at the workplace, they shall be entitled to receive the wage due for the entire duration of the production's interruption, in the form of an integration of the C.I.G. benefit, if accorded*".
Industrial producers of glass, art. 44; Chemical and related small and medium industries (CONFAPI) – glass, art. 39	"*The worker classed into the third group*[160] *being present at the workplace and not being able to start the working activity by reason of circumstances beyond his control, whenever not being promptly alerted with a minimum 6 hours notice period of the impossibility to perform the working activity itself, shall be paid the wage due for the entire working day, without prejudice to the employer's power to assign him to different tasks. During the following days, and relatively to working time suspensions non eligible under the C.I.G. scheme, workers referred to in the previous paragraph, whenever not alerted with a minimum 6 hours notice, shall be paid the 75% of the daily wage*".
Ceramic and refractory industries, art. 30.	"*This is without prejudice to the C.I.G. regulation, with respect to the reimbursement firms may claim.* *In case a temporary shortening of the working time is needed, the Parties shall refer to the legislation in force*"
Toys industries, art. 82.	"*In the event of an interruption of the working activity, blue collar workers shall be provided the following treatment:* *1) payment of the basic wage and the salary weighting for the lost hours of work during which the workers have been present at the workplace at the employer's disposal, without prejudice to the possibility, for the latter, to assign them to different tasks;* *2) any remuneration shall be due, with respect to the last hours of work during which the workers have not been present at the workplace;* *This is without prejudice to the C.I.G. regulation, with respect to the reimbursement firms may claim*".
Clothing industries, arts. 82, 96 and 105.	"*In the event of an interruption of the working activity, blue collar workers and trainees shall be provided the following treatment:* *1) payment of the wage for the lost hours of work during which the workers have been present at the workplace at the employer's disposal, without prejudice to the possibility, for the latter, to assign them to different tasks;* *2) with respect to lost hours of work for which the workers, even if not asked to be present at the workplace, were not given prior notice at least one day in advance, and subject to joint examination by the management and the representatives of the relevant trade unions at firm level, the management can resort to make up time. Whether the make up of lost hours of work not being resolved, workers shall be entitled to receive the 80% of the wage limited to the first day of suspension;* *3) with respect to lost hours of work for which the workers have been promptly alerted, any remuneration shall be due, save for the possibility to resort to make up time …*

[159] In the Italian collective bargaining system by "intermediate" worker is meant an employee that does not have the status of white collar but that has responsibilities higher than those of a blue collar.
[160] See previous footnote.

	This is without prejudice to the C.I.G. regulation, with respect to the reimbursement firms may claim" *The parties, by providing for the payment of the 80% of the wage limited to the first day of suspension pursuant to paragraph 1 point 2, confirm that they do not intend to substitute the firm's intervention to that of the C.I.G. …*"; White collars, intermediate workers and special categories: "*Without prejudice to the C.I.G. regulation in force, in all other cases of short-time work or working activity suspension resolved by the firm, the monthly wage shall not be curtailed*"
Small and medium footwear industries (CONFAPI), arts. 69 and 93; Leather industries, arts. 75, 85 and 93;	"*B. In the event of an interruption of the working activity, blue collar workers and trainees shall be provided the following treatment:* *1) payment of the basic wage and the salary weighting for the lost hours of work during which the workers have been present at the workplace at the employer's disposal, without prejudice to the possibility, for the latter, to assign them to different tasks;* *2) with respect to lost hours of work for which the workers, even if not required to be present at the workplace, were not given adequate notice according with respect to the predictability of the event, and subject to joint examination by the management and the representatives of the relevant trade unions at firm level, the management can resort to make up time.* *Whether the make up of lost hours of work not being resolved, workers shall be entitled to receive the 80% of the wage limited to the first day of suspension;* *3) with respect to lost hours of work for which the workers have been promptly alerted, any remuneration shall be due;* *This is without prejudice to the C.I.G. regulation, with respect to the reimbursement firms may claim*" *The parties, by providing for the payment of the 80% of the wage limited to the first day of suspension pursuant to paragraph 1 point 2, confirm that they do not intend to substitute the firm's intervention to that of the C.I.G. …*"; White collars, intermediate workers and special categories: "*Without prejudice to the C.I.G. regulation in force, in all other cases of short-time work or working activity suspension resolved by the firm, the monthly wage shall not be curtailed*".
Industrial producers of umbrella, arts. 69, 78 and 87.	"*In the event of an interruption of the working activity, blue collar workers shall be provided the following treatment:* *1) payment of the wage for the lost hours of work during which the workers have been present at the workplace at the employer's disposal, without prejudice to the possibility, for the latter, to assign them to different tasks;* *2) payment of the 80% of the wage, limited to the first day of suspension, with respect to lost hours of work for which the workers, even if not required to be present at the workplace, were not given prior notice at least one day in advance;* *3) with respect to lost hours of work for which the workers have been promptly alerted, any remuneration shall be due. This is without prejudice to the C.I.G. regulation, with respect to the reimbursement firms may claim*"; Intermediate workers: "*Without prejudice to the C.I.G. regulation in force, in all other cases of short-time work or working activity suspension resolved by the firm, the monthly wage shall not be curtailed.* *This is without prejudice to the possibility, for the firm, to file for the C.I.G.*" White collars and professionals: "*Without prejudice to the C.I.G. regulation in force, in all other cases of short-time work or working activity suspension resolved by the firm, the monthly wage shall not be curtailed*".
Industrial manufacturers of pen and brushes, arts. 81, 88 and 96.	"*In the event of an interruption of the working activity, blue collar workers shall be provided the following treatment:* *1) payment of the wage for the lost hours of work during which the workers have been present at the workplace at the employer's disposal;* *2) payment of the 70% of the wage, limited to the first day of suspension, with respect to lost hours of work for which the workers, even if not required to be present at the workplace, were not given adequate notice according with respect to the predictability of the event,;* *3) with respect to lost hours of work for which the workers have not been present at the workplace, any remuneration shall be due.* *This is without prejudice to the C.I.G. regulation, with respect to the reimbursement firms may claim*" Intermediate workers, special categories and white collars: "*Without prejudice to*

	the C.I.G. regulation in force, in all other cases of short-time work or working activity suspension resolved by the firm, the monthly wage shall not be curtailed".
Industrial laundries, art. 97; Eyewear industry, arts. 85 and 94.	Intermediate workers, special categories and white collars: "*Without prejudice to the C.I.G. regulation in force, in all other cases of short-time work or working activity suspension resolved by the firm, the monthly wage shall not be curtailed*"
Industrial manufacturers of nets, arts. 78, 89 and 98.	"*In the event of an interruption of the working activity, blue collar workers and trainees shall be provided the following treatment:* *1) payment of the basic wage and the salary weighting for the lost hours of work during which the workers have been present at the workplace at the employer's disposal, without prejudice to the possibility, for the latter, to assign them to different tasks;* *2) with respect to lost hours of work for which the workers, even if not asked to be present at the workplace, were not given prior notice at least one day in advance, and subject to joint examination by the management and the representatives of the relevant trade unions at firm level, the management can resort to make up time. Whether the make up of lost hours of work not being resolved, workers shall be entitled to receive the 80% of the wage limited to the first day of suspension;* *3) with respect to lost hours of work for which the workers have been promptly alerted, any remuneration shall be due. This is without prejudice to the C.I.G. regulation, with respect to the reimbursement firms may claim*"; Intermediate workers, special categories and white collars: "*On the subject matter the legislation in force, with respect to the possibility to resort to the C.I.G., is recalled. In other cases of working activity suspension the provisions laid down in art. 84 of the National Collective Agreement of 1st June 1987 are recalled*".

As first, it is possible to observe how some national collective labor agreements provide for different rules depending upon whether the cases of working activity interruption, stop or suspension be eligible for support under the C.I.G.O. scheme or not, whilst some other national collective labor agreements allow for different alternatives in the management of the same cases. Among the former, as already anticipated, are the national collective labor agreements of constructions and related sectors, that require firms to promptly file for C.I.G.O. benefits.

Secondly, it is possible to distinguish between national collective labor agreements providing for suspended workers on C.I.G.O. scheme to be entitled only to receive the C.I.G.O. benefit or else to have right to an additional wage supplementation from the firm. The latter is again the case of the constructions sector, where it is provided that firms, with respect to production's stops lasting more than 2 hours and for the entire duration of workers' period of presence on the construction site, shall pay them the difference between the C.I.G.O. benefit and the wage they would have earned if they had worked. In the mining, quarrying and processing of stone materials sector (industrial undertakings) it is always provided for firms to pay such wage difference, whilst the national collective labor agreement of rubber and plastics industries specifies that, whenever the workers been

required to be at the workplace, they have right to receive either the wage or the difference between the wage and the C.I.G.O. benefit, if claimed.

Several national collective labor agreements of the textiles sector, together with the national collective labor agreements of glass producers, accord workers a differential treatment depending upon the category they belong: with respect to cases of working activity suspension not eligible for supplementation under the C.I.G.O. scheme, white collars are typically granted their wage not to be curtailed, whilst nothing is due to blue collar workers having been promptly alerted. Even in the absence of prior notice, the latter workers are only provided a wage supplementation at a replacement rate equal or lower than that of C.I.G.O. benefit, limited to the first day or extended to the following days of working activity suspension.

Whilst, finally, the national collective labor agreements of clothing and leather industries expressly specify the above referred provisions not to be intended to substitute the firm' intervention to that of the C.I.G.O., virtually all collective agreements allow for the make up of lost working hours trough the institution of "make up time" (*recupero*).

This institution, regulated by all national collective labor agreements with the sole exception of constructions cooperatives, is in fact expressly designed not only to cope with interruptions, stops and short-lasting working activity suspensions due to force majeure and similar events, but also to manage those agreed between employers and employees, as well as to be used with respect of all categories of workers[161]. More precisely, the institution of "make up time" is based on the possibility to make up for lost wage through the scheduling of additional working hours at a later time. The option to resort to make up time is typically left to the employer and the institution is liable to allow both a collective and an individual use. Some collective agreements submit the latter possibility to a joint examination between the management and the representatives of the relevant trade unions[162].

By reason of its characteristics the institution of make up time may be thought as a sort of "reversed" working time account, where the shortening precedes the extension of the working time or, more properly, the occurrence of a fall in the production constitutes a

[161] Exceptions are the national collective labor agreements of wood, furnitures and forestry industries, allowing the institution to be utilized only with respect to blue collars and intermediate workers (arts. 66 and 89 industrial undertakings, arts. 60 e 84 small and medium industrial undertakings CONFAPI and CONFIMI).

[162] National Collective Labor Agreement of clothing industries, art. 57; National Collective Labor Agreement of eyewear industries, art. 41.

reserve of hours to allow (or induce) the use of overtime at a later moment, without additional costs for the employer. We may argue that the contractual regulation of this institution, compared to working time accounts, renders it at the same time a more flexible instrument – as long as designed to be activated at the initiative of the employer – but also a more rigid device, to the extent that all national collective labor agreements typically establish rather strict limits to its use. All national collective labor agreements set in fact a limit to the number of hours that can be added per day (up to 1), while some other also provide for an overall limit to the total number of hours that can be made up[163] and/or to the daily working time including made up hours[164]. Virtually all national collective labor agreements, finally, lay down a deadline within which lost hours can be made up for, ranging between 2 weeks[165] and 30 days[166] and till 60 days[167].

---

[163] Amounting to 12 hours in the national collective labor agreements of glass producers (industrial undertakings, art. 47; small and medium industrial undertakings CONFAPI, art. 39).

[164] Set down as following: 8 hours, in case of *part-time* (National Collective Labor Agreement of industrial laundries, art. 50; National Collective Labor Agreement of eyewear industries, art. 41; National Collective Labor Agreement of industrial producers of umbrellas, art. 49; National Collective Labor Agreement of clothing industries, art. 57); 10 hours in the constructions sector (industrial undertakings, art. 10 paragraph 4; craft undertakings, art. 13 paragraph 4; small and medium industrial undertakings CONFAPI and CONFIMI, art. 10).

[165] Or 14/15 working days: National Collective Labor Agreement of industrial producers of cement, lime and plaster, (CONFAPI and CONFIMI), art. 58; National Collective Labor Agreement of industrial manufacturers of bricks and concrete elements (CONFAPI and CONFIMI), art. 55; National Labor Collective Agreement of constructions industrial undertakings, art. 10; National Collective Labor Agreement of constructions craft undertakings, art. 13; National Collective Labor Agreement of constructions small and medium industrial undertakings, art. 10; National Collective Labor Agreement of mining quarrying and processing of stone materials industrial untertakings, art. 64; National Collective Agreement of mining quarrying and processing of stone materials small and medium industrial untertakings (CONFAPI and CONFIMI), art. 55.

[166] Or 4 weeks: National Collective Labor Agreement of tobacco processing industries, art. 19; National Collective Labor Agreement of industrial producers of cement, lime and plaster, art. 36; National Collective Labor Agreement of industrial manufacturers of bricks and concrete elements, art. 75; National Collective Labor Agreement of wood, furniture and forestry industries, arts. 66 and 89; National Collective Labor Agreement of metalworking industries, (CONFAPI-CGIL), art. 27; National Collective Labor Agreement of small and medium metalworking industries (CONFIMI-CISL-UIL), art. 25; National Collective Labor Agreement of chemical and pharmaceutical industries, art. 32; National Collective Labor Agreement of leather tanning industries, art. 31; National Collective Labor Agreement of industrial producers of rubber and plastics, art. 32; National Collective Labor Agreement of chemical and related small and medium industreis (CONFAPI) – ceramic, glass and abrasive products, art. 39; National Collective Labor Agreement of toys industries, art. 49; National Collective Labor Agreement of industrial laundries, art. 50; National Collective Labor Agreement of industrial manufacturers of umbrella, art. 49; National Collective Labor Agreement of leather industries, art. 40; National Collective Labor Agreement of industrial manufacturers of nets, art. 52; National Collective Labor Agreement of industrial manufacturers of pens and brushes, art. 44; National Collective Labor Agreement of industrial producers of glass, art. 47; National Collective Labor Agreement of industrial manufacturers of bricks and concrete elements, art. 30; National Collective Labor Agreement of footwear industries, art. 39.

[167] National Collective Labor Agreement of agricultural, zootechnical products and food processing cooperatives, art. 33; National Collective Labor Agreement of food processing industries, art. 37; National Collective Labor Agreement of small and medium food processing industries (CONFAPI), art. 30; National Collective Labor Agreement of small and medium chemical and related industries (CONFAPI) – leather

It is noteworthy that the National Collective Labor Agreement of metalworking industries, as amended by the separate agreement of 5th December 2012, but also the new National Collective Agreement of the metalworking cooperatives, no longer provide for any limit, by ruling that "*the regulation of make up time shall be established at firm level*"[168]. Similarly do not provide for limits, but only for the deferment to collective bargaining between the management and the representatives of the relevant trade union at firm level, some national collective labor agreements of chemical and textiles industries, with respect to planned working activity suspensions[169].

If the characteristics of make up time as designed by the examined national collective labor agreements render it already a partial alternative to the C.I.G.O., the possibility to (re)design the institution, in future national collective labor agreements as well as through firm level agreements opens up further scenarios, that appears anyway to be bounded by two kind of limits.

On the one hand, extending the deadline within which the "compensative" overtime may be placed by the employer could certainly help rendering make up time more usable as an instrument of production fluctuations' management, but would render at the same time the worker's condition much less tolerable, by moving forward the time when he will make up for lost wage. With respect to firm level agreements, such a redesign shall be only possible under art. 8 Law-Decree no. 138/2011 provided that it would entail a deterioration in the employees working conditions,

On the other hand, the adoption of wage-smoothing mechanisms similar to those of flexible working time schedule (which would result in facts in the homologation of make up time to the latter institution) would require both the will and the possibility, from the part of the employer, to pay workers the wage in the event of interruptions, stops and short-lasting suspensions of the working activity, even due to force majeure events.

To date, in conclusions, the resort to make up time according to the national collective labor agreements in force, whenever consistent with the firm's technical, organizational and economical needs, involves a double convenience for employers, with respect to both the

---

tanning and similar, rubber and plastics, art. 39; National Collective Labor Agreement of eyewear industries, art. 41; National Collective Labor Agreement of clothing industries, art. 57.

[168] Confront: National Collective Labor Agreement of metalworking industries of 20th January 2008 and 5th December 2012, Section IV, Title III, art. 4, as well as the National Collective Labor Agreement of metalworking cooperatives, Section IV, Title III, art. 4.

[169] National Collective Labor Agreements of industrial laundries, art. 50; National Collective Labor Agreements of eyewear industries, art. 41; National Collective Labor Agreements of industrial manufacturers of umbrellas, art. 49, National Collective Labor Agreements of clothing industries, art. 57.

additional contribution they would be required to pay on C.I.G.O. benefits in case of falls in the production and to the additional wage component they would be required to pay for the use of overtime work in case of positive peaks.

As regards the business whose production patterns are not compatible with such an use of make up time, the latter institution, in addition to being useless, is liable to constitute an obstacle in case of C.I.G.O. claim. In this perspective it is worth reading the contractual provisions establishing a priority order between C.I.G.O. and make up time, as for example art. 39 of the National Collective Labor Agreement of small and medium chemical and related industries – rubber and plastics, providing for the C.I.G.O. intervention to be claimed limited to working hours "*that is not possible to make up*". Some national collective labor agreement of the textiles sector, and significantly those deferring the implementation of make up time to firm level agreements, state that "*the parties agree on the opportunity…to resort to make up time also in order to avoid legal disputes with the insurance Istitute in case of C.I.G.O. claims*"[170].

The object of litigation with the I.N.P.S. is explained as follows in a Memorandum of Understanding on "*Working activity interruptions and the use of C.I.G.O.*" signed by the social partners of the footwear industries:

"*The parties, given the special nature of the footwear industry, declare as follows:*
- The footwear firms are subject to labor contractions due to the variability of market demand;
- The same firms, however, have a non-seasonal production structure, as under normal market conditions they are capable to produce every working day of the year;
- The frequent occurrence of C.I.G.O. claims recurring in certain periods is still to be ascribed to contingent and unpredictable situations of lack of orders.
Given the above:
the parties agree to take action to intervene and implement, on each occasion and at all levels, the necessary measures to ensure the decisions on C.I.G.O. claims be uniformly addressed and consistent with the factors listed above".

It must be accounted for the fact that, significantly, to date it exists only two pieces of regulation providing guidance for C.I.G.O. claims assessments by the I.N.P.S.: the Circular letter no. 249/1990, dedicated to the examination of claims filed by firms "*subject to recurring contractions of production, in particular footwear industries*", outlining the criteria to be adopted for the purpose of assessing the existence of the requirement of the "transient nature" of the cause of short-time work or working activity suspension in relation to the concept of

[170] National Collective Agreements of textiles industries, art. 57; National Collective Agreements of leather industries, art. 40; National Collective Agreements of eyewear industries, art. 41.

"recurrent stops"[171]; the Circular letter no. 139/2016, who has recently extended the same criteria to all firms.

According to these Circular letters, the existence of a recurrent stop shall be assessed by paying attention "*more than to the timing of the activity contractions during certain periods of the year, to the extent of the CIGO benefits claims in each year. And in fact it can not be considered to be transient an event that recurs in time with sizeable entity*". About the observation period to be taken into consideration, the I.N.P.S. Circular letter no. 249/1990 has also prescribed it to include "*a number of years that may be considered as appropriate in relation to the purposes of the investigation to be carried out. This number, as a general rule, can not be less than five*". The latter document finally requires the decision on C.I.G.O. claims to take into account the ratio between hours worked and supplementation hours in the time period considered.

To the need of ensuring a uniform address of the decisions on C.I.G.O. claims it seemed to be informed the directive principle, contained in Law no. 184/2014, of the "*possibility of introducing standardized mechanisms at national level for the granting of benefits, providing for due and legally certain instruments*" (art. 1 paragraph 2 letter. a). Such principle has to date been implemented only by the I.N.P.S. Circular letter no. 139/2016.

It must be noted that, to date, not only it does not exist any piece of legislation or practice providing for general criteria, principles, addresses or guidelines for the decision on C.I.G.O. claims, but it does not also exist any study or statistics assessing or documenting the practices *effectively followed* in such decision within the national territory. Moreover, to date, at the best of the Author knowledge, it does not exist any national or international literature addressing territorial differences in the use of short-time work compensation schemes. This is probably due to the scarce/recent diffusion of such schemes, introduced in many States only during the Great Recession and the form of anti-crisis national-level policy.

Recently, the Author of the present work (Di Stefano and Fontana, 2017) has revealed and assessed, through statistical analysis, significant territorial differences in the practices effectively followed by the Italian National Institute for the Insurance against Workplace Accidents and Professional Illnesses (*Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro e le malattie professionali* – I.N.A.I.L.), at both Province and Regional level, with

[171] As already accounted for, according to settled case-law "*there are no conditions for admission to the C.I.G.O. in the event of a cyclical drop in orders in recurrent periods of the year, lacking both the requirement of temporary nature (since the phenomenon is repeating constantly), and non-accountability to the business activity (as the phenomenon is in fact inherent in that type of production)".*

respect to decisions on compensation claims for work-related musculoskeletal disorders. It must be specified that latter analysis has been possible thanks to the availability of administrative data normally not accessible to researchers.

In the following chapter, an assessment of the practices effectively followed by the Provincial Commissions and the Provincial headquarters of the I.N.P.S. will be carried out through analysis of the only data source openly available: the rulings of the Italian administrative courts of first instance (*Tribunali Amministrativi Regionali* – T.A.R.), which in the Italian judicial system are competent to hear and decide on the legitimacy of C.I.G.O. denials in the territorial jurisdiction of which they are based.

CHAPTER IV

THE GOVERNANCE OF THE C.I.G.O. SCHEME THROUGH PROVINCIAL COMMISSIONS (AN ANALYSIS OF SELECTED CASE-LAW)

1. The role of the C.I.G.O. statutory governance bodies and its difficult assessment

Since the C.I.G.O. has become a State STWS, two kinds of statutory governance bodies have been provided by the legislation in force till 1st January 2016, respectively at provincial and national level. By C.I.G.O. governance body we mean tripartite and paritarian committees or commissions accorded some functions in the management of the scheme.

A first centralized body, the Special Committee for the Wage Supplementation Fund (*Comitato Speciale per la Cassa Integrazione Guadagni*, hereinafter, Special Committee or simply Committee) was established pursuant to art. 7 Lgs. D. L.R. no. 788/1945. This Committee was chaired by the I.N.P.S. President or his delegate and composed by the General Director of the Ministry of Labor and Social Security, by two representatives (one each) of the Ministry of Treasury and the Ministry of Industry and Trade and by six representatives (three each) of workers' and employers' relevant organizations.

The Special Committee, which was appointed by Decree of the Ministry of Labor and Social Security, was given the power to issue opinions on matters concerning the application of the C.I.G.O. legislation, to examine the fund's annual budget and to decide on appeals concerning benefits and social contributions (art. 8 Lgs. D. L.R. no. 788/1945). At the latter respect, the decisions of the Special Committee could be appealed, within thirty days from their notification, to the Ministry of Labor and Social Security, without prejudice to the possibility to apply to the relevant Court, after thirty days from the notification of the Ministry's final decision (art. 9 Lgs. D. L.R. no. 788/1945).

The participation of social partners was also envisaged in the Board of Auditors, established under art. 10 Lgs. D. L.R. no. 788/1945 to control over the C.I.G.O. fund and composed by the I.N.P.S. President (as a chairman), by two representatives (one each) of

the Ministry of Labor and Social security and the Ministry of Treasury and by two representatives (one each) of workers' and employers' organizations at national level.

Two years later Lgs. D. P.H.S. no. 869/1947 had provided for decentralised governance bodies as well, by resolving the establishment of provincial commissions in charge for the decision upon C.I.G.O. claims (art. 8). Such commissions, appointed by Decree of the Provincial Governor (*Prefetto*), were chaired by the I.N.P.S. Director and composed by one labor inspector, one financial inspector, two representatives of employers' and two representatives of workers' relevant organizations. The Provincial Commissions' decisions could be appealed to the Special Committee within thirty days from their notification.

The regulation of the Provincial Commissions had been subsequently taken up, clarified and party modified by Law no. 164/1975, before being abrogated by the Jobs Act.

Art. 8 Law no. 164/1975 had in particular specified C.I.G.O. benefits to be accorded by the competent I.N.P.S. headquarters subject to prior assent of the correspondent Provincial Commissions, while modifying the Commissions' composition as well.

Social partners, who had been accorded one more representative each, have been significantly given the majority of members of the Commissions, which were appointed by Decree of the Director of the regional headquarter of the Ministry of Labor and Social Policies, chaired by the Director of the provincial headquarter of the same Ministry and composed, for the rest, by one labor inspector plus an official of the I.N.P.S. provincial headquarter, who was only provided advisory capacity. The Commissions' decisions, taken at majority, could be appealed to the Special Committee pursuant to the following art. 8. The latter article had also given each member the power to appeal the Commissions' decision in case of dissent, as long as minuted.

Provided the structure and the statutory assignments of such bodies, the focus must move to the reconstruction of their *functions* with respect to the C.I.G.O. regulation and therefore to the assessment their *effective role* in the management of the scheme.

As regards the first focus, we put forward that Provincial Commissions and the Special Committee have in fact been accorded a preeminent function of assessment of the C.I.G.O. benefit's eligibility criteria, together with a function of conflicts' resolution.

As regards the second focus, we need to account for the fact the activity carried out by the Provincial Commissions and the Special Committee has left no direct records in form of open access documents. The role played by these bodies in the governance of the C.I.G.O. scheme can be only indirectly assessed through case-law, to the extent that the

latter represents to date the only secondary data source on the subject matter. A further limitation is implied in the nature of such case-law, as a result of the nature of the judicature of a decision upon a C.I.G.O. claim.

At this point of the analysis two premises are needed, as regards the assessment of C.I.G.O. benefit's eligibility criteria and the Italian judicial system.

Pursuant to art. 1, paragraph 1, letters a) and b) Law no. 164/1975, the C.I.G.O. benefit could be claimed in case of "*firm's situations due to transient events not attributable to the entrepreneur or to the workers…or else due to temporary market conditions*".

Moreover, pursuant to article 5, paragraph 1, point 1, Lgs. D. P.H.S. no. 869/1947, provided the cause of the working activity suspension not being attributable to the entrepreneur or to the workers, the benefit could be accorded as long as "*the workers' readmission into the firm's production activity within a short term be assured*".

Finally, according to the following article 6, the benefit was not due "*to workers hired or employed in surplus with respect to the firms' needs, whose tasks or maintenance in the activity giving rise to shifts or to working time reduction…*".

The condition for admission to the benefit represent in fact the "*the problematic fulcrum of the institution*" (Lenti, 1979). Italian labor law and social security scholars have scarcely covered the subject and seem to have given up from the attempt of providing a juridical configuration of the institution contemporary with the shift form civil to administrative jurisdiction.

A second premise must be done with respect to the competence to hear and determine the appeal of C.I.G.O. claims' denial decisions. Till the issue has been definitively settled by a Ruling of the Supreme Court of Cassation, Combined Civil Section (no. 5456/1987), case-law had been alternatively resolving for the competence either of civil or administrative jurisdiction. The Court has ruled the juridical situation of a C.I.G.O. claimant being that of a legitimate interest and not that of a right, given the configuration of the administrative decision upon a C.I.G.O. claim as "*an act of discretionary nature and constitutive effectiveness*". It follows that applicants can only promote annulling actions for violation of the law, incompetence and abuse of power before administrative Courts.

After 1987 the extent of the administration's discretion in the decision upon a C.I.G.O. claim, and therefore the extent of the judicature of a denial, have been further clarified by the Council of State, which represents the administrative court of second instance in the Italian judicial system:

"*The judicature of a C.I.G. denial decision is limited by the broad technical discretion which characterises the appraisal of a crisis situation under art. 1 l. no. 164/1975 by the insurer, whose choices can be the subject of judicial review only if clearly illogical, manifestly inconsistent, unreliable or biased due to obvious misrepresentations of the facts*" (Rulings no. 6518/2007, no. 5251/2009, no. 2503/2012, no. 3783/2013, no. 4084/2013, no. 2290/2014, no. 2713/2016).

"*The positive, as well as the negative decision on the admission to the C.I.G.O…does not automatically follow the appraisal of the cause of the working time reduction or working activity suspension – which is anyway left to the technical discretion of the competent body – but also implies an appraisal, of a discretionary nature, involving the balancing of economic and social policy interests. This dual profile of discretion, in accordance with principles long observed, confines the judicature out of the latitude enjoyed by the administrative authority in relation to such appraisals, unless they do appear manifestly unreasonable or biased due to obvious misrepresentations of the facts*" (Ruling no. 4549/2000).

"*The conditions for the admission to the C.I.G.O. are not met in case of a cyclical fall in orders occurring every year within the same time periods, lacking both the requirements of temporariness (since the phenomenon is repeating constantly) and non-accountability of the firm's management (since the happening is inherent in that type of production)*" (Rulings no. 200/1992, no. 585/1996, no. 996/1996, no. 4549/2000, no. 871/2001, no. 872/2001, no. 1844/2002, no. 4372/2002, no. 4497/2002, no. 4480/2002 and no. 497/2005).

Administrative case-law had finally contributed to the assessment of the Provincial Commissions' *status*, by specifying such bodies not constituting I.N.P.S. organs and their deliberation representing just and intermediate stage in the whole procedure ending up with the final I.N.P.S. decision upon C.I.G.O. claims (see among others T.A.R. Piemonte no. 597/2011).

Administrative case law, although not settled, had also given an interpretation of the Commissions' role with respect to the C.I.G.O. regulation; on a strict view, the technical discretionarily left to Provincial Commissions only regards eligibility criteria and does not imply a balanced evaluation of the conflicting interests involved, as they have been already evaluated by the Legislator who has settled down the eligibility criteria themselves (T.A.R. Piedmont, Ruling no. 380/2015); in a different view, Provincial Commission are competent to carry out a balanced evaluation of the entrepreneur's interests with the interests represented by the I.N.P.S., taking into account the elements provided by the representatives of workers' and employers' organizations as regards the specific situation of the claimant firm and the reasons that have determined the entrepreneur to file for the C.I.G.O. (T.A.R. Piedmont, Rulings no. 596/2011 and no. 597/2011).

Administrative Courts' Rulings always contain a more or less brief and detailed account of the facts, from which is possible to reconstruct the practices followed by Provincial Commissions and I.N.P.S. headquarters, the relationships between the latter two organs as well as the role of the Special Committee. Moreover, it is plausible to assume the stand taken by a Court in the ruling of a certain subject matter to influence such practices in a given territory with respect to the subsequent years.

2. The assessment of the role of C.I.G.O. statutory governance bodies though case-law

2.1. C.I.G.O. and the collective and individual management of legal and contractual institutions for working time arrangement

In Chapter III Paragraph 2 we have been discussing about C.I.G. and annual leave. With respect to the C.I.G.O., we know from the already quoted Ruling of the Court of Bergamo that "*during the course of the investigation it has emerged the existence of a practice whereby the I.N.P.S. conditions the benefit's authorization to the prior enjoyment, by the employees, of annual leave accrued during the previous year and left untaken, and considers as a preferential requirement the prior exhaustion of annual leave accrued during the year of the claim*". The parties' statements quoted in the text of the Ruling provide a more clear picture at this regard:

"*As regards the prior exhaustion of annual leave, in practice, with respect to the C.I.G., it is impossible to obtain the authorization if annual leave accrued during the previous year (in our case during 2009) have not been taken. This is a longstanding practice followed by the I.N.P.S. headquarter of Bergamo, although not regulated in Circular letters. I repeat: this is a constant practice followed without exceptions, and all employers' organizations have been always following it. As regards annual leave accrued during the current year – that is, in our case, during 2010 – the I.N.P.S. does not give the authorization only if* [the hours/days of leave] *are a lot. In those cases* [the I.N.P.S.] *requests the firms explanations why annual leave have not been taken…*"

The significance of the above reported statement is given by the qualification of its maker, who declares:

"*I'm a member of the commission for the Wage Supplementation Fund. I have not followed directly the dispute which forms the object of the present legal proceeding but I know how the I.N.P.S. is used to handle such cases. I've been participating in the commission for more than 10 years; the commission is chaired by the director of the* [provincial headquarter of the Ministry of Labor and Social Policies]. *Since I'm been participating, it has always been said that, before resorting to the C.I.G., annual leave, and especially if accrued during the previous year, must be taken from the employees; so much so that the claim form has a dedicated field in which such data have to be indicated. Often, if untaken annual leave is indicated, the I.N.P.S. asks for explanations and requires the prior exhaustion of annual leave. In any case in the commission we have agreed that before resorting to the public finance it is opportune to use annual leave…this is a practice followed throughout Italy…as far as I know, the I.N.P.S. requirement of prior exhaustion of annual leave is compelling with respect to the previous year, and it is considered to be a good practice with as regards the current year*".

Three significant facts emerges about the practice of subordinating the authorization of the C.I.G.O. benefit to the prior exhaustion of annual leave, either left untaken or accrued: as first, the practice is deemed to be longstanding with respect to the I.N.P.S. headquarter and the Provincial Commission of Bergamo; secondly, employers' organizations, and

therefore firms, are deemed to have been always following it; finally, the practice is deemed to be followed throughout Italy. In the light of such alleged facts, we observe that the practice has been almost never challenged before administrative courts.

The sole significant exception is provided by the dispute arisen between the firm Diebold Italia S.p.A. and the I.N.P.S., settled by Ruling no. 4455/2005 of the Administrative Regional Court of Piedmont (T.A.R. Piemonte).

The claimant firm, a software house, had applied against the decision, taken by the I.N.P.S. headquarter prior assent of the Provincial Commission of Turin, to deny the C.I.G.O. benefit on ground of "*presence of a large number of annual leave and other leave left untaken, so that the cause of the working activity suspension is attributable to the entrepreneur and therefore not eligible for support*".

The applicant had alleged violation of art. 1 Law 164/1975 and precisely abuse and misuse of power with respect to the evaluation of eligibility conditions, beside alleging lack of both a proper investigation and a consistent motivation of the decision.

As regards the violation of art. 1 Law 164/1975, the applicant had argued the Provincial Commission and the I.N.P.S. to have mistakenly confused between the causes of the crisis situation, which should have formed the proper object of assessment in view of the decision upon the C.I.G.O. claim, and which were certainly not attributable to the entrepreneur, and the adoption, by the same entrepreneur, of possible remedies in alternative to the C.I.G.O. itself. The applicant had also observed the C.I.G.O. purpose to be that of supporting workers' income – and therefore, indirectly, firms – undergoing temporary difficulties, allowing for savings on wages otherwise due to workers. Provided that these savings should help the firm to overcome its difficult situation, in the case at hand, if the remedy represented by the enjoyment of annual leave and other leaves be taken, nothing would have changed as to the firm's finances, since the latter would have had to continue paying the wage to its workers.

The Court has stated the evaluation reserved to the Provincial Commission pursuant to art. 8 Law no. 164/1975 to have as its object the transience of the cause of the firm's crisis situation and its non-accountability to the entrepreneur. In the case at hand, the Commission had failed to assess the latter two conditions, which, if deemed non-existent, could legitimately support the denial. The motivation of the denial had been instead exclusively focused on another profile, which does not draw on the causes that had determined the contraction of the production activity.

Note that the Court has not questioned the discretionary power invoked by the I.N.P.S., who had alleged that "*the assessment of the abstract conditions provided by the law in relation to the authorization of the C.I.G.O. benefit it is up to the administrative authority in the exercise of its discretion*". Provided that the exercise of such power is legitimate as long as motivated, the Court had rather ruled that the motivation of the denial in the case at hand "*appears to be totally incongruous and irrelevant with regard to the conditions referred to in the quoted art. 1 Law no. 164/1975, which constitutes the provision conferring the administrative power exerted*".

If follows that, in the opinion of the Court, the practice of subordinating the authorization of the C.I.G.O. benefit to the prior exhaustion of annual leave is not grounded in art. 1 Law no. 164/1975. As anticipated in Chapter III, this turns out to be a fundamental difference between the Italian and the German STWS, as in the latter case the prior exhaustion of annual leave helps to qualify as unavoidable a fall in the working activity pursuant to art. 96, paragraph 4, no. 3 Book III of the Social Code.

2.2. C.I.G.O. and "make up time"

In Chapter III Paragraph 3 we have been assessing the relationship between C.I.G.O. and "make up time" and observing how some national collective labor agreement of the textiles sector have been accounting for legal disputes between firms and the I.N.P.S. on this subject matter.

We observe no evidence of such legal disputes through search in both the official search engine of administrative case-law and the private repository "De Jure". Such evidence could be interpreted as an index of the fact firms make effective use of make up time or do not appeal denials before administrative Courts. The lack of civil legal proceedings may in turn be an index of scarce use of this institution.

2.3. C.I.G.O., overtime, workers' fungibility and the firm's organizational model

As argued in Chapter III Paragraph 2, it may be questioned whether the exercise of discretion by the competent bodies shall go so far as to challenge the choice of the organizational model adopted by the entrepreneur, with respect to the assessment of the

C.I.G.O. eligibility conditions. At the latter respect, in Chapter III Paragraph 1, we have also accounted for the existence of a practice, attested in a Ruling of the Administrative Regional Court of Piedmont, subordinating the C.I.G.O. authorization not only to the prior exhaustion of the contractual possibilities of working time reduction, but also to the adoption of all the allowed "*organizational*" devices (T.A.R. Piemonte no. 380/2015).

It is worth analysing such Ruling in relation to a prior Ruling of the same Court delivered four years before (no. 597/2011 and no. 596/2011). The comparison between such case-law is in fact particularly interesting under multiples points of view. As first, as reported in the previous Paragraph, the same Court has taken two opposite stands with respect to the role of Provincial Commissions in the management of the C.I.G.O. scheme. Secondly, the Court has taken two different stands as regard the use of overtime during short-time work or working activity suspension, an issue that, we observe incidentally, has formed the object of legal disputes only in Piedmont (see also T.A.R. Piemonte Ruling no. 1906/2005), as there is no evidence in case-law for the rest of Italy. Finally, two opposite approaches have been taken as to the evaluation of the possible fungibility between workers and the opportunity or obligation for the employer to provide them adequate training in order to allow functional flexibility as a response mechanism to negative shocks.

Such differences may be fully appraised by taking into account that the two Rulings refers, respectively, to a firm operating in the service sector and a firm operating in the industrial sector.

The former is the case of FCA Services S.p.A., a firm providing accounting, payroll and staff services. More precisely, as it emerges from the account of facts, FCA Services S.p.A. had taken over the dispute from Fiat Services S.p.A. The latter firm had been working for two customers only: CNH Industrial and FCA groups. The relationship between the firm and its two customers had been based on yearly "agreements" specifying the expected volume of services to be delivered together with their negotiated price. Such volume had been subject to periodical revision during the year, with the consequent adjustment of the budget; as the Court has observed, it had not been specified whether adjustment consists of mere recalculation or renegotiation of the budget itself.

To justify the C.I.G.O. claim, the firm had declared a turnover loss of 10-26% originated by a fall in the demand of its customers' products, which had caused in turn a contraction in the volume of the administrative services to provide.

The Provincial Commission of Turin, who had originally accorded the C.I.G.O., has later reformed its decision (at majority, with the representative of employers' organizations voting against) on the basis of the results of several inspections carried out by the I.N.P.S.

Inspectors had alleged:

- cyclicality, *i.e.* regularity of the workers' suspensions, occurring in particular on the 3rd week of the month for the accounting and staff services, and on the last week of the month for the payroll services;
- use of overtime concomitantly with the suspensions (0,71 hours of overtime per hours of suspension in total, 0,43 considering only the months with suspensions and including both payed an unpaid-managers overtime, 0,11 payed overtime only);

The Provincial Commission had revoked the C.I.G.O. since the employer had been considered accountable for the working activity suspensions. To motivate its reformed decision the Commission had alleged cyclicality and programming of the working activity suspensions (as they were communicated to the representatives of the relevant trade unions with a large notice period *i.e.* 45 days) in a context of programmability of the business activity. To be eligible for the C.I.G.O., the employer shall use "*all the allowed organizational and contractual devices*" before requesting the benefit. In the case at hand, poor organization and programming of the business activity, proven in particular by the large use of overtime, would result in negligence and incompetence of the entrepreneur, who is expected to know the characteristic of the productive cycle in his sector of economic activity. The Commission had also asserted lack of evidence of the contraction of the working activity, as the number of documents processed by the claimant firm had not decreased substantially.

Against the Provincial Commission's decision the applicant firm had alleged:

- the use of overtime to be the result of the nature of the services provided, the working activity being subject to peaks determined by legal constraints, *i.e.* the need to respect punctual deadline for the delivering of administrative documents; the order of phases in the documents' processing not being modifiable; since skills are service-specific, human resources are not exchangeable between different areas of services; management's supervision is always needed, regardless of the number of people at work; overtime shows anyway a negative trend compared to the past;
- the fall in the volume of the activity can't be simply measured, alike in the industrial sector, by the number of documents processed, but need to be assessed taking into

account qualitative changes in the data registered on them, which determine the number of working hours needed to process them.

The Court has decided the case by preliminarily requalifying the business relationship between the applicant and its customers as an intra-group relationship, as well as the claim as a case ruled under art. 1 letter a) of L. no. 164/1975. The Court has nevertheless stated that, even under art. 1 letter b) of L. no. 164/1975, the C.I.G.O. benefit would not be accordable considered that the claimant firm has not proved the occurrence of a temporary difficult market conjuncture. The evaluation of such occurrence must take into account the situation and the behaviours of other similar firms in the same sector of economic activity, and the reduction on orders must come from a plurality of customer. The Court has admitted such a criterion to be likely to disadvantage firms working for a single or a limited number of big customers, but has consider still such circumstances as the result of a market strategy and therefore as an entrepreneurial choice.

In the case at hand, the contraction in working activity of the applicant firm could be considered as the result of the customer's restructuring process rather than as the result of an unfavourable market conjuncture. The Court has also incidentally stated that a fall in the working activity can be proxied by a fall in the financial turnover, as the latter can be regarded as an presumptive index. The Court has finally observed the entrepreneur had not taken any action to react to the negative shock, neither by adapting its organization nor by renegotiating the agreements with his customers. Moreover, workers should have been provided adequate training in order to allow for their fungibility.

In the different case of AFV Acciaierie Beltrame S.p.A., formerly Siderurgica Ferrero S.p.A., vs. I.N.P.S., the C.I.G.O. denial had been motivated by the presence of overtime in the same departments concerned by the suspensions of the working activity. The applicant firm had alleged violation of art. 1 paragraph 1 letter b) Law no. 164/1975, abuse of power for lack of investigation, insufficient and erroneous motivation, misrepresentation of the facts and lack of factual and legal assumptions.

The Court, in Rulings no. 597/2011 and no. 596/2011, deviating from a previous judgement (T.A.R. Piedmont, Turin, Sec. II, no. 1906/2005) has accepted the application and annulled the I.N.P.S. decision for lack of motivation, after resolving the moderate use of overtime could not to be incompatible with the C.I.G.O. in the case at hand.

As reconstructed by the Court:

- the applicant firm had a broad social object, including industrial and commercial activities in the fields of iron and steel, metallurgy, mechanical and related metals and raw materials, as well as in constructions and electricity production sectors;
- the firm's organization consisted of 3 main areas:
    - Production, in turn subdivided into a Steel Department and a Steel Rolling Department;
    - Maintenance, also divided in the two departments of the Steelworks and Rolling;
    - Services, distributed, among others, between the technical services of the Production and Maintenance areas;
- the C.I.G.O. benefit had been requested, on behalf of the workers of the production, technical and administrative services of the steel and rolling mills, under the provision of art. 1, point 1, letter b) L. no. 164/1975, due to the severe crisis of the steel market, which had resulted in a serious decline in orders for rolled steel and in the consequent rise of the factory stocks of finished products and semi-product from the steel mill;
- considering the significant independence between the department of the Steelworks and that of Laminates, both with regard to production and maintenance, workers could not be considered as fungible;
- during the periods and in the departments concerned by the C.I.G.O. request, the production had been fully suspended;
- the moderate use of overtime (95.5 hours) is potentially compatible with the performance of those residual tasks that, even in the case of inactivity, must be nevertheless carried out in order to provide the services and supplies indispensable to ensure the safety of the installations in view of the recovery of production (recovery which represents the necessary condition for the admission to the benefit);
- the use of overtime for recovering lost production is hardly compatible with the continuous production cycle adopted by the firm.

2.4. Cyclical, repeated and "structural" use of C.I.G.O.

Another evidence that can result from the analysis of case-law is about cyclical and/or repeated use of C.I.G.O. and, more in general, about the length and characteristics of the periods for which the benefit is effectively claimed, denied or accepted. We have already accounted for the fact that settled case-law has ruled the condition for the admission to C.I.G.O. not to be met in case of cyclical fall in the demand, as well as that I.N.P.S. Circular letter no. 249/1990 has been providing criteria for the examination of C.I.G.O. claims filed by firms subject to recurring contractions of production.

It is worth analysing at this respect the case of a textile company, Pompea S.p.A. vs. I.N.P.S., ruled by the Regional Administrative Court of Lombardy (T.A.R. Lombardia no. 1286/2012), where both the Provincial Commission and the provincial I.N.P.S. headquarter of Mantua had justified the benefits' denial by alleging "structural" *i.e.* systematic and continuous use of the C.I.G.O.

The benefit had been claimed on behalf of 283 workers for the period from 1st November to 27th November 2010 and from 29th November 2010 to 1st January 2011. From the account of facts it emerges that the company had already been benefitting from both C.I.G.O. and C.I.G.S., as well as from the C.I.G.D., during the previous years. More precisely, the company had been authorized:

- 6 weeks of C.I.G.O. from September to December 2006;
- 3 weeks of C.I.G.O. and 7 months of C.I.G.S. from 1st June to 31st December 2007;
- 5 months of C.I.G.S. from 1st January to 31st May and 7 months of C.I.G.D. from 1st June to 31st December 2008;
- 4 months of C.I.G.D. from 1st January to 30th April and, contemporary, 6 weeks of C.I.G.O. from February to April; 8 months of C.I.G.S. from 1st May to 31st December 2009;
- 4 months of C.I.G.S. from 1st January to 30th April; 5 weeks of C.I.G.O. from 3rd May to 5th June; 4 weeks of C.I.G.O. from 7th June to 3rd July, from 5th July to 31st July, from 2nd August to 28th August, from 30 August to 25th September; 5 weeks of C.I.G.O. from 27th September to 31st October 2010.

The judgment has focused on the appraisal of the eligibility condition laid down in art. 5, paragraph 1, point 1, Lgs. D. P.H.S. no. 869/1947, requiring the workers' recall within a short term to be assured. Settled case-law has ruled the reasonable predictability of workers' recall within the short term due to production's recovery to be assessed *ex ante*, *i.e.* at the time of filing of the C.I.G.O. claim, and not *ex post* (Cassation Court no. 2138/2001;

Council of State no. 1773/2003 and no. 4420/2003). On this point the competent bodies had alleged production not to have been resumed in the intervals between different claims. Moreover, breach of the 36 weeks in the five-year period total limit to the enjoyment of C.I.G. benefits and recurrent claiming would account for both the non-transient nature of the crisis and a negative outlook on the firm's probability to recover.

The applicant firm had significantly alleged the resort to C.I.G.O. not to be "unlawful" as long as resolved in compliance with the legislation in force. The court has ruled the assessment of the eligibility conditions with respect to the predictability of the firm's recovery shall not only consider the repeated use of the scheme over time but shall also take into account whether the number of workers concerned. Whenever such number is decreasing over time, whilst the number of workers employed is increasing, this account for a recovery. The denial decision has been annulled on ground of erroneous application of the C.I.G.O. legislation, since competent bodies "*appear in fact to have erroneously failed to consider, also in view of the assessment of the temporary nature of the firm's situation, the partial resumption of the working activity, which is…relevant not only in order to exclude continuity in the use of social shock absorbers*".

In the case at hand the Court has therefore admitted repeated, prolonged and large use of the scheme as long as consistent with the eligibility criteria laid down in the legislation, by resolving, similarly to the case analysed in the previous Paragraph 2.1. with respect to annual leave, that such an use can't, in a strict view, account by itself for the non temporary nature of a firm's crisis situation, which need to be assessed according such criteria.

Similarly, in the case Cave Ticino di Oleggio s.r.l. vs. I.N.P.S. the claimant firm, as alleged by the I.N.P.S. - who had appealed the authorization of the C.I.G.O. benefit given by the Provincial Commission of Turin on ground of lack of transient and temporary nature of the event that had caused the suspension of the working activity - had been using the scheme almost continuously since 3rd November 2008, with maximum 2 weeks breaks.

The Regional Administrative Court of Piedmont (Ruling no. 516/2012) has acknowledged inadequate motivation since, to be eligible for C.I.G.O. benefit, it is sufficient that the claimant prospects as probable, stating the reasons, the resumption of the production in a given period of time.

2.5. C.I.G.O. and contractual liability

A last hypothesis that deserves attention is that of the resort to C.I.G.O. in case of firm's difficult situations due to infringement of contractual obligations by a third part with whom the employer has concluded an agreement. Settled case-law has established that the contraction or suspension of the working activity shall neither be attributable to the employer nor to any third part involved in a contractual relationship with the former (Council of State Ruling no. 1131/2011); moreover, a critical situation arising from an infringement of a contractual obligation shall be dealt with by resorting to the remedies accorded by the rules of contractual liability instead of the C.I.G.O. (Council of State Ruling no. 1010/1999). This has typically been the case of contract works and public works and service contracts.

In many cases both Provincial Commissions and I.N.P.S. headquarters have denied claims, and the competent administrative court has rejected appeals since the cause of the working activity suspension had arisen in the context of a contractual relationship. It is still possible to track differences in the rulings, and therefore, as a proxy, in the practices followed by the C.I.G.O. governance bodies in some Regions. By way of example we will compare some case-law ruled by the Regional Administrative Tribunals of Lombardy and Piedmont, the two biggest Regions of the so called Italian "industrial triangle".

In the case Furlan Walter D.I. vs. I.N.P.S., ruled by the Regional Administrative Court of Lombardy (no. 2416/2015) the applicant firm had suspended the renewing of a building since the customer hadn't payed the due construction tolls to the local Municipality; in the case F.B. Costruzioni s.r.l. vs. I.N.P.S., ruled by the same Court (no. 2780/2014), the applicant had been engaged from another private firm to perform, under subcontract, a part of construction works in some residential building. The contractor had subsequently informed the applicant the works had to be suspended due to block of the funding.

In the case Barbirato Danilo s.a.s. di Barbirato Marco & C. vs. INPS (Ruling no. 542/20149), Regional Administrative Court of Piedmont has instead annulled the I.N.P.S. denial. The firm had alleged the contraction of its activity to have been caused by the state of insolvency of its main customers. The C.I.G.O. had been authorized by the Provincial Commission of Vercelli but the decision had been appealed by the I.N.PS. In the case Macchia Angiolo s.a.s. vs. I.N.P.S. (Ruling no. 2163/2006) the applicant had awarded a public tender for the reconstruction of some railway stations. Works had been repeatedly suspended by the Direction due to difficulties in the supply of raw materials. The

Provincial Commission and the I.N.P.S. of Novara had denied the C.I.G.O. since the cause of the working activity suspension had to be traced back to the contractual relationships between the firm and the contracting authority, but the court has accepted the appeal and annulled the decision by stating that such condition is by itself "*in any way referrable to the eligibility conditions of temporariness and non accountability of crisis situation to the employer pursuant to the legislation*…".

CHAPTER V

THE ASSESSMENT OF ITALIAN SHORT-TIME WORK COMPENSATION SCHEMES' REGULATION IN A "OSTROM LOGIC"

1. Conclusions: the assessment of Bilateral Solidarity Funds and C.I.G.O. regulation in the framework of Ostrom's design principles for long-enduring successful collective institutions

In the framework of the theoretical analysis carried out in Chapter I and in the light of the evidences emerged from the empirical analysis carried out in Chapters III- IV, we are now able to perform an assessment of the actual C.I.G.O. and Bilateral Solidarity Funds Regulation with respect to the design principles for long-enduring successful collective institutions developed by Ostrom (1990). These principles are:

"1. Clearly defined boundaries
Individuals…who have rights to withdraw resource units from the common-pool resource must be clearly defined, as must the boundaries of the common-pool resource itself

2. Congruence between appropriation and provision rules and local conditions
Appropriation rules restricting time, place, technology, and/or quantity of resource units are related to local conditions and to provision rules requiring labor, material, and/or money.

3. Collective-choice arrangements
Most individuals affected by the operational rules can participate in modifying the operational rules.

4. Monitoring
Monitors, who actively audit common-pool resource conditions and appropriator behaviour, are accountable to the appropriators or are the appropriators.

5. Graduated sanctions
Appropriators who violate operational rules are likely to be assessed graduated sanctions (depending on the seriousness and context of the offense) by other appropriators, by officials accountable to these appropriators, or by both.

6. Conflict-resolutions mechanisms
Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials.

7. Minimal recognition of rights to organize
The rights of appropriators to devise their own institutions are not challenged by external governmental authorities.

For common-pool resource that are part of larger systems:

8. Nested enterprises
Appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layers of nested enterprises." (p. 90).

Note that, according to Ostrom (1990, 30), the concept of "common-pool resource" may refer both to a natural and a man-made system. Recently, the concept has been applied to social insurances by Bannink (2014): according to the latter author, "*a corporatist social policy system of obligatory benefits under private administration functions as a common-pool resource*".

To perform our assessment, we will group Ostrom's design principles along with three macro-dimensions:

- The *boundaries* and *structure* of the scheme (1 and 8)
- The *insurance* scheme (2)
- The *governance* of the scheme (3 to 7)

The following tables illustrates the results of the application of such framework to the analysis of respectively, Bilateral Solidarity Funds and C.I.G.O. STWS. Moreover, a comparison is made with two alternative models of STWS "reflexive" regulation, that of Solidarity Funds and National Paritarian Inter-Professional Vocational Training Funds (see Chapter I Paragraph 3.2, I and F).

With respect to Bilateral Solidarity Funds, the procedural and substantive aspects of the scheme regulation that have been affirmed by the Government *in the process of the reform implementation* or with the subsequent reform by the Jobs act (ore that have been left open) are evidenced in bold .

Similarly, with respect the C.I.GO. regulation, the procedural and substantive aspects resulting from the *effective functioning* of the scheme are evidenced in bold as well.

Table 1: the assessment of Bilateral Solidarity Funds' regulation in the framework of Ostrom's design principles for long-enduring successful collective institutions

Dimensions of "reflexive" regulation	Bilateral Solidarity Funds (J)	Solidarity Funds (I)	FPI (F)
Clearly defined boundaries (1) **Nested Structure (8)**	**Boundaries' definition according to the national collective labor agreement applied or to exogenous classification criteria of economic activities?** Sectorial national level. **Regional level for**	Boundaries' definition according to collective agreements. Sectorial national level. Firm level for public utility companies. No nested structure.	Boundaries' definition according to collective agreements. Employers are anyway free to chose among funds. Sectorial national level. Nested structure (regional and other territorial level).

	Trentino-Alto Adige only. **Group and firm level for former Solidarity Funds only**. **Nested structure for crafts manufacturing bilateral funds (only)?**		
Congruence between appropriation and provision rules and local conditions (2)	Voluntary regime with default reserve option (Residual Solidarity Fund). Under paragraph 4: freedom to set and vary the ordinary social contribution rate (transposition needed). Under paragraph 14: minimum 0.50 ordinary social contribution rate (no transposition needed). **Impossibility to suspend the obligation to pay the ordinary social contribution** Under paragraph 4: saving accounts. Under paragraph 4: **impossibility to design STW benefit's amount, duration, eligibility and entitlement criteria.** Under paragraph 14: **limited** possibility to design STW benefit's amount, duration, eligibility and entitlement criteria.	Voluntary regime without default reserve option. 0.50% ordinary social contribution rate. Possibility to suspend the obligation to pay the ordinary social contribution. Saving accounts. Possibility to design STW benefit's amount, duration, eligibility and entitlement criteria.	Voluntary regime with default reserve option (the social contribution goes to the I.N.P.S. and finances unemployment insurance). 0.30 social contribution rate Impossibility to suspend the obligation to pay the social contribution Saving accounts. Possibility to design STW benefit's amount, duration, eligibility and entitlement criteria (during years 2009-2010 only).
Collective-choice arrangements (3) **Monitoring (4)** **Graduated sanctions (5)** **Conflict-resolutions mechanisms (6)** **Minimal recognition of rights to organize (7)**	Under paragraph 4: tripartite paritarian management under State's vigilance. Under paragraph 14: bilateral management under State's vigilance. Collective agreement needed. **Procedures to claim benefits: deferment to collective agreements?**	Tripartite paritarian management under State's vigilance. Collective agreement needed. Procedures to get benefits deferred to collective agreements. Conflict's resolution mechanisms in place. Social contribution collection and sanctions'	Bilateral management subject to authorization regime and State's vigilance. Conflict's resolution mechanisms in place. Social contribution collection by the INPS and transfer to FPI. Additional sanctions set by the law.

	Conflict's resolution mechanisms in place. Social contribution collection and sanctions' application up to the I.N.P.S.	application up to the I.NP.S.	

Table 2: the assessment of C.I.G.O. regulation in the framework of Ostrom's design principles for long-enduring successful collective institutions

Dimensions of "reflexive" regulation	**C.I.G.O.**
Clearly defined boundaries (1) **Nested Structure (8)**	Boundaries' definition according to the law. No nested structure.
Congruence between appropriation and provision rules and local conditions (2)	Compulsory regime. Ordinary and additional social contribution rates set by the law. **Experience rating.** Impossibility to design STW benefit's amount, duration, eligibility and entitlement criteria. Possible indirect role of collective bargaining on eligibility and entitlement criteria only.
Collective-choice arrangements (3) **Monitoring (4)** **Graduated sanctions (5)** **Conflict-resolutions mechanisms (6)** **Minimal recognition of rights to organize (7)**	**No more governance bodies neither conflict's resolution mechanisms in place.** Possible indirect role of collective bargaining on eligibility and entitlement criteria only. Social contribution collection and sanctions' application by the INPS.

As it emerges from the first question mark, the first dilemma faced by the Government in the process of Fornero Reform's implementation has regarded the choice of the criteria to define Bilateral Funds' boundaries. On the one hand, bilateral funds' boundaries have been traditionally paired with the application field of the collective agreements signed by the founding organizations. On the other hand, the boundaries of the Italian Welfare States have been always shaped by peculiar classification criteria of economic activities developed by the INPS (Statistic Social Security Code).

The Sectorial Funds' model had been voluntary built on the first criteria. The problem has not arisen for FPI since employers can freely choose which fund to join.

Neither the rationales nor the solutions given by the Fornero Reform and the Jobs Act are clear at this respect. Although collective agreements for the reconvention of former Solidarity Funds (see banks and insurances) as well as the collective agreements for the creation of new Bilateral Solidarity Funds (see public transports) were defining the funds' boundaries by deferment to the national collective labor agreement signed by respective organizations, in the transposition process such principle has been (only) in some cases substituted with an exogenous classification criteria.

Moreover, the Government has denied the constitution of a regional Bilateral Solidarity Fund of the cooperative firms of Trentino (agreement 29th October 2013) but resolved the establishment of a Bilateral Solidarity Fund of the whole Trentino-Alto Adige Region; has finally obliged artisan organizations to create a national fund in place of the longstanding regional funds. Nevertheless, in the latter case, although a national fund has been formally created, regional articulation of bilateral funds' system has been in fact confirmed.

While the model of FPI is expressly according the possibility to articulate funds from the sectorial to the territorial level, the problem had not arisen under former Solidarity Funds, whose establishment was voluntary.

Finally, the economic activities like railways and post services are today split between C.I.G. schemes, "private Bilateral Solidarity Funds" and the Residual Solidarity Fund.

While transposing collective agreements into Decrees, the Government has also modified some elements of the insurance's design. First, no power to determinate the amount, the duration and the entitlement criteria of STW benefits seems in fact to have been accorded to social partners, as the Government has substituted the provisions laid out in collective agreements with a generic deferment to the C.I.G. legal discipline. Anyway, the transposition of the provisions on saving accounts is likely to limit the duration of benefits.

The possibility to suspend the obligation to pay the ordinary social contribution has been instead canceled. This is significant in the light of the evidence, that neither the legislator nor the Government seem to have taken into consideration, that the firm's falling within the scope of former Solidarity Funds, during the almost twenty years they have been in force, have virtually never claimed ordinary short-time work benefits, *i.e.* the provisions that both the Fornero Reform and the Jobs Act have extended and made compulsory for all firms. Note that, as a probable evidence of path dependency processes, the firms included in the scope of former Solidarity Funds have significantly not being claiming the C.I.G.D. during the Great Recession.

Note that under Sectorial Funds, as well as under FPI in times of crisis, social partners had been enjoying almost complete freedom to shape STW benefits, although they have never been free to set the amount of ordinary social contribution. Note also that the procedures to claim Bilateral Solidarity Funds' benefits have not formed the object of any prescription by Law 92/2012: as a consequence, the problem of the relationship between decrees and collective agreements, analyzed with respect to the funds' boundaries, remains open.

Finally, the Fornero Reform and the Jobs Act have definitely chosen the model of tripartite paritarian management instead of bilateral management (eventually subject to State's vigilance), so that in fact "Bilateral Solidarity Funds" can hardly be defined "bilateral", as Liso (2013) has pointed out. Nevertheless, the model of "*pure*" bilateral fund (*ibidem*) has evidently influenced even the latest "regulatory experimentation" of non-CIG STWS.

On the whole, the perspective of analysis chosen evidences poor formulation of self-regulation's regulation and too large discretionary spaces left to the Government. Moreover, the comparison between the different regulatory models may suggest considering "revisited" bilateral funds under paragraph 14 or FPI as potential alternatives to combine public and private elements allowing for nested articulation of STWS. Revisited bilateral funds or FPI would typically manage a public resource (the social contribution) through bilateral organization.

As to the C.I.G.O., also compared to Bilateral Solidarity Funds, it makes sense to question whether its current regulation still substantiate a privileged regime, or else it ended up configuring a penalizing regime from the point of view of both workers and employers, as well as from the point of view of the social partners.

Once in fact the "universalization" of income support in case of short-time work or working activity suspension be resolved, significantly providing for homogeneous benefits in terms amount and duration, the comparison between different regimes must in fact move on the plan of the residual aspects of the schemes' design, and in particular on the government or governance mechanisms of the schemes themselves. Not to mention the fact that no objective criteria is provided to justify the adoption – and multiplication – of different governance models for the management of what has finally turned out to be as a single income support instrument.

In this context it is possible to frame, significantly, the statutory modification of the social contribution rates: face with a modest decrease in the ordinary contribution rate, firms must bear increased costs for the additional contribution; unlike social partners in the sector of economic activity falling within the scope of Bilateral Solidarity Funds, the social partners of the sectors included in the C.I.G.O. are not allowed to change the social contribution rates, and, what is most important, after the abolition of the Provincial Commissions and the Central Commission are deprived of any role with respect to management, conflict resolution and even simple monitoring of the scheme.

Against this background, given poor formulation of eligibility conditions and consequent large discretion left to the administrative authority, even the criterion of the prior "exhaustion of the contractual possibility of reduction of working time" is likely to act as an additional penalizing factor, as the indirect role social partners may play through collective bargaining in the governance of the scheme is not acknowledged and embedded in its design, being totally disconnected from the management of the scheme itself.

Moreover, firm falling within the scope of Bilateral Solidarity Funds are allowed greater freedom in the use of the scheme due to the institution of saving accounts.

At the letter respect, it is also noteworthy that the social partners of the sectors excluded from the C.I.G. have been allowed not only to decide whether to set up sectorial or cross-sectorial funds, but also to grade the level of solidarity between firms within a same funds. No objective reasons justify in fact the differentiated provision of a regime of limited solidarity, between the categories of undertakings with individual account, compared to a regime of full solidarity, between industrial firms and the other categories of undertakings falling within the scope of C.IG.O. Provided that individual accounts may substantiate and alternative variant to traditional social insurance schemes (for an example on unemployment schemes, see Feldstein and Altman, 2007).

As to the "problematic fulcrum" of the C.I.GO. institution, and even before that, to the risk insured by the scheme, provided that neither the Fornero Reform nor the Jobs Act have contributed to its better (re)definition, the coherence of the institution's overall design should be assessed in the light of the answer to the following question: depending on the configuration given to the eligibility conditions, and more precisely to the notion of transiency and temporariness of the cause of short-time work, would it be virtually possible/what would be the statistical probability to top up the theoretical maximum duration of the benefit provided by the law (52 weeks over two years), in situations other

than those that substantiate the eligibility conditions for the C.I.G.S. and that therefore justify the existence of the latter as a distinct scheme? In relation to such a probability, the design of the maximum duration of the benefit and of both ordinary and additional social contribution appears appropriate? Failure in (re)defining the insured risk, with consequent latitude left to the administrative authority, account for the opportunity to a change in the paradigm adopted in the assessment of STWS regulation, at least with respect to the Italian case.

REFERENCES

Abraham, K. G., and Houseman, S. N. (2014), Short-Time Compensation as a Tool to Mitigate Job Loss? Evidence on the U.S. Experience During the Recent Recession, Industrial Relations, 53: 543–567.

Abraham, K. G., and Houseman, S. N. (1994), Does Employment Protection Inhibit Labor Market Flexibility? Lessons from Germany, France and Belgium, in Blank, R. M., Social Protection versus Economic Flexibility: Is There a Trade-Off? University of Chicago Press:59-94)

Abraham, K. G., and Houseman, S. N. (1993), Job security in America: Lessons from Germany. Washington, D.C.

Abraham, K. G., and Houseman, S. N. (1992), Employment security and labor adjustment: A comparison of West Germany and the United States. Working Paper. College Park, University of Maryland.

Alba-Ramírez, A., Arranz, J.M., and Muñoz-Bullón, F. (2007), Exits from unemployment: recall or new job, Labour Economics, 14: 788–810.

Aricò, F., and Stein, U. (2012), What Short-Time Work a Miracle Cure During the Great Recession? The Case of Germany and Italy, Compared Economical Studies, 54: 275.

Arntz, M., and Wilke, R. A. (2009), Can public employment subsidies render the German construction sector weather proof?, Working Paper University of Heidelberg.

Arntz, M., and Wilke, R. A. (2008), How Weather-Proof is the Construction Sector? Empirical Evidence from Germany, ZEW Discussion Paper, 105.

Arpaia, A., Curci, N., Meyermans, E., Peschner, J., and Pierini, F. (2010), Short time working arrangements as response to cyclical fluctuations, European Economy Occasional Papers, 64.

Arranz, J. M., and García-Serrano, C. (2011), Tie me up, tie me down! The interplay of unemployment compensation system, fixed-term contracts and rehirings, Documento de Trabajo Fundacíon de las Cajas de Ahorros, 586.

Azariadis, C. (1975), Implicit Contracts and Underemployment Equilibria, Journal of Political Economy, 83: 183-1202.

Baily, M. H. (1974), Wages and Employment Under Uncertain Demand, Review of Economic Studies, 141: 37-50.

Balleer, A., Gehrke, B., Lechthaler, W., and Merkl, C. (2016), Does short-time work save jobs? A business cycle analysis, European Economic Review, 84: 99–122.

Bannink, D. (2014) Social Policy from Olson to Ostrom: A Case Study of Dutch Disability Insurance, Social Policies and Administration,48: 279-299.

Barassi, L. (1957), Il diritto del lavoro, 3, Milano.

Barbieri, M. (2009), Ammortizzatori sociali in deroga. Riflessioni a partire dal caso della Puglia, in Curzio, P., Ammortizzatori sociali. Regole, deroghe, prospettive, Bari : 83-113.

Becker, G. (1964), Human capital, New Jork.

Bellardi, L., and De Sanctis G. (2011), La bilateralità fra tradizione e rinnovamento, Milano.

Bellardi, L. (1989), Istituzioni bilaterali e contrattazione collettiva: il settore edile: 1945-1988, Milano.

Béraud, M. (1994), Le chômage partiel, un dispositif de protection de l'emploi: comparaison dans quatre pays européens, Travail et emploi, 61: 4-22.

Blanchard O. I., Tirole J. (2008), The joint design of unemployment insurance and employment protection: a first pass, in Journal of the European Economic Association, 6: 45-77.

Boeri, T., and Brücker, H. (2011b), Short-time work benefits revisited: some lessons from the Great Recession, Economic Policy, 26: 697-765.

Boeri, T., and Brücker, H. (2011a), Short-time work benefits revisited: some lessons from the Great Recession, IZA Working Paper.

Bonoli, G. (2005), The politics of the new social policies: providing coverage against new social risks in mature welfare state, Policy and Politics, 33: 431-449.

Braun, H., and Brügemann, B. (2014) Welfare effects of short-time compensation, IZA Discussion Paper, 8597

Brey, B., and Hertweck, M. S. (2016), The extension of short-time work schemes during the Great Recession: A story of success?, Working Paper Series University of Konstanz Department of Economics.

Calavrezo, O., and Lodin, F. (2012), Short-Time Working Arrangements in France During the Crisis: An Empirical Analysis of Firms and Employees, Compared Economical Studies, 54: 299.

Calavrezo, O., Duhautois, R., and Walkowiak, E. (2010), Short-Time Compensation and Establishment Exit: An Empirical Analysis with French Data, IZA Discussion Paper, 4989.

Calavrezo, O., Duhautois, R., and Walkowiak, E. (2009), The Short-Time Compensation Program in France: an Efficient Measure against Redundancies?, CEE Document de Travail, 114.

Calavrezo, O., Duhautois, R., and Walkowiak, E. (2008), Le Recours au Chômage Partiel entre 1995 et 2005, DARES document d'études, 135.

Calavrezo, O., Duhautois, R., and Walkowiak, E. (2007), The Effect of Working Time Reduction on Short-Time Compensation: A French Empirical Analysis, CEE Document de Travail, 88.

Calavrezo, O., Duhautois, R., and Walkowiak, E. (2006), Le chômage partiel: quelles tendances?, hal-00831517.

Cahuc, P., and Carcillo, S. L. (2011), Is Short-Time Work a Good Method to Keep Unemployment Down? CEPR Discussion Paper, DP8214.

Crimmann, A., Wießner, F. and Bellmann, L. (2012), Resisting the crisis: short-time work in Germany, International Journal of Manpower, 33: 877-900.

Crimmann, A., Wießner, F. and Bellmann, L. (2010), The German work-sharing scheme: An instrument for the crisis, ILO Conditions of Work and Employment Series, 25.

Deeke, A. (2005), Kurzarbeit als Instrument betrieblicher Flexibilität: Ergebnisse aus dem IAB-Betriebspanel 2003, IABForschungsberichtm,12.

Di Stefano and Fontana (2017), forthcoming.

Eurofound (2010), Extending flexicurity – The potential of short-time working schemes, ERM REPORT.

Esping-Andersen, G. (1999), Social Foundations of Postindustrial Economies, Oxford.

Feldstein, M., and Altman, D. (2007), Unemployment Insurance Savings Accounts, Tax Policy and the Economy, 21.

Feldstein, M., (1976), Temporary Layoffs in the Theory of Unemployment, The Journal of Political Economy, 84: 937-958.

Feldstein, M., (1975), The Importance of Temporary Layoffs. An Empirical Analysis, Brookings Papers on Economic Activity, 3.

Ferrera, M., and Rhodes, M. (2000), Recasting European welfare states, London, 2000.

Gallo, B. (2001), Credito cooperativo e imprese di assicurazione in crisi. Fondi di solidarietà per il sostegno al reddito, Diritto & Pratica del Lavoro, 47: 3101-3105.

Giovannetti, E. (2014), Una valutazione ecologica che non c'è: quali danni ha causato l'uso flessibile del lavoro al sistema delle imprese?, in A. Ninni (a.c.d.), Politica industriale e sviluppo sostenibile, Collana di Economia Industriale e Applicata dell'Università di Parma: 135-201.

Giugni (2002), Diritto sindacale, Bari.

Gottardi, D. (1998), Il fondo di solidarietà per il settore del credito, Lavoro Informazione, 13 .

Gottardi and Renga (1999), Le riduzioni di personale oltre l'industria. Prefazione, Lavoro e Diritto, 1999, 3.

Grais, B. (1983) Lay-offs and short-time working in selected OECD countries, Organization for Economic Cooperation and Development.

Hense, A. (2014), Temporary Layoffs: New Issue for Social and Employment Policy?, IREC 2014 Conference Paper.

Hijzen, A., and Venn, D. (2011), The role of short-time work schemes during the 2008-09 recession, OECD Social, Employment and Migration Working Papers, 115.

Hijzen, A., and Martin, S. (2013), The role of short-time work schemes during the global financial crisis and early recovery: a cross-country analysis, IZA Journal of Labor Policy.

Hollingsworth, J. R., Schmitter, P. H. C., and Streeck, W. (1994), Capitalism, sectors, institutions, and performance. Governing capitalist economies. Performance and control of economic sectors, New Jork.

Holzmayer, W. T. (1989), Kurzarbeitergeld und Schlechtwettergeld: ein entwicklungsgeschichtlicher Vergleich, Berlin.

Italia Lavoro (2013), Gli enti bilaterali in Italia, Primo rapporto nazionale.

Jensen, P., and Svarer, M. (2003), Short- and long-term unemployment: How do temporary layoffs affect this distinction? Empirical Economics,
28: 23-44.

Johnston, A., Kornelakis, A., and Rodriguez d'Acri C. (2011) Social Partners and the Welfare State: Recalibration, Privatization or Collectivization of Social Risks, European Journal of Industrial Relations, 17: 349-364.

Kahn-Freund, O. (1954), Intergroup conflicts and their settlement, The British Journal of Sociology, 5: 193-227.

Lagala, C. (1992), L'artigianato, in Bellardi, L., Relazioni industriali e contrattazione collettiva in Italia, 1945-1992, Bari.

Lenti, L. (1979), La cassa integrazione nell'analisi dei giuristi, Rivista Trimestrale di Diritto e Procedura Civile, 559-619.

Leonardi, S. (2014) Rapporto sulla bilateralità nel terziario, Rome.

Liso, F. (2013) I fondi bilaterali alternativi, in Cinelli, M., Ferraro, G., and Mazzotta, O., Il nuovo mercato del lavoro dalla riforma Fornero alla legge di stabilità, Turin.

Liso, F. (2012) Legge, autonomia collettiva e bilateralità: un caso problematico. "Eccesso di potere" del contratto collettivo?, Rivista di Diritto della Sicurezza Sociale, 1.

Liso, F. (2009) Gli ammortizzatori sociali. Percorsi evolutivi e incerte prospettive di riforma, in Curzio P., Ammortizzatori sociali. Regole, deroghe e prospettive, Bari.

Liso, F. (1997), La galassia normativa dopo la Legge 223/1991, in Giornale di Diritto del Lavoro e di Relazioni Industriali, 73.

Liso, F. (1991b) La nuova legge sul mercato del lavoro: un primo commento, in Lavoro Informazione, 1991, 18.

Liso, F., (1991a), Osservazioni e proposte su "La riforma dell'indennità ordinaria di disoccupazione", CNEL: 627-631.

Magri, M. (1999), Previdenza "sperimentale" e contrattazione collettiva per i dipendenti delle ferrovie, Lavoro e Diritto, 3: 418-420.

Mariucci (1998), Le fonti del diritto del lavoro, Turin.

Merkl, C., Balleer, A., Gehrke, B., and Lechthaler, W. (2014), Does Short-Time Work Save Jobs? A Business Cycle Analysis, European Economic Review, 84: 99–122.

Miscione, M. (1998), Un modello privatistico di ammortizzatore sociale, Diritto e Pratica del Lavoro, 23.

Miscione (1997), Il sostegno al reddito degli enti bilaterali, Diritto e Pratica del Lavoro, 1997, 36.

Mosley, H., and Kruppe, T. (1996), Employment Stabilization through Short-time Work, in Schmid, G., O'Reilly, J. and Schömann, K. (eds.), International Handbook of Labor Market Policy and Evaluation.

Mulé, R., and Di Stefano, L. (2014), Crisi economica e risposte della politica. La political economy regionale dagli ammortizzatori in deroga alla riforma degli ammortizzatori sociali, Bologna.

Mulé, R., and Di Stefano, L. (2013), Gli ammortizzatori sociali in deroga, in Fargion, V., and Gualmini, E. (eds.), Tra l'incudine e il martello: regioni e nuovi rischi sociali in tempi di crisi, Bologna: 163-192.

Nogler, L. (2014) Gli enti bilaterali dell'artigianato tra neo-centralismo ed esigenze di sviluppo.

Nucara and Candido (2012), Cosa intendiamo quando parliamo di stagionalità, Bollettino ADAPT.

Ostrom, E. (1990), Governing the Commons. The Evolution of Institutions for Collective Action.

Pandolfo, A., and Marimpietri, I. (2000), Ammortizzatori sociali "fai da te": il caso del settore del credito, Rivista di Previdenza Pubblica e Privata, 1.

Perulli, P., and Sabel, C. F. (1996), Gli enti bilaterali dopo l'inizio: tre approcci a una interpretazione operativa, Diritto delle Relazioni Industriali, 2.

Pierson, P. (1998), Irresistible forces, immovable objects: post-industrial welfare states confront permanent austerity, Journal of European Public Policy, 5: 539-569.

Pierson, P. (1994), Dismantling the Welfare State? Reagan, Thatcher and the Politics of Retrenchment. Cambridge University Press, Cambridge.

Piore, M., and Sabel, C. F. (1984), The second industrial divide, New York.

Renga, S. (2013), Bilateralità e sostegno al reddito tra autonomia ed eteronomia, Padua.

Righetti, P. (2002), Fondo di solidarietà ex dipendenti Monopoli di Stato, Guida al Lavoro, 38.

Romei, R. (1999), Le procedure di riduzione del personale nel settore ferroviario, Lavoro e Diritto, 3: 349-366.

Requier-Desjardins, D. (2004), Produced Common Pool Resources, Collective Action and sustainable local developement: the case of food-processing clusters, Conference Paper.

Røed, K., and Nordberg, M. (2003), Temporary layoffs and the duration of unemployment, Labour Economics, 10: 381–398.

Rogowski, R. (2013), Reflexive Labour Law in the World Society.

Rosen, S. (1985), Implicit contracts: a survey, NBER Working Paper, 1635.

Senatori, I. (2012), Struttura e funzioni della contrattazione collettiva nella "Riforma Fornero", Quaderni della Fondazione Marco Biagi, Sezione Saggi, 4.

Stoker, G. (1998), Governance as a theory: five propositions, International Social Science Journal, 50: 17-28.

Sørensen, E., and Triantafillou, P. (2009), The Politics of Self-Governance, New Jork.

Trampusch, C. (2007), Industrial Relations as a Source of Social Policy: A Typology of the Institutional Conditions for Industrial Agreements on Social Benefits, Social Policy and Adinistration, 3 : 251-270.

Trampusch, C. (2006), Industrial relations and welfare states: the different dynamics of retrenchment in Germany and the Netherlands, Journal of European Social Policy, 16: 121-133.

Van Audenrode, M. (1994), Short-Time Compensation, Job Security, and Employment Contracts: Evidence from Selected OECD Countries, Journal of Political Economy, 102: 76-102.

Vroman, W. (2013), Short-Time Compensation and Job Preservation, Urban Institute Working Paper, 6.

Vroman, W. (1992), Short-time compensation in the U.S., Germany, and Belgium. Working Paper. Washington, D.C.: Urban Institute.

Vroman, W., and Brusentsev, V. (2009), Short-time compensation as a policy to stabilize employment, Working Paper Department of Economics, University of Delaware.

Walz, G., Buiskool, B.J., Collewet, M., de Koning, J., and Calavrezo, O. (2012), Short-time working arrangements during the crisis and lessons to learn, Panteia Final Report.

Will, H. (2010), Kurzarbeit als Flexibilisierungsinstrument: Hemmnis strukturellen Wandels oder konjunkturelle Brücke für Beschäftigung?, IMK Study, 5.